



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	960 of 2022
Date of filing:	16.05.2022
Date of first hearing:	02.08.2022
Date of decision:	09.05.2023

1. Ajay Dhingra
 2. Sangeeta Dhingra
 3. Ankit Dhingra
- R/o T3-123, Raheja Atharva, Sector-109, Gurugram-122017.

....COMPLAINANTS

VERSUS

Vatika Ltd.
Regd. Office at Vatika Triangle, 4th Floor, Sushant Lok,
Phase-I, Block-a, Mehrauli-Gurugram Road, Gurugram, Haryana-122002.

....RESPONDENT

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

Present: Mr. Abhijit Gupta, Id. counsel for the complainants
 through VC

Ms. Vertika H Singh, Id. Counsel for the respondent
through VC

ORDER (NADIM AKHTAR-MEMBER)

Present complaint dated 16.05.2022 was filed by complainants before the Authority 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.

A. UNIT AND PROJECT RELATED DETAILS:

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

S. No.	Particulars	Details
1.	Name of project	Vatika Mindscapes, Sector-27, Faridabad.
2.	Nature of the Project	Commercial Space
3.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
4.	Allotment letter dated	15.02.2007 by original allottee (Annexure-B) 14.04.2011 transferred in the name of complainants as mentioned in pleadings (Annexure-D)
5.	Unit No. and area	516, 1500 sq. ft., Tower-D (initially Tower-C-II/C-2)



7.	Builder Buyer Agreement	15.02.2007 with original allottee (Annexure-C)
8.	Total Sale Consideration	₹63,75,000/-
9.	Paid by the complainants	₹63,75,000/- as mentioned in the agreement
10.	Deemed date of possession	<ul style="list-style-type: none"> • 31.07.2008 (as mentioned in the pleadings at page no.10 of the complaint and clause viii of allotment letter dated 15.02.2007). • September 2015, as per letter dated 17.12.2014 (Annexure-E page no. 52 of complaint book).
11.	Offer of possession	Not offered
12.	Provision regarding assured returns	Clause P(h) of the builder buyer agreement provides that unit would be let-out by the developer at his own cost to a bonafide lessee at a minimum rental of @₹45/- per sq. ft. per month for first 36 months after the date of completion of the project or till the date the said unit is put on lease (at page 16 of BBA and page 47 of complaint book)
13.	Occupation certificate	Obtained as mentioned in reply. However, no document has been placed on record.
14.	Delay in handing over of possession	07 years 7 months 9 days (from September 2015)

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

3. Case of the complainants is that original allottee was allotted a unit bearing no.516, fifth floor, Tower-C-II/C-2 having super area of 1500 sq. ft. on 15.02.2007 in the project namely, "Vatika Mindscapes", Mathura Road,



Faridabad being developed by the respondent. Total sale consideration of the unit was ₹63,75,000/- and the same has been paid by the complainants. Copies of payment receipts and allotment letter are annexed at **Annexure-A and B**. Builder buyer agreement was executed between erstwhile allottee and the respondent on 15.02.2007, copy of which is annexed at **Annexure-C**. Complainants was assigned all the rights in the said unit on 14.04.2011, copy of letter is annexed at **Annexure-D**.

4. That as per clause (viii) of the allotment letter dated 15.02.2007 issued to original allottee, unit was to be completed and ready for lease by 31.07.2008 and respondent was to pay lease rental at ₹45/- per sq. ft. w.e.f. 01.08.2008. It is further mentioned that if unit is leased any time after 01.08.2008, respondent shall pay rentals as per terms of clause P(h) of the builder buyer agreement. Relevant part of Clause P(h) is reproduced below:

“Return on completion of the project and letting out of space:

That on the completion of the project, the space would be let out by the Developer at his own cost to a bonafide lessee at a minimum rental of ₹45/- per sq. ft. per month less cost income tax at source. In the event of the Developer being unable to finalise the lease arrangements, it shall pay the minimum rent at ₹45/- per sq. ft. to the Allottee as Minimum Guaranteed Rent for the first 36 months after the date of completion of the project or till the date the said Unit/Space is put on lease, whichever is earlier.”

5. That vide letter dated 17.12.2014 issued to complainants, it was informed by the respondent that as per final layout of the project Tower-C-II/C-2 has been renamed as Tower/Block-D. Copy of said letter is enclosed at Annexure-E.



6. That the respondent had paid monthly assured returns till the month of September 2018 and thereafter stopped making payments of assured returns without giving any intimation. The complainants had tried to communicate respondent on different occasions regarding status of construction and delivery of possession but respondent had never given satisfactory response. The complainants had suffered a lot due to deficiency in service by the respondent and sought timely delivery of possession of the unit along with delay penalty charges and assured return as per terms of the agreement and allotment letter.

C. RELIEF SOUGHT:

7. The complainants have sought following reliefs:
- i. To direct the respondent to give possession of the unit and get registry done in favour of complainants.
 - ii. To direct the respondent to pay assured return as promised in the agreement and delay penalty charges as per act.
 - iii. To direct the respondent to pay litigation cost of ₹1,00,000/-.
 - iv. Any other relief which is deemed fit and proper by this Hon'ble Authority.

D. REPLY:

8. Respondent in its reply submitted that present complaint is liable to be dismissed/rejected as the same has been filed with an unknown motive to harass and pressurize the respondent to unreasonable and unjustifiable demands of the complainants. The complainants have deliberately concealed the material

facts which are within their knowledge. There exists no cause of action in favour of complainants against respondent. That the complainants cannot challenge the terms of the agreement qua delay compensation and interest etc. because he had willingly signed the same without any intimidation.

9. That the complainants have failed to make any case either of deficiency in services or even otherwise as provided under the act. It is settled law that parties would be bound by the terms of the agreement. As far as project namely, "Vatika Mindscape" is concerned, it consists of four towers i.e., Tower A, B, C and D. Occupation certificate has already been received for Towers A, B and D and these four towers are fully operational.

10. That erstwhile allottees namely, Mr. Prem Maini and Mrs. Anita Maini had bought the said unit from the respondent and builder buyer agreement was executed on 15.02.2007. On the request of original allottees, builder buyer agreement dated 15.02.2007 was endorsed in the name of the complainants on 14.04.2011. Hence, complainants stepped into shoes of the respondent on 14.04.2011 subsequently and the rights/benefits granted to original allottee were assigned in favour of the complainants. Since the complainants are subsequent allottees who bought the said unit from open market and not from the respondent, they do not have any right to raise any grievances against the respondent. At the time of signing agreement and purchasing the unit, complainants were well aware of the terms and conditions of the builder byer agreement.



11. Respondent further submitted that as per terms and conditions laid down in the agreement, it is revealed that complainants had invested his money in an assured return scheme of the respondent and in compliance of the said scheme, respondent had already paid assured returns till September 2018.

12. That the complainants have received payments in terms of agreement and further rentals shall be received in terms of the leasing arrangement provided in builder buyer agreement. Further, 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 argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

13. That complainants have filed present complaint on the ground that respondent has not paid commitment charges nor possession of the unit has been handed over. It is submitted that as per terms and conditions of the agreement, commitment charges are made to the complainants till September 2018. Regarding possession it is submitted that occupation certificate has already been received by the respondent company for Tower in question, respondent will hand over possession to the complainants.

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E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS:

14. Learned counsel for complainants has argued that original allottee booked a commercial unit no.516, measuring 1500 sq. ft. on 5th floor of Tower-D of the project namely, 'Vatika Mindscapes', Faridabad developed by respondent promoter at agreed consideration of ₹63,75,000/- on 15.02.2007. They have paid entire sale consideration to the respondent. Payments of ₹63,75,000/- are admitted by respondent promoter and same has also been incorporated in the builder-buyer agreement executed on 15.02.2007. As per clause (viii) of the allotment letter dated 15.02.2007 issued to original allottee, unit would be completed and ready for lease by 31.07.2008 and respondent would pay lease rental at ₹45/- per sq. ft. w.e.f. 01.08.2008. It is further mentioned that if unit is leased any time after 01.08.2008, respondent shall pay rentals as per terms of clause P(h) of the builder buyer agreement. Complainants alleges that respondent made payment of assured returns till September 2018 and the same were stopped thereafter. Respondent has also failed to transfer ownership rights by executing conveyance deed in favour of complainants.

15. In View of above facts, Complainants has prayed for relief of possession and getting the sale /conveyance deed executed; and payment of assured returns from September 2018 till possession of the unit in question is delivered to him and delay penalty charges as per act.



F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

16. Learned counsel for respondent has argued that respondent company has been developing the project "Vatika Mindscape" which is a commercial project consisting of four towers i.e., Tower A, B, C & D. Out of these four towers, Towers A, B & D are complete and have received Occupation Certificate from competent authorities. In furtherance of said arrangement between the parties, respondent company has already made payment of assured return till September, 2018. Respondent cannot pay further 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 further argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

17. Learned counsel for respondent further argued that occupation certificate for the Tower-D has already been issued, therefore, there is no doubt that construction of the Tower in question is not complete. Moreover, original allottee and the complainants had opted for the option of leasing arrangement and accordingly, received assured return till September 2018. Respondent is ready to



hand over possession of the unit since occupation certificate has already been received.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainants are entitled to possession of the unit?
- ii. Whether complainants are entitled to assured returns or delay penalty as per act?

H. OBSERVATIONS OF THE AUTHORITY:

18. Authority has gone through the facts of the case and the submissions made by parties. The respondent has taken a stand that the complainants could not have filed the present complaint raising out of any grievance against it as they are subsequent allottees who stepped into the shoes of the original allottee on 14.04.2011 i.e., after the deemed date for completion of the construction and thus were well aware of the terms and conditions of the builder buyer agreement. In this regard, Authority observes that the complainants are 'aggrieved person' who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter M/s Vatika Ltd. for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. At this stage, it is important to emphasize upon the definition of terms allottee under the RERA Act of 2016, same is reproduced below for ready reference: -

Section 2(d) of the RERA Act:

(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 the above-mentioned definition, an allottee means a person to whom a plot, apartment or building, as the case may be, has been allotted, sold or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise. Thus, the definition does not distinguish between an allottee and a subsequent allottee. The respondent promoter had transferred the rights of the original allottees in favour of the complainants by making an endorsement on the builder buyer agreement on 14.04.2011 and the complainant stepped into the shoes of the original allottee. Hence, there is no ambiguity with respect to the fact that the complainant is very much covered under the definition of allottee.

20. It is an admitted fact that respondent promoter issued an allotment letter and allotted a unit no.516 to the original allottees on 15.02.2007 and also executed a builder buyer agreement on the same day. Subsequently, the complainants purchased the unit from the original allottee and the respondent transferred the allotment in favour of complainants by way of endorsement on the builder buyer agreement itself. This act of transfer of the rights by way of endorsement was communicated to the complainants vide letter dated 14.04.2011, meaning thereby that the complainants stepped into the shoes of the original allottee on 14.04.2011 for all intent and purposes. Since the



transfer/assignment of rights were by way of endorsement and no fresh builder buyer agreement was signed between the complainants/allottees and the respondent, the terms and conditions agreed vide builder buyer agreement dated 15.02.2007 remained unchanged and both the complainant and respondent were obligated to fulfil the same. At clause (viii) of the allotment letter dated 15.02.2007, it was committed that the unit would be completed and ready for lease by 31.07.2008 and the allottee would be paid lease rental of ₹45/- per sq. ft. of space w.e.f. 01.08.2008 and in the event the unit is leased at any time after 01.08.2008, rentals at agreed terms mentioned under clause P(h) of the builder buyer agreement would be paid. After the RERA Act of 2016 coming into force the terms of allotment cannot be re-written, the Authority only ensures that whatever was agreed between the allottee and the promoter by way of agreement for sale is adhered to the allottee. This issue has been dealt by the Hon'ble Bombay High Court in the case titled as **Neelkamal Realtors Pvt. Ltd. versus Union of India and Others** in OS-WP-2737-17 & Ors. wherein, it was held that the RERA Act, 2016 does not contemplate re-writing of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below: -

“119. Under the provisions of Section 18, the delay in handing over of possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of project and declare the same under section 4. The RERA does not contemplate re-writing of the contract.”

21. Since no fresh builder buyer agreement was signed between the complainants/allottees and respondent, respondent was obligated to duties as promised in the builder buyer agreement dated 15.02.2007 i.e., to complete the unit and lease it by 31.07.2008. It is but natural that a property would be ready for leasing only when it is complete and ready for usage i.e., the respondent was obligated to complete the construction work and obtain occupation certificate then lease out the property by 31.07.2008. The fact that allottees had agreed that the respondent would lease out the property/unit on their behalf and in return shall pay them rental/assured returns does not take away their right to seek possession of the unit. Clause B (6) at page 8 of the builder buyer agreement specifically provides that **“the complex shall be ready for possession by 01.08.2008 and the developer shall issue a notice in writing to every allottee for taking over possession”**. The clause further provides that in the event of allottee’s failure to take over possession, developer shall charge ₹5/- per sq. ft. super area per month from the allottee till the date such possession is accepted. Therefore, it was obligated on part of the respondent promoter to issue notice/letter of possession on completion of the unit. However, it is observed that there is nothing on record to show that in fulfilment to its obligations under clause B (6), the respondent promoter ever offered possession of the allotted unit to the complainants.

22. Further, on perusal of clause (P) at page 15 of the builder buyer agreement, it is observed that the builder buyer agreement provided an option to



the allottee to enter into a lease arrangement with the respondent promoter and by opting for this arrangement the allottee authorise the developer to negotiate and finalise the leasing arrangement with any suitable tenants, meaning thereby that the allottee shall authorise the respondent to facilitate finding suitable tenants. It is nowhere provided in builder buyer agreement that in case the allottee opts for a lease arrangement, respondent promoter shall be exempted from offering the possession to the allottee. Infact clause (F) of the builder buyer agreement at page 12 extends the obligation of the respondent promoter by providing that the developer shall execute the conveyance deed, which can be done only once a valid offer of possession has been made to the allottees.

23. Further, complainants in their complaint had alleged that the respondent vide letter dated 17.12.2014 had informed that as per final layout of the said project Tower/block- II/C2 has been renamed as Tower/block D. On perusal of letter dated 17.12.2014 it is apparent that the promoter by issuing letter has misused his dominant position by unilaterally changing the name of the tower. Vide this letter, respondent also informed that the tower D will be operational by September 2015. However, even post 2015, neither the unit was occupational nor ready for use. Authority observes that though the respondent has informed the complainant vide letter dated 17.12.2014 that as per final layout plan Tower/block- II/C2 has been renamed as tower D, no document/approval of the competent authority approving the renaming of tower C2 as tower D had been provided/placed on record. Therefore, it cannot be ascertained that it is



Tower/block- II/C2 only which is now known as Tower D and occupation certificate has actually been issued for the tower where the unit of the complainant is situated. Further, the fact that the respondent admittedly continued to pay assured returns till the year 2018, which were to be paid till completion of the construction, raises doubt whether occupation certificate was ever issued for Tower/block- II/C2 where unit of the complainant is located. Infact as brought to the notice of the Authority in another case no.959 of 2022, occupation certificate for Tower D was issued in the year 2016 and if tower C2 was renamed as tower D why did the respondent continued to pay assured returns till the year 2018. The fact that occupation certificate was received and the respondent instead of leasing the unit, still continued to pay assured return till September 2018 raised doubt regarding the veracity of the statement regarding grant of occupation certificate.

24. In view of the reasons stated above, Authority observes that the respondent promoter failed in its obligation to deliver possession of the unit as per builder buyer agreement. However, complainants do not intend to withdraw from the project, therefore, as per Section 18(1), the complainants are entitled to interest for every month of delay till actual handing over possession of the unit at such rate as may be prescribed. Further, since the complainants has paid the entire cost of the unit, they are entitled to a valid offer of possession and also the conveyance deed of the unit. Authority, therefore directs the respondent to hand over possession of the unit and to execute conveyance deed in favour of the



complainants immediately. This grievance of the complainants is decided accordingly.

25. Regarding assured return/delay interest, in the captioned complaint complainants and respondent-promoter had executed builder buyer agreement under assured return scheme. As per clause (viii) of the allotment letter and clause P(h) of agreement, where allottee has made full payment of basic sales price, they are entitled to assured return at the agreed rate. According to this clause respondent had to pay assured returns to complainants at the rate ₹45/- per sq. ft. In present matter, admittedly the respondent has duly paid the assured returns to the complainants at the agreed rate till September 2018. Thereafter respondent had stopped making further payment under guise of the argument that they could not have paid due to coming into force of BUDS Act, 2019. This common/stereotype argument of respondent that they stopped making payment of assured return from September 2018 as such schemes of assured returns have been banned under the Banning of Deposit Schemes Act, 2019, was rejected by Authority **Complaint No. 343 of 2021 titled as "Tanya Mahajan v. Vatika Ltd"**. Relevant part of the order is reproduced below:

8. Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and complainants because complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and it's 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.



26. Therefore, for the non-fulfilment of the terms of builder buyer agreement and for violation of provisions of the RERA Act 2016, complainants are seeking possession of the booked unit along with delayed possession interest and assured return, as per the terms and conditions of the allotment letter and builder buyer agreement executed by the respondent.

27. Now, the proposition before the Authority is as to whether the allottees who are getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of a provision in the builder buyer agreement or in a MoU having reference of the builder buyer agreement or an addendum to the builder buyer agreement or in a MoU or allotment letter. The assured return in this case is payable with effect from 01.08.2008 i.e., the date when unit would be completed and ready for lease. The respondent had paid assured returns till September 2018. It is not mentioned that from which date assured returns have been paid. Authority observes that building shall be considered complete only when a valid offer of possession is made to the complainants. In the present case, construction of unit is not complete till date. The rate at which assured return has been committed by the promoter is ₹45/- per sq. ft. of the super area per month which is more than reasonable in the present



circumstances. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the respondent promoter has assured the complainants/allottees that they would be entitled for this specific amount till completion of construction of the said building or valid offer of possession be made to the complainants/allottees. Accordingly, the interest of the allottees is protected even after the due date of possession is over as the assured returns are payable when the unit would be completed and ready for lease. The purpose of delayed possession charges after the due date of the possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised date of delivery and in return, they are to be paid either the assured return or delayed possession charges whichever is higher. In this case, respondent promoter has not put the unit on lease up to 31.07.2008 nor given a valid offer of possession to the complainants/allottees. Further, respondent has paid assured returns till September 2018. After that he stopped making payments of assured returns in view of prohibition under BUDS Act. Authority has observed that complainants had paid the money to the respondent for taking possession of the unit as per agreement. Clause (F) of the agreement stipulates that developer shall sell the unit by executing and registering the conveyance deed subject to the approval/no objection from the appropriate authority to confirm the title of the unit upon the complainants/allottees. The respondent has neither



completed the unit till date nor has offered possession to the complainants. Therefore, complainants are entitled to timely possession of the unit and pending assured returns along with interest till valid offer of possession be made to them.

29. Accordingly, Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till valid offer of possession, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. Hence, the authority directs the respondent promoter to pay assured return from the date the payment of assured return has not been paid till valid offer of possession @₹45/- per sq. ft. per month and declines to order payment of any amount on account of delayed possession charges as their interest has been protected by granting assured returns till handing over possession.

30. For the reasons stated above, complainants are entitled to possession of their booked unit and execution of conveyance deed in their favour along with payment of outstanding assured return as per the agreement entered between the parties. Accordingly, respondent is liable to pay outstanding assured returns @₹67,500/- (₹45/- * 1500 sq. ft.) of the super area per month to the complainants along with delay interest from the date the payment of assured return has not been paid i.e., October 2018 till valid offer of possession/handing over possession.

I. DIRECTIONS OF THE AUTHORITY:

31. 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. Authority Accordingly orders respondent to offer possession and execute conveyance deed in favour of complainants and transfer clear title of the unit. Till the time, possession is handed over by respondent, complainants are entitled to get agreed monthly assured returns as stipulated in the builder buyer agreement i.e., @45/- per sq. ft. Accordingly, monthly returns @₹67,500/- will be paid along with interest as per Rule 15 of HRERA Rules, 2017 for the entire period from October 2018 till valid offer of possession/handing over possession. Authority has got calculated monthly assured returns ₹67,500/- per month along with interest as per Rule 15 of the HRERA Rules, 2017 from October 2018 till May 2023 which amounts to ₹47,40,592.50/-.

ii. Respondent is directed to pay the outstanding accrued assured return amount till date within 90 days from the date of order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest as per Rule 15 of HRERA Rules, 2017 till actual realization. It is also ordered that further monthly assured




returns will be paid regularly by the respondent till lawful offer of possession is made to the complainants.

iii. The respondent shall execute the conveyance deed within 3 months from the final offer of possession along with occupation certificate upon payment of requisite stamp duty as per norms of the state government.

iv. Respondent shall not charge anything from the complainants which is not the part of the agreement of sale.

32. **Disposed of** in above terms. File be consigned to record room after uploading of order on the website of the Authority.


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


.....
NADIM AKHTAR
(MEMBER)