



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint nos.:</b>	1288 of 2021 1289 of 2021
<b>Date of filing:</b>	20.12.2021
<b>Date of first hearing:</b>	08.02.2022
<b>Date of decision:</b>	31.01.2023

1. Jasbir Dhaliwal  
W/o Bachittar Singh Dhaliwal
2. Anureet Bains  
D/o Bachittar Singh Dhaliwal  
R/o House no.125, Sector-35A, Chandigarh.

....COMPLAINANTS

VERSUS

Vatika Ltd.  
Corporate office at 7<sup>th</sup> Floor, Vatika Triangle,  
Block A, Sushant Lok, Gurgaon-122022.

....RESPONDENT

1. Jasbir Dhaliwal  
W/o Bachittar Singh Dhaliwal
2. Divas Dhaliwal  
D/o Bachittar Singh Dhaliwal  
R/o House no.125, Sector-35A, Chandigarh.

....COMPLAINANTS

VERSUS

Vatika Ltd.  
Corporate office at 7<sup>th</sup> Floor, Vatika Triangle,  
Block A, Sushant Lok, Gurgaon-122022.

*Rathore*

....RESPONDENT

**CORAM:** Dr. Geeta Rathee Singh  
Nadim Akhtar

**Member  
Member**

**Hearing:** 5<sup>th</sup>

**Present:** Mr. Sanjeev Gupta, ld. counsel for the Complainants s  
Through VC

Ms. Charu Dhingra, ld. Counsel for the respondent  
Through VC

**ORDER (DR. GEETA RATHEE SINGH-MEMBER)**

Present complaints dated 20.12.2021 have been filed by Complainants s under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

Both the complaints have been taken up together as bunch matters as facts of the cases and grievances of the Complainants s are similar in nature and also concerns the same project of the respondent promoter. Facts of complaint

*G. Rathee*

no.1288 of 2022 titled as Jasbir Dhaliwal versus Vatika Ltd. have been taken as lead case.

**A. UNIT AND PROJECT RELATED DETAILS:**

2. The particulars of the project, the details of sale consideration, the amount paid by the Complainants s, date of proposed handing over possession, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Vatika Mindscapes, Sector-27, Faridabad
2.	Nature of the Project	Commercial Space
3.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
4.	Allotment letter dated	03.02.2014
5.	Unit No.	617, 6 <sup>th</sup> floor, Block-C
6.	Unit Area	500 sq. ft.
7.	Builder buyer agreement	08.02.2014
8.	Total Sale Consideration	₹22,50,000/-
9.	Paid by the Complainants	₹23,33,430/-
10.	Deemed date of possession	31.12.2015
11.	Offer of possession	NA

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANTS:**

*S. Rathee*

3. Complainants booked a commercial apartment/unit No.617 and measuring 500 sq. ft. on 6<sup>th</sup> floor, block C of the building of the project promoted by respondents at agreed consideration of ₹22,50,000/- on 03.02.2014. Complainants paid little more than entire consideration i.e. ₹23,33,430/- on 07.02.2014, copy of receipt has been placed at page no.26 of the complaint book. Builder-buyer agreement was executed on 08.02.2014, copy of which has been placed at page no.29-52 of the complaint book. Clause 15 of Agreement provides that assured return committed at the rate of ₹71.50 per sq. ft. per month i.e. ₹35,750/- per month will be paid to complainants till construction of the allotted unit is complete. Complainants allege that respondent paid assured return @ ₹71.50 per sq. ft. till February, 2018, but suddenly stopped the payment thereafter. The complainants allege that when complainants visited office of respondent in the year 2019 with regard to payment of assured returns, respondent informed that they have received occupation certificate of the building, therefore, from now onwards they will not give assured returns. Complainants, however, alleges that even till now, the possession of the unit has not been offered and the project is not ready of occupation.

4. Complainants further allege that vide letter dated 12.03.2018, respondents informed that construction work of Block C has been completed and building is operational and ready for occupation and started making payment of assured returns @ ₹65 per sq. ft. w.e.f. from 01.03.2018, whereas, as per

4 Rathore

agreement, payment should have been made @ ₹71.50 per sq. ft. Complainants state that respondent stopped making payment even @ ₹65/- per sq. ft. from September, 2018. Complainants argue that the agreement was silent with respect to date of delivery of possession, but claims that three years should be taken as reasonable period to complete the construction from the date of execution of agreement, making substantial payments. Block C is still not ready for occupation and therefore the respondent has legal liability to pay assured returns @71.50 sq. ft. as per terms and conditions of the agreement. Respondent has stopped making payments from 01.10.2018.

**C. RELIEF SOUGHT:**

5. The Complainants in their complaint has sought following reliefs:
- i. To direct the respondent to pay assured return @71.50 sq. ft. to be calculated w.e.f. March 2018 till date. The assured return paid by the respondent @65 per sq. ft. w.e.f. March 2018 to September 2018 may be adjusted from the total amount.
  - ii. To direct the respondent to pay interest on the amount of ₹23,33,430/- at the rate prescribed under Rule 15 of the HRERA Rules 2017 w.e.f. 08.02.2014 i.e. within a period of 3 years from execution of agreement till date of completion of the project.

- iii. To direct the respondent to execute conveyance deed of the unit in favour of Complainants s.
- iv. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

6. Respondent in his reply submitted that there is no relationship of builder and buyer between the respondent and the complainants. Complainants were simply investors who had approached respondent for investment opportunities and for steady rental income. Respondent has quoted provisions of clause 16.12 of agreement in support of their arguments. Respondent allege that agreement between parties was in the form of an investment agreement and Complainants had approached the respondent as investors looking for certain investment opportunities. Complainants being an investor purchased unit in the project and, the agreement for commercial space/unit contained a lease clause which empowers the developer to put unit of the complainants along with other commercial space on lease. It does not have a clause for offering possession. Since complainants were looking for speculative gains, these complaints are liable to be dismissed. Respondent challenges that present complaint has been filed before a wrong forum. The Complainants s are praying for assured return which is beyond jurisdiction of this Authority.

*G. Kataria*

7. Respondent cannot pay assured returns to complainants due to prevailing laws. Respondent argue that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to Complainants s.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS :**

8. Complainants argue that they are clearly allottees in terms of Section 2 (d) of RERA Act, 2016. Complainants had booked a commercial unit measuring 500 sq. ft. each at agreed consideration of ₹22,50,000/- in the project namely "Vatika Mindscapes" being developed by the respondent. Respondent had undertaken to pay assured returns to the complainants till the time peaceful physical possession is handed over to complainants. Construction of the project is nowhere near completion. As per agreement, respondent paid assured returns @ ₹71.50 per sq. ft. till September, 2018. The complainants state that offer of possession has still not been made nor has payment of assured returns been resumed. The respondent, however, started making payments @ ₹65/- per sq. ft. w.e.f. 01.03.2018. The respondent stopped making payment of even ₹65/- per sq.

7 *J. Patree*

ft. from October, 2018. Complainants have prayed for delivery of possession of unit as well as payments of overdue amounts of assured returns.

9. Learned counsel for complainants further drew attention of the towards the order dated 03.02.2022 passed by the Authority in complaint no.343 of 2021 titled as Tanya Mahajan versus Vatika Ltd. He stated that facts and grievances involved in these complaints are also similar to the facts and grievances of compliant no.343 of 2021, so the present complaints may be disposed of in same terms.

**E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:**

10. Learned counsel for respondent argued that as per clause 15 of the agreement, a leasing arrangement was agreed between the parties. The agreement is in the form of investment/lease agreement. The conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority.

**F. JURISDICTION OF THE AUTHORITY:**

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints



**F.1: Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Faridabad District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F.2: Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*34. Functions of Authority.—The functions of the Authority shall include—(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;*

In view of the Provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding

non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating Office, if pursued by the Complainants at a later stage.

**G. ISSUES FOR ADJUDICATION:**

Whether complainants are entitled to interest for delay in handing over possession as per agreement for sale along with overdue assured returns and registration of conveyance deed?

**H. OBSERVATIONS OF THE AUTHORITY:**

12. After consideration of facts and circumstances of the case, Authority observed that claim of the complainants are that they are allottees of the project as is clearly establish from nature of the project and the nature of the builder-buyer agreement executed between complainants and respondent company. Respondent company has failed to keep its promises of paying assured returns and also have not completed the project and offered possession after obtaining occupation certificate. The case of the respondent is that the complainants are not allottees, they are mere investors/depositors. Assured returns had been paid to the complainants up to September, 2018, but after promulgation of BUDS ordinance on 21.02.2019 and coming into force of the BUDS Act on 31.07.2019, the respondent is prohibited from paying assured returns to complainants. Further, the agreement executed between parties is only a lease agreement. Respondent

have been paying due returns to the complainants, but had stopped payments after coming into force the BUDS Act as law has prohibited them from making payments of assured returns to the complainants.

13. Further, it is observed that Authority has already disposed of bunch of complaints with lead complaint case no. 343 of 2021 titled as "Tanya Mahajan Versus Vatika Ltd.". Therefore, considering the submissions made by learned counsel for complainants, Authority decides to dispose of present complaints in the same manner in which complaint no. 343 of 2021 titled as "Tanya Mahajan V/s Vatika Ltd." was decided by the Authority vide orders dated 03.02.2022. Relevant part of order dated 03.02.2022 passed in complaint no. 343 of 2021 is reproduced herein below:

*"7. Authority has gone through all facts and circumstances of these matters. It has gone through written statement as well as oral arguments put-forth by both sides. It observes and orders as follows:*

- i. Claim of the complainants is that they are allottees of the project as is clearly establish from nature of the project and the nature of the builder-buyer agreement executed between complainants and respondent company. Respondent company has failed to keep its promises of paying assured returns and also have not completed the project and offered possession after obtaining Occupation certificate.*
- ii. The case of the respondents is that the Complainants s are not allottees, they are mere depositors. Assured returns had been paid to the Complainants s up to December, 2018, but after promulgation of BUDS ordinance on 21.02.2019 and coming into force of the BUDS Act on 31.07.2019, the respondents are prohibited from paying assured returns to Complainants s. Further, the agreement executed*

between parties is only a lease agreement. Respondents have been paying due returns to the Complainants, but had stopped payments after coming into force the BUDS Act as law has prohibited them from making payments of assured returns to the Complainants.

- iii. Authority would first of all refer to nature of the agreement executed between both the parties. Clause-A, B & C of opening recitals of the agreement provides that respondents-company is owner in possession of 8.793 acres land in revenue estate of Sarai Khawaja, Tehsil and District Faridabad, Sector-27, Faridabad. M/s Vatika I.T. Parks Pvt. Ltd. i.e. respondent no.2 had obtained licence No. 1133 of 2006 from Director, Town & Country Planning Department, Haryana, for constructing upon the said land an IT park. Clause-C of the opening recital states that Director, Town & Country Planning Department, has already approved demarcation/ zoning plans and building plans of the said IT park vide their memo No. 16150 and 1315 dated 20.06.2007 and dated 08.04.2008. It further states that said IT park has been named as "Vatika Mindscapes".
- iv. Clause D, E, F & G repeatedly refers to Complainants as buyers and to respondents as developers. Clause E clearly stipulates that Complainants /buyer have approached the developer for purchase of units of approximately 500 sq. ft. super area on 4<sup>th</sup> floor of the building block-C of the project.
- v. A cursory reading of the opening recital A to H leaves no doubts that respondents are builder-promoters of the project 'Vatika Mindscapes'. They have properly obtained licence from State Government. They have got their building plans etc. duly approved. They have properly negotiated for sale of specified and identified units to the Complainants.

This by itself leaves no doubt that the respondents are developers and Complainants are buyers and a proper builder-buyer relationship exists between both the parties and any dispute relating to the agreement between them is referable to this Authority only. Jurisdiction of the Authority, therefore, for dealing with this dispute is undisputable and objections raised by respondents to the jurisdiction of the Authority are without any basis.

- vi. *In Clause-1 (a) of the agreement, unit allotted to the Complainants is properly identified. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, Complainants herein chose the option of down payments. An option of deferred payment was also available but Complainants did not opt for the same.*
- vii. *Clause-4, particularly clause 4.4, specifies the area deliverable to Complainants, including covered area of the unit as well as pro-rata share of common areas of the entire building. Definition of the common area has also been specified in the agreement.*
- viii. *Reading of the remaining clauses of the agreement there is no doubt that this was a proper builder-buyer agreement as per prevailing market practice.*
- ix. *Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, Complainants chose to make down payments and in return claim monthly assured returns. As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, Complainants allottees would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.*

8. *Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and Complainants because Complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering*

possession to Complainants . Complainants s therefore are entitled to relief sought i.e. possession of the unit along with payment of overdue assured returns as per provisions of the agreement.

9. Respondents have taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondents' argument is that since the Complainants s are not allottees, they are depositors, therefore, they fall within the prohibitions provided in the BUDS Act.

10. Respondents have cited provisions of Sub Section 4 of Section 2 of the BUDS Act in which definition of deposits has been given. Opening line of the definition of the deposit reads ...

".... an amount of money received by way of an advance or loan or in any other form by any deposit taker with a promise to return whether of a specified period or otherwise either in cash or any kind or any specified service....."

Authority observes that none of the conditions listed in the aforesaid definition of "deposits" are fulfilled in the captioned complaints. The money paid by the Complainants s cannot be called advance or loan. It was very much a consideration for purchase of specified and identified apartments/ units in the duly licenced real estate project of the respondents. Further, definition deposit stipulates an essential condition that the deposit has taken with 'a promise to return after a specific period'. This condition is also not fulfilled in the present case. Provisions of the agreement do not at all provide for return of the money paid by the Complainants s. It only provides for delivery of a pre-identified constructed unit in the lawfully licenced project of the respondents. The arguments of the respondents, therefore, are summarily rejected because consideration amount paid by Complainants by no stretch of imagination can be categorised as deposits of finance for return in the form of investment bonus, profit or in any other form.

11. Respondents are desperately trying to deny legitimate rights of the Complainants s as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.

12. The Authority observes that respondents have still not obtained occupation certificate. Real estate project can be said to be complete only upon receipt of occupation certificate or part completion certificate. Having not received the Occupation certificate, project is still on going. The respondents have got this

*project registered with the Authority vide Registration No. 196 of 2017 dated 15.09.2017. The Complainants s are therefore, entitled to lawful possession of the unit after obtaining occupation certificate thereof by the respondents. Till such time as a lawful offer of possession is made, Complainants s are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft. Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e. MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case. Admittedly, monthly assured returns @ ₹71.50 per sq. ft. which amounts to ₹35,750/- per month is payable. This amount had been paid up to December, 2018. Accordingly, monthly returns @ ₹35,750/- will be paid for the entire period from January 2019 till February 2022 i.e. the month of passing of this order. This amount works out to ₹15,63,803/-. It is also ordered that non-calculated monthly interest will be paid regularly by the respondents till lawful offer of possession is made to the Complainants s."*

**I. DIRECTIONS OF THE AUTHORITY:**

14. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to hand over lawful possession of the units after obtaining occupation certificate to the complainants and to execute conveyance deed.

- ii. Till such time as a lawful offer of possession is made, complainants are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft. Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act.
- ii.. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e. MCLR+2%. However, since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case. Admittedly, monthly assured returns @ ₹71.50 per sq. ft. which amounts to ₹35,750/- per month is payable. This amount had been paid up to October, 2018. Accordingly, monthly assured returns @ ₹35,750/- will be paid along with interest for the entire period from October 2018 till January 2023 i.e. the month of passing of this order in both cases. This amount works out to ₹22,94,160.92/- in each case. Respondent is directed to pay amount of ₹22,94,160.92/- to complainants in each case. It is also ordered that non-calculated monthly interest will be paid regularly by the respondent till lawful offer of possession is made to both complainants.

  
G. Kothari



15. The complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



.....  
NADIM AKHTAR  
(MEMBER)



.....  
DR. GEETA RATHEE SINGH  
(MEMBER)

