



**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Date of order: 02.12.2022**

Name of the Builder		Vatika Limited	
Project Name		Vatika City INX City Centre	
S. no	Complaint no.	Name of Parties	Advocates
1.	CR/3824/2021	ARP Engineerings Private Limited V/s Vatika Limited	Mr. Sandeep Chaudhary Ms. Ankur Berry
2.	CR/3825/2021	Aryabandhu Herbs V/s Vatika Limited	Mr. Sandeep Chaudhary Ms. Ankur Berry
3.	CR/3841/2021	Shalini Saha V/s Vatika Limited	Mr. Sandeep Chaudhary Ms. Ankur Berry

**CORAM:**

Shri Vijay Kumar Goyal  
Shri. Sanjeev Kumar Arora

Member  
Member

**ORDER**

1. This order shall dispose of all the three complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the





project, namely, India Next City Centre (commercial complex) being developed by the same respondent/promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issues involved in these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, possession and the execution of the conveyance deeds.

3. The details of the complaints, reply status, unit no., date of agreement, assured return clause, assured return rate, possession clause, due date of possession, total sale consideration, amount paid up, and the reliefs sought are given in the table below:

<b>Project: Vatika INXT City Centre, Sector 83, Vatika India Next, Gurugram, HR-122012</b>
<b>Assured return clause: Addendum to the agreement</b>
The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq.ft. However during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 13/- per sq.ft. Therefore, your return payable to you shall be as follows:
This addendum forms an integral part of builder buyer agreement
A. Till completion of the building: Rs. 78/- per sq.ft.
B. After completion of the building: Rs. 65/- per sq.ft.
You would be paid an assured return w.e.f. 02.03.2010 on a monthly basis before the 15 <sup>th</sup> of each calendar month.
The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq.ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq.ft. the following would be applicable.
1. If the rental is less then Rs. 65/- per sq.ft. then you shall be refunded @Rs. 120/- per sq.ft. (Rupees one hundred twenty only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq.ft.
2. if the achieved rental is higher then Rs. 65/- per sq.ft. then 50% of the increased rentals shall accrue to you free of any additional sale consideration. However, you





will be requested to pay additional sale consideration of Rs. 120/- per sq.ft. (Rupees One hundred twenty only) for every rupee of a additional rental achieved in the case of balance 50% of increased rentals.

1	2	3	4	5	6
Sr. no	Complaint no./title/reply status	Unit no. & area admeasuring	Allotment letter	Date of agreement	Total sale consideration/ Amount paid
1.	CR/3824/2021 ARP Engineerings pvt. Ltd. VS Vatika Limited	140, 1 <sup>st</sup> floor, block E  *Initially allotted unit: 1217, 12 <sup>th</sup> floor, 500 sq.ft.	05.03.2010	05.03.2010	Rs. 17,50,000/- Rs. 17,50,000/-
2.	CR/3825/2021 Aryabandhu herbs VS Vatika Limited	139, 1 <sup>st</sup> floor, block E NA  *Initially allotted unit: 1216, 12 <sup>th</sup> floor, 500 sq.ft.	NA	02.03.2010	Rs. 17,50,000/- Rs. 17,50,000/-
3.	CR/3841/2021 Shalini Saha VS Vatika Limited	138, 1 <sup>st</sup> floor, block E  *Initially allotted unit: 1215, 12 <sup>th</sup> floor, 500 sq.ft.	NA	01.03.2010	Rs. 17,50,000/- Rs. 17,50,000/-

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date, seeking award of delayed possession charges and the execution of the conveyance deeds
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which



mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/ allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 3824/2021 titled as ARP Engineerings Pvt. Ltd. Vs. M/s Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges, and execution of conveyance deeds.

**A. Unit and project related details**

7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form

S.no.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Allotment letter	05.03.2010 (page 22 of complaint)
3.	Date of builder buyer agreement	05.03.2010 (page 24 of complaint)
4.	Unit no.	1217, 12th floor, tower A, admeasuring 500 sq.ft. (page 22 of complaint)
5.	New unit no.	140, 1st floor, block E (page 47 of complaint)
6.	Possession clause	The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee





		has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs As per annexure "A" ..... (Rupees.....) per sq.ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession. (Emphasis supplied)
7.	Due date of possession	05.03.2013
8.	Total sale consideration	Rs. 17,50,000/- as per clause 1 of the agreement (page 27 of complaint)
9.	Paid up amount	Rs. 17,50,000/- as alleged by the complainant (page 27 of the complaint)
10.	Assured return clause	<b>Annexure A</b> <b>Addendum to the agreement dated 05.03.2010</b> The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq.ft. However during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 13/- per sq.ft. Therefore your return payable to you shall be as follows:



		<p>This addendum forms an integral part of builder buyer Agreement dated 05.03.2010</p> <p>A. Till Completion of the building: Rs. 78/- per sq.ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq.ft.</p> <p>You would be paid an assured return w.e.f. 05.03.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq.ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq.ft.</p> <p>1. If the rental is less than Rs. 65/- per sq.ft. than you shall be returned @Rs. 120/- per sq.ft. for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq.ft.</p> <p>2. If the achieved rental is higher than R. 65/- per sq.ft. than 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq.ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals</p>
11.	Offer of possession	Not offered
12.	Occupation certificate	Not obtained





**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint:-

- I. That the complainant believing the assurances and representations so stated to be true and correct on 1.02.2010 booked a commercial unit admeasuring 500 sq ft of super area in the said project named Vatika Trade Centre for a total sale consideration of Rs. 17,50,000/- and paid the booking amount as asked by the respondent.
- II. That the complainant in its readiness and willingness and avail the proposal of a regular return from the said property paid the entire balance sale consideration on 24.02.2010 to the satisfaction of the respondent upon which it issued an allotment letter dated 05.03.2010. The respondent allotted the unit bearing no. 1217 admeasuring 500 sq. ft. of super area on the twelfth floor of the said project with a promise that the project shall be complete and ready for lease by 30.09.2012 and that the complainant would started getting the commitment lease rentals at Rs. 65 per sq. ft. w.e.f. 1.10.2012.
- III. That the respondent as committed initially paid the minimum rental amount of Rs. 39,000/- per month upto March, 2018 but nothing was paid thereafter and the complainant has been kept at its mercy since then.
- IV. That in the meantime vide letter dated 27.07.2011, the respondent intimated that the project has been relocated to a

better location in proximity to National Highway – 8 and Dwarka Expressway which would enhance the value of the property and accordingly the land schedule in the buyers' agreement already executed was informed to be changed and the new license for the project was no. 122 of 2008 and also the name of the project was changed to "INXT City Centre".

- V. That vide letter dated 31<sup>st</sup> July, 2013, the respondent, intimated the complainant that the final allocations of areas in the complex were now complete and it has now been allotted the unit no. 140, first floor, block E, in project named India Next City Centre, NH8, Sector 83, Gurgaon.
- VI. That vide letter dated 26.03.2018, the respondent informed the complainant about the construction of E-block of the INXT City Centre being complete and the building being operational and ready for occupation. It was also informed that the respondent is in active discussion with various prospective tenants and is expected to lease out substantial area in the building and the complainant would be paid the commitment charges to the extent of Rs. 65 per sq. ft. per month from 1.03.2018 as per terms and conditions agreed upon.
- VII. That the said letter dated 26.03.2018 was a mere eye wash and a means of avoiding liability towards the complainant and gain wrongfully as neither was the building to any extent was operational nor did the respondent had entered into any talks for





leasing the said building. Even the respondent did not offer the possession of the unit to the complainant. However, therefrom, the respondent avoided paying any money as rentals or assured rentals to the complainant and started avoiding it on one or the other pretexts of alluring the complete advantage of the property & returns therefrom would very soon be given to it and the property is about to be leased out very soon.

- VIII. That since then the complainant and its promoter Sh. Rajiv Gupta, invested his hard-earned money into the project hoping to own and possess a commercial property has been rounds to the offices of the respondent but to no avail and the project has been at a standstill since then.
- IX. That vide email dated 21.12.2018, the respondent, to shy away from its liability took assistance of the legal framework stating that the return based sales without registering the product with SEBI were prohibited and stated that it would therefore, not be able to pay the monthly rentals anymore and that the property is available for leasing and it anticipate to have the unit leased out between March and June 2019,.Thereby, the respondent took the shield behind the legal framework and instead of complying with the legal procedures, relegated form its obligations of making the monthly payments.
- X. That in pursuance of formally avoiding the liability of paying the monthly rentals as committed in the initial agreement between



the parties, the respondent under the garb of the legal framework and alluring to clear off all outstanding amounts within 90 days influenced the complainant to sign another bogus addendum agreement dated 6.08.2019 whereby it committed itself to clear the outstanding amount within 90 days thereof and amended the original clause 32 - leasing assistance, by abrogating the minimum assured rental and compensation arising therefrom.

- XI. That however, to the misery of the complainant neither the respondent complied with the original agreement, the self-serving addendums nor gave the possession & ownership of the unit and let the unit on rent as assured and on the last visit by the complainant's promoter.
- XII. In the month of August, 2021 the complainant realised that neither is there any construction activity going on nor seems any prospect of any lessees coming and occupying the project and nor did the representatives of the respondent provided any reliable response to the further expected timelines of the project.
- XIII. That the minimum rental could not in any way be an excuse for non- completion of the project and it was incumbent upon the respondent to complete the obligation of construction of the project in a timely manner and to handover the possession as assured and to arrange for the necessary lease of the property of the complainant. It is highly dishonest and unfair on the part of the respondent in paying only few monthly rentals to the





complainant and then abandoning its prime obligation of completion of the project and conveying the property so agreed to be transferred.

- XIV. That though the complainant is very much entitled to the monthly assured rental of Rs. 78 per sq. ft. till the completion of the project and also for the assured rentals thereafter and to equivalent amount of compensation for breach of obligations, however, it reserving that right to claim such compensation and rentals through appropriate legal proceedings is only filing the present complaint for delay possession interest as prescribed under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 and the direction to complete the project and deliver possession and convey the same to it by execution and registration of the conveyance deed.
- XV. That as per the assurance of the respondent, the project was to be completed by October, 2012 which has not even completed till date and hence, the respondent is obliged to pay and the complainant is entitled to be paid the delay possession charges at the prescribed rate of interest w.e.f. 1.11.2012 till the delivery of actual physical possession and also the respondent is obliged to complete the construction and development of the project along with all assured amenities and facilities and deliver actual and physical possession and convey the unit to the complainant by execution and registration of the conveyance deed.



**C. Relief sought by the complainant:**

9. The complainant has sought following relief(s).
  - I. Direct the respondent to complete the construction and development of the project and deliver actual and physical possession and convey the unit no. 140, first floor, block E.
  - II. Direct the respondent to pay interest for every month of delay till the handing over of possession at the prescribed rate as per Act.
  - III. That the accumulated interest may kindly be directed to be paid immediately and the further interest be directed to be paid on a monthly basis.
10. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

11. The respondent contested the complaint on the following grounds: -
  - a) That at the very outset, it is submitted that the complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before the authority as the relief being claimed by him cannot be said to fall within the realm of jurisdiction of this forum. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'assured return' and any "committed returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI and thus cannot run,





operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "deposit". Thus, the simultaneous reading of all the three results in making the assured return and the similar schemes being illegal.

- b) The "assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, and thus the relief prayed for in the complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs. 33,45,452/- till October 2018 as assured returns. Thereafter an addendum dated 06.08.2019 was executed wherein the assured return was payable till 30.06.2019. But, the complainant by way of undertaking dated 25.11.2019 and out of his own free will has waived off the assured return for the period of April 2019 till June 2019.
- c) That as per the SEBI Act, 1992, collective investment schemes as defined under section 11 AA can only be run and operated by a registered person. Hence, the assured return schemes have become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law. Also, it is important to rely upon clause 35 of the buyer's agreement dated 05.03.2010 which specifically caters to a situation where certain provisions of the agreement become inoperable due to application of law.





- d) That the complainant has not come before the authority with clean hands. He has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant requires detailed deliberation by leading the evidence and cross examination, thus only the civil court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.
- e) It is pertinent to mention that the complaint is not maintainable before the authority as it is apparent from the prayer sought in the complaint. It is crystal clear from reading the complaint that he is not 'allottee', but purely an 'investor', who is only seeking assured return from the respondent, by way of present petition, which is not maintainable as the unit is not meant for personal use and rather, it is meant for earning rental income.
- f) That it is also relevant to mention here that the commercial unit of the complainant was not meant for physical possession and the same is only meant for leasing the said commercial space for earning rental income. Furthermore, as per clause 32(d) of the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by hm is not meant for physical possession.
- g) That in view of the judgment and order dated 16.10.2017 passed by the Maharashtra RERA Authority in the complaint titled *Mahesh Pariani vs. Monarch Solitaire*, in complaint no: **CC00600000000078 of 2017**, it has been observed that in case where the complainants have invested money in the project with





- sole intention of gaining profits out of the project, then they are in the position of co-promoter and cannot be treated as an 'allottee'.
- h) That the complainant has come before this authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottees malicious intention to earn some easy buck. The covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the buyers' agreement dated 05.03.2010.
- i) That it is submitted that the complainant entered into an agreement owing to the name, goodwill and reputation of the respondent. According to the terms of the buyer's agreement dated 05.03.2010, the construction of unit was completed and the same was duly informed to it vide letter dated 26.03.2018. Due to external circumstances which were not in control of the respondent, minor timeline alterations occurred in completion of the project. Even though the respondent suffered from setback due to external circumstances, yet it managed to complete the construction.
- j) The complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case. The main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. It is pertinent to





submit that the complainant was sent letter dated 27.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in its favour and against the respondent and hence, the complaint deserves to be dismissed.

12. All other averments made in the complaint were denied in toto.
13. Copies of all the relevant documents have been filed and place on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

14. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

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

**E.II Subject-matter jurisdiction**





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

**Section 11(4)(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides 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.*

17. So, in view of the provisions of the Act 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 officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I. Objection regarding entitlement of DPC on ground of complainant being investor.**

18. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, it is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in





stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.17,50,000/-** to the promoter towards purchase of an unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that it is allottee(s) as the subject unit was allotted to it by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real





Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F. Findings on the relief sought by the complainant:**

**F. I Direct the respondent to handover the possession of the unit along with prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.**

20. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

21. Clause 32.1 of the buyer's agreement dated 05.03.2010 provides a clause for leasing arrangement providing as under:

*32.1 That on completion of the project, the Developer undertakes to put the said unit on lease and to effectuate the same the allottee hereby authorizes the developer (and agrees, if deemed expedient, to execute any other necessary document in future in this regard in favour of the Developer) to negotiate and finalize leasing arrangement with any suitable tenants. The Allottee expressly authorizes the Developer to enter into any agreement with any third party for leasing of the said unit and to appear before the HUDA or any other competent authority of assurances and to lodge account of the Allottee, in respect of the lease if payable. However, it is understood and agreed between the Allottee and the Developer that:*





- a) *The rents shall be paid by the lessee/Developer to the Allottee.*
- b) *The Developer shall neither be a party nor shall be privy to such lease agreement.*
- c) *The Developer shall arrange for the execution and registration of the lease deed but changes & expenses for the same, including but not limited to stamp duty and registration charges shall be borne by the allottee/proposed lessee as may be negotiated and agreed to.*
- d) *The unit shall be deemed to have been legally possessed by the allottee.*
- e) *In the event of non-payment of the rent or any other dues by the lessee or the delayed payments, the allottee shall have the remedies available to it as may be stipulated in the said lease agreement.*
- f) *The Developer shall at all times have the right of leasing of the unit and such decisions as to the choice of the tenant and the lease rent shall be binding on the allottee. This clause is a power of attorney executed by the allottee as donor with the developer as donee/attorney and the allottee hereby ratifies and confirms all acts deeds and things to be done by the developer as its attorney, by virtue of the presents above.*
- g) *That the allottee permits the developer to remit to it the said rent after deducting the expenses/costs incurred by it (developer) on a pro rata basis, on he said leasing arrangement including costs on costs on collection of rents from the lease and subsequent payment of rentals to the allottee on an ongoing basis. Such costs presently workout to Rs. 7/- per sq.ft. per annum of leased super area. In addition, the allottee also undertakes to pay service tax and other levies as may be applicable from time to time on the said rentals received by it through the developer. The due shall be deducted by the developer in one lump sum from the first rent payable to the allottee in the financial year.*
- h) *The allottee shall not without the written consent of the developer (such consent not being unreasonably withheld) be entitled to take the physical possession including self-occupation of the unit. In case an allottee is given possession of his unit, such possession shall be given in the same state in which the previous occupant/lessee had vacated the space viz. 'as is where is basis'. Further, it is clearly understood by the allottee that upon such possession being given the developer's responsibility or providing services such as air-conditioning, firefighting, and electrical supply shall be limited to catering to modules of area 3000 sq.ft. or less shall not be permitted."*

22. After those two addendums to that agreement dated 27.07.2011 and 06.08.2019 were executed between the parties w.r.t. leasing out that





subject unit and w.r.t. assured returns. Though, the complainant took a plea that as per the above-mentioned documents, it is entitled to seek possession along with delay possession charges of the subject units but it has not been able to refer to a single clause or condition vide which it is entitled to those reliefs. The opening words of clause 32.1 detailed above shows that on completion of the project, the developer undertakes to put the said unit on lease, the allottee authorising it to do so and the unit shall be deemed to have been legally possessed by the allottee =. Though, different rates of return on completion of project and letting out the unit have been mentioned under clause 32.2 of the agreement but nowhere it is provided that on completion of the project, the allottee would be entitled to possession of the allotted unit and compensation on account of delay in completing the project. That situation has already been dealt with by way of payment of assured returns while executing addendum agreements on different dates at the rates mentioned therein. Though, vide letter dated 26.03.2018 the respondent informed the complainant about the completion of construction of the of block E of the project but in the absence of certificate of occupation, the same cannot be taken into consideration and does not carry any weight. So, keeping in view all these facts and particularly the pleadings of the complainant, it is neither entitled to possession of the subject unit nor delay possession charges.

23. While filing the complaint, the complainant only sought the above-mentioned reliefs reserving its right to claim assured returns separately






by way of separate complaint. Though, in the facts and circumstances detailed by the parties, it may be entitled to that relief but the same is not being granted in view of averments made in this regard.

24. Thus, keeping in view the factual as well legal position detailed above, the complaint filed seeking possession of the allotted unit besides delay possession charges and execution of its conveyance deed is not maintainable and the same is hereby ordered to be rejected. However, the complainant would be entitled to seek assured returns as per the provisions of the buyer's agreement against the allotted unit by filing a separate claim.
25. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
26. Complaints stand disposed of.
27. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)  
Member

Dated: 02.12.2022