



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

DATE OF DECISION: 09.05.2023

Sr. No.	Complaint No.	Complainant's Name
1.	2152 of 2022	Navneet Benepal W/o Daljeet Singh Dhanesar R/o 3047, Sector-21D, Chandigarh-160022.
2.	2153 of 2022	Ranbir Kaur Benepal W/o Gurdev Singh R/o 3047, Sector-21D, Chandigarh-160022.

Versus

S. No.	Respondent name	Respondent address
1.	Vatika Limited	Registered office at Unit No. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012, Haryana.

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present:

Mr. Rajan K. Hans, Id. counsel for the Complainants in both complaints through VC
Ms. Vertika Singh, and Mr. Aman, Id. Counsel for the respondent in both complaints through VC

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaints have been filed on 24.08.2022 by complainants 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.

2. Both the complaints have been taken up together as bunch matter as facts of the cases and grievances of the complainants are similar in nature and also concerns the same project of the respondent promoter. Facts of complaint no.2152 of 2022 titled as Navneet Benepal versus Vatika Ltd. have been taken as lead case.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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-b, Faridabad
2.	Nature of the Project	Commercial Space
3.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
4.	Unit No.	203, Block-C
5.	Unit Area	500 sq. ft.
6.	Builder buyer agreement	14.04.2014
7.	Total Sale Consideration	₹28,97,500/-(as per BBA at page 16 of complaint)

8.	Paid by the Complainants	₹30,04,940/- (mentioned in the BBA at page 16 of complaint)
9.	Deemed date of possession	Not mentioned
10.	Offer of possession	Not offered
11.	Provision regarding assured returns	Clause 15 of the builder buyer agreement provides assured return in full down payment cases @₹71.50/- per sq. ft. from the date of execution of the agreement till construction of the said unit is complete (page 24-25 of BBA)
12.	Occupation certificate	Not obtained

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

3. Complainant booked a commercial apartment/unit no.203, admeasuring 500 sq. ft. in block C of the building of the project promoted by respondent at agreed consideration of ₹28,97,500/-. Complainant paid little more than entire consideration, i.e., ₹30,04,940/- on 21.03.2014, copy of receipt has been placed at page nos. 35 of the complaint book. Builder-buyer agreement was executed on 14.04.2014, copy of which has been placed at page no.13-34 of the complaint book. Vide email dated 12.03.2018, respondent has communicated that construction of Block C is complete and ready for occupation purpose. However, possession was never offered by the respondent-promoter. Complainant stated that Clause 15 of Agreement provides that assured return committed at the rate of ₹71.50/- per sq. ft. per month will be



paid to complainants till construction of the allotted unit is complete. Further, in Clause 16.1 of BBA, the builder will pay ₹65/- per sq. ft. super area of the said unit per month as assured return up to three years from the date of completion of construction of the said building. On 12.03.2018, an email was sent by the builder about the completion of construction, assured return was revised to ₹65/- per sq. ft. and the same was paid till September 2018. After 07.09.2018, the builder stopped making payments of assured returns.

4. Complainant' case is that respondent-promoter is obliged to pay assured returns to the complainant from the date of completion of construction till today. That complainants' grievance arose when respondent stopped paying the said assured returns and secondly when respondent did not give physical possession of the said unit till date.

C. RELIEF SOUGHT:

5. The Complainant in her complaint has sought following reliefs:
- i. Pass an appropriate award directing the respondent to pay the pending assured return of ₹10,23,750/-.
 - ii. Pass an appropriate award directing the respondent to give the legal, peaceful and physical possession of the said units.
 - iii. Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.



D. REPLY:

6. Respondent in its reply submitted that 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 its arguments. Clause 16.12 is reproduced below:

16.12. It is clarified that the scheme under which the units are being agreed to be sold in the terms of this clause (under leasing arrangement) is specifically designed for earning rental income from the unit and not for its personal physical occupation or use the buyers. However, in case any buyer seeks physical possession of his unit upon its vacation by a lessee, then in cases where the super area of the unit is 5000 sq. ft. or more, the covered/carpet area of the unit will be as per the normal practice and ratio of covered/carpet area to super area is likely to be % since access to such units has been provided. However, in cases of units having super area of less than 5000 sq. ft. then the covered/carpet will get reduced since access to such units will be have to be carved out from within such small units, albeit, as economically sa possible. In such cases ratio of covered/carpet area to super area is likely to be%. The buyer has agreed to enter into this agreement in respect of the said Unit after clearly understanding the pros and cons of the scheme and shall not raise any objection whatsoever to the same later on. Physical possession, when given, will be in the same state in which, the previous occupant/lessee has vacated the unit i.e., on 'as is where is basis'. Further, it is clearly understood by the Buyer that, upon such possession being given, the Developer's/Maintenance Company's responsibility of providing services such as air conditioning, fire fighting and electrical supply shall be limited to catering to units having area 5000 sq. ft. each and it shall be the responsibility of the buyers to further channelize the said services so as to cater to their respective units.

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. Agreement for sale does not have a clause for offering possession of the



units. 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 are praying for assured return which is beyond jurisdiction of this Authority.

7. Respondent cannot pay assured returns to complainants due to prevailing laws. Respondent argued 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 argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to Complainants.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS:

8. Learned counsel for complainant argued that complainant is clearly allottee in terms of Section 2 (d) of RERA Act, 2016. Complainant had booked a commercial unit measuring 500 sq. ft. at agreed consideration of ₹28,97,500/- in the project namely "Vatika Mindscapes" being developed by the respondent. Respondent had undertaken to pay assured returns to the complainant till the time peaceful physical possession is handed over to her. Construction of the project is nowhere near completion. As per agreement, respondent paid assured



returns @ ₹71.50/- per sq. ft. till 07.09.2018. The complainant has stated that offer of possession has still not been made nor payment of assured returns has 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. ft. from 07.09.2018. Complainants have prayed for delivery of possession of unit as well as payments of overdue amounts of assured returns.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

9. Learned counsel for respondent argued that as per clauses 15 and 16 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 matters. 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.

G. ISSUES FOR ADJUDICATION:

10. Whether complainants are entitled to possession of the unit, 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:

11. On perusal of documents on record and after hearing the arguments of the parties, Authority observes that it is the case of the complainant that she is a allottee in real estate project as is clearly establish from nature of the project and the nature of the builder-buyer agreement executed between complainant and respondent company. Respondent company failed to fulfil its obligation as per agreement for sale by default in making payment of assured returns. Respondent has also neither completed the project nor offered possession to the complainant till date.
12. Per contra respondent alleges that the complainant is not an allottee, she is mere an investors/depositor. Moreover, the agreement for sale between the parties is only a lease agreement. Assured returns have been paid to the complainants up to 07.09.2018, however, 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. Respondent has 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 complainant.
13. The facts of the cases and submissions made by both the parties are identical to the facts and circumstances of 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/terms 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 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 s, 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 s.
- 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 4th 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 preferable 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 s, 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 s 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 s 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 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 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 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. 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 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 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 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."

14. It is an admitted fact that occupation certificate has not been issued for tower/block C, hence the respondent has failed to offer possession after completion of construction. Therefore, it is established that the respondent is in contravention of section 11(4) (a) of the Act and accordingly, the complainant is entitled for delayed interest along with the offer of possession. With respect to rate of interest and 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%.

15. In the present cases, 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. (@ ₹71.50/- * 500 sq. ft.) which amounts to



₹35,750/- per month is payable. This amount had been paid up to September 2018. Accordingly, monthly assured returns @₹35,750/- will be paid along with interest for the entire period from October 2018 till April 2023 in both cases. This amount works out to ₹24,57,157.08/- in each case.

I. DIRECTIONS OF THE AUTHORITY:

16. 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 to the complainants after obtaining occupation certificate and to execute conveyance deeds in their favour in both cases.
- 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. per month on super area (₹71.50/- * 500 sq. ft.) which amounts to ₹35,750/- per month. Accordingly, monthly assured return @₹35,750/- will be paid along with interest for the entire period from October 2018 till April 2023. This amount works out to ₹24,57,157.08/-. Respondent is directed to pay the said amount to complainants in each case as assured returns.



iii. It is also ordered that non-calculated monthly assured returns will be paid regularly by the respondent till lawful offer of possession is made to both complainants.

17. The complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading order on the website of the Authority.



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



.....
NADIM AKHTAR
(MEMBER)

