# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no. :** | **1537 of 2022** |
| **Date of filing complaint:** | **26.04.2022** |
| **First date of hearing:** | **20.07.2022** |
| **Date of decision :** | **30.05.2023** |

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| Rishabh Nagpal & Sushil Nagpal<br>**R/o**: 649, Sec 33B, Chandigarh- 160020. | **Complainants** |
| Versus | |
| M/s Vatika Limited<br>**address:** Vatika Triangle, 4th floor, Sushant Lok, Phase-i, Block-A, M. G. Road, Gurugram-122 002. | **Respondent** |

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| **CORAM:** | |
| Shri. Ashok Sangwan | Member |
| Shri. Sanjeev Kumar Arora | Member |
| **APPEARANCE:** | |
| Sh. Gaurav Rawat proxy | Advocates for the complainants |
| None | Advocates for the respondent |



## ORDER

The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

## A. Project and unit related details

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

| S. No. | Heads | Information |
|---|---|---|
| 1. | Name and location of the project | One on One Phase- 1, Sector- 16, Village Silokhera, Gurugram |
| 2. | Nature of the project | Commercial complex |
| 3. | Area of the project | 12.13125 acres |
| 4. | DTCP License | 05 of 2015 dated 06.08.2015 |
| | valid upto | 05.08.2020 |
| | Licensee name | Keshav Dutt & 2 others. |
| 5. | Allotment dated | 29.11.2017<br>(page no. 18 of complaint) |
| 6. | Unit no. | 534, 5th floor, Block 3<br>(page no. 18 of the complaint) |
| 7. | Super area | 500 sq. ft.<br>(page no. 18 of the complaint) |
| 8. | Date of builder buyer agreement | Executed but date is not mentioned |
| 9. | Possession clause | Not given in file |
| 10. | Due date of possession | Cannot be ascertained |
| 11. | Total sale consideration | Rs. 41,25,000/-<br>(page no. 26 of complaint) |
| 12. | Paid up amount | Rs. 41,20,000/-<br>(As alleged by complainant on page no. 10 of complaint) |

| | | |
|---|---|---|
| 13. | Assured return clause | As per ***clause 2 of allotment letter*** That ***the payment of your assured return of Rs 150.26/- per sq. ft. per month on super area will commence only on receipt of 100% of basic sale consideration by us from you, in terms of the payment plan/schedule of payment*** as agreed/opted by you and will and ***will be paid till the completion of the construction of the said building.*** Post completion construction of the said building, you will be paid committed return of ***Rs 131/- per sq. ft. per month on super area for up to three years from to completion of construction of the said building or the said unit is put on lease whichever is earlier***. You will be entitled to receive lease rent in respect of said unit from the rent commencement date in accordance with lease document as may be executed with prospective tenant. If there is any rent-free period on account of fit out or otherwise, then you will not be entitled for rent during rent free period. (page 18 of complaint) |
| 14. | Offer of possession | Not offered |
| 15. | Occupation certificate | 06.09.2021 (As per annexure R-2 of reply) |
| 16. | Assured return amount paid by the respondent till 30.09.2018 | Rs. 6,76,215/- (annexure R3 of reply) |

## B. Facts of the complaint

8. That the respondents approached the complainant for investment in commercial unit in 'Vatika One on One' of approximately 500 sq. feet super area and handed over to the complainant prospectus enticing him to invest in the project in as much as assured monthly return and lease rental was guaranteed.

9. The respondent shared allotment letter to the complainant dated 29.11.2017 mentioning terms and conditions for booking commercial space at One on One, Sector 16, Gurgaon. As per allotment letter, the respondent agreed to pay Rs 150.26/- per sq. ft. per month of super area as assured return to the complainant till date of completion of building. On the basis of representations made by it the allottee submitted an application form dated 13.09.2017 with respondent company for booking of a unit in the project in question.
10. That as per clause 2 of the allotment letter dated 29.11.2017, the respondent was liable to pay Rs. 150.26/- per sq.ft. of super area as assured return to the complainant till date of completion of building. However, the promoter has failed to pay agreed assured return from October 2018. The respondent has failed to obtained the OC in respect of block 3 of commercial building One on One, Sector 16, Gurgaon where the booked unit is situated till date. The complainants had already paid Rs 41,20,000/- out of total sale consideration of Rs 41,25,000/- as and when demanded by respondent on a timely basis.
11. That the complainants had invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at the time of booking in order to allure the complainants. However, the respondent has failed to abide all the obligations of him stated orally and under the buyer agreement duly executed between both the present parties.
12. Therefore, the complainants are forced to file present complaint before the authority under section 31 of Real Estate Regulation and Development Act,

2016 read with Rule 28 of Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent.

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

The complainants have sought following relief(s):

i. Direct the respondent to pay agreed assured return charges of Rs. 67,621/- per month along with interest at the prescribed rate to the complainants accrued from the month of October 2018 to the date of offer of possession along with OC by respondent.

ii. Direct the respondent to execute and register the conveyance deed of the booked unit after completion of pending construction works and receipt of occupation certificate in respect of same.

29. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions 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**

The respondent has contested the complaint on the following grounds.

a. That the complainant has got no locus standi or cause of action to file the complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the BBA dated 20.07.2020, as shall be evident from the submissions made in the following paras of the present reply.

b. That it is pertinent to mention that the present complaint is not maintainable before the Authority as it is apparent from the prayers sought in the complaint. The buyer's agreement dated 20.07.2020 does

not contain any assured return clauses further there has been no addendum to the effect of assured returns. Further, the respondent has also duly completed the construction, applied for occupation certificate and received the same on 06.09.2021, thus the complaint ought to be dismissed outrightly.

c. 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 themselves in filing the above captioned complaint before the authority as the reliefs being claimed by him cannot be said to fall within the realm of jurisdiction of the authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'assured return' and or any "committed returns" on the deposit schemes have been banned. The respondents having not taken registration from SEBI Board 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".

d. As per section 3 of the BUDS Act, all unregulated deposit scheme has been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposit. Thus, section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoters, illegal and punishable under law. Further 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. It is also important to rely upon clause 35 of the BBA dated 21.07.2011 which specifically caters to the situation where certain provisions of the agreement become inoperable due to application of law. Thus, the complaint deserves to be dismissed at the very outset, without wasting precious time of this authority.

e. The complainants have not come before the authority with clean hands. The complaint has been filed by them 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 them require 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.

f. That the complainants have come before the Authority with unclean hands. The complaint has been filed by the complainants 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 allottee 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 complainants have instituted the present false and vexatious complaint against the respondent who has already

fulfilled its obligation as defined under the buyer's agreement dated 20.07.2020.

g. That the complainants entered into an agreement i.e., buyer's agreement dated 20.07.2020 with respondent owing to the name, good will and reputation of the respondent. According to the terms of the buyer's agreement dated 20.07.2020, the construction of unit was completed and the OC for the project has already been received on 06.09.2021.

g. The present complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while sections 11 to section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, section 19 provides the rights and duties of allottee. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottee, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act or omission of part of the other.

h. That it is brought to the knowledge of the Authority that the complainants are guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainants. That before buying the property from the erstwhile allottees, the complainants were aware of the status of the project and the fact that the commercial unit was only intended for lease and never for physical possession.

i. That 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 that the main purpose of the present complaint is to harass the respondents by engaging and igniting frivolous issues with ulterior motives to pressurize the respondents. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of him and against the respondents and hence, the complaint deserves to be dismissed.

30. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

## E. Jurisdiction of the authority

31. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### E. I Territorial jurisdiction

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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**

33. 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;*
>
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*
>
> ***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.*

34. So, 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 officer if pursued by the complainant at a later stage.

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

35. The common issues with regard to delayed possession charges, assured return and litigation charges are involved in **both the cases.**

**F.I Assured return**

36. The complainant has sought assured returns on monthly basis as per clause 2 of the allotment letter at the rate of Rs. 150.26/- per sq.ft. of super area per month till the completion of construction of the said building. It was also agreed as per clause 2 of the allotment letter that the developer will pay to the buyer Rs. 131/- per sq.ft. super area of the said commercial unit as committed return for upto three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019 (herein after referred to as the Act of 2019). But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured returns upto

the year 2018 but did not pay the same amount after coming into force of the Act of 2019 as it was declared illegal.

37. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral part of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same

parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees. Now, three issues arise for consideration as to:

i. Whether authority is within the jurisdiction to vary its earlier stand regarding assured returns due to changed facts and circumstances.
ii. Whether the authority is competent to allow assured returns to the allottees in pre-RERA cases, after the Act of 2016 came into operation,
iii. Whether the Act of 2019 bars payment of assured returns to the allottees in pre-RERA cases

38. While taking up the cases ***of Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018),*** and ***Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP" (complaint no 175 of 2018)*** decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a

doctrine of "prospective overruling" and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of ***Sarwan Kumar & Anr Vs. Madan Lal*** Aggarwal Appeal (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now the plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority in not tenable. The authority can take a different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum , memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. In the case

in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. Then in case of ***Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors. (Writ Petition (Civil) No. 43 of 2019) decided on 09.08.2019,*** it was observed by the Hon'ble Apex Court of the land that "...allottees who had entered into "assured return/committed returns' agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees". It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code" including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in case ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of ***Pioneer Urban Land Infrastructure Ld & Anr.*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the

builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (supra) as quoted earlier. So, the respondents/builders can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

39. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *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 after a specified period* or otherwise, either in cash or in kind or in the form of a specified service, *with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

    i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such*

*business including—*

*ii. advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

40. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

*i. as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property*

*ii. as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

41. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

42. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.

43. It is evident from the perusal of section 2(4)(l)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.

44. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honor their commitments, a number of cases were filed by the creditors at different forums such *as* ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the

abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited*** (*RERA-PKL-2068-2019*) where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard.

45. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e, explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules

however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under:-

> *(2) The following shall also be treated as Regulated Deposit Schemes under this Act namely:-*
> ***(a)*** *deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and*
> ***(b)*** *any other scheme as may be notified by the Central Government under this Act.*

46. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

47. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottees is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.

48. On consideration of documents available on record and submissions made by the parties, the assured return of Rs. 150.26/- per square feet per month is to be paid till the construction of the said commercial unit is complete. The respondent has obtained the occupation certificate on 06.09.2021. Accordingly, the promoter is liable to pay assured return of the unpaid period i.e., October 2018 till September 2021 at the rate of Rs. 150.26/-per sq.ft. per month of the super area.

49. Keeping in view the fact that OC has been obtained on 06.09.2021, the promoter is liable to pay assured return @150.26/- per sq. feet. of the super area till September 2021.

50. The counsel for the respondents submitted that assured return has been paid uptil September 2018, the assured return thereafter be paid as ordered above.

51. It is further provided under clause 2 of the allotment letter that developer would also pay to the buyer Rs. 130/- per sq.ft. per month of

super area of the allotted unit as committed return upto three years from the date of completion of the construction of the said building or the said unit is put on lease whichever is earlier. The buyer would start receiving lease rental in respect of the said unit in accordance with lease document as may be executed with prospective tenant. If there is any rent-free period on account of fit out or otherwise, then the buyer shall not be entitled for rent during the same. So, in view of that agreement between the parties, the developers are also under an obligation to pay to the allottee committed return @130/- per sq.ft. per month for 3 years from the date of completion of the construction of building or the unit is put on lease whichever is earlier.

**F. II Conveyance deed**

52. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

> ***"17. Transfer of title.-***
> *(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

53. As per Section 17(1) of Act, the promoter is under obligation to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent Authority, as the case may be. It has come on record that the occupation certificate of the tower in which the unit of the complainant is situation has been obtained from competent Authority on 06.09.2021 and thus, in view of Section 17(1) of Act and the fact that the already paid almost complete amount towards consideration of allotted unit, the respondent is directed to executed conveyance deed/sale deed in favour of complainant within 30 days from date of this order.

## G. Directions of the authority

54. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay the arrears of amount of assured return amount from October 2018 till September 2021 as per clause 2 of the allotment letter. Further, the respondent/ builder would also be liable to pay monthly assured returns at agreed rate of the super area up to 3 years or till the unit is put on lease whichever is earlier.

ii. The respondent is also directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of order after adjustment of outstanding dues, if any,

from the complainant(s) and failing which that amount would be payable with interest @8.70% p.a. till the date of actual realization.

iii. The respondent is directed to executed conveyance deed/sale deed in favour of complainant within 30 days from date of this order.

iv. The respondent shall not charge anything from the complainant(s) which is not the part of the agreement of sale.

55. Complaints stand disposed of.

56. Files be consigned to registry.

Sanjeev Kumar Arora
Member

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
30.05.2023