



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	959 of 2022
Date of filing:	16.05.2022
Date of first hearing:	02.08.2022
Date of decision:	09.05.2023

M/s Ajay Dhingra and sons HUF through its Karta
R/o T3-123, Raheja Atharva, Sector-109, Gurugram-122017.

....COMPLAINANT

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, ld. counsel for the complainant
 through VC

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

ORDER (NADIM AKHTAR-MEMBER)

Present complaint was filed on 16.05.2022 by complainant 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 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, 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	09.08.2012 by original allottee (Annexure-B) 09.09.2016 transferred in the name of complainant as mentioned in pleadings (Annexure-D)
5.	Unit No. and area	353, 750 sq. ft., Tower-B



6.	Builder Buyer Agreement	16.08.2012 with original allottee (Annexure-C)
7.	Total Sale Consideration	₹26,25,000/-
8.	Paid by the complainant	₹27,06,112/- as mentioned in the agreement
9.	Deemed date of possession	30.12.2012 (as mentioned in the pleadings at page no.10 of the complaint and clause iv of allotment letter dated 09.08.2012)
10.	Offer of possession	Not offered
11.	Provision regarding assured returns	Clause 15 of the builder buyer agreement provides assured return on full down payment cases @₹68.75/- per sq. ft. from the date of execution of the agreement till construction of the said unit is complete (at page 13 of BBA and page 37 of complaint book)
12.	Occupation certificate	Obtained on 14.10.2016 as mentioned in complaint and reply. Annexure-F is placed on record by complainant at page 54 of the complaint book.
13.	Delay in handing over of possession	10 years 4 months 9 days

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

3. Case of the complainant is that original allottee was allotted a unit bearing no.353, third floor, Tower-B having super area of 750 sq. ft. on 09.08.2012 in the project namely, "Vatika Mindscapes", Greenfield Colony, Sector-27, Faridabad, Haryana. Total sale consideration of the unit was ₹26,25,000/- against which an amount of ₹27,06,112/- had been paid to the respondent. Copy of payment receipt and allotment letter are annexed at

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Annexure-A and B respectively. Builder buyer agreement was executed between erstwhile allottee and the respondent on 16.08.2012, copy of which is annexed at Annexure-C. Complainant was assigned all the rights in the said unit on 09.09.2016, copy of letter is annexed at Annexure-D.

4. That as per clause (iv) of the allotment letter dated 09.08.2012, unit would be completed and ready for lease by 30.12.2012 and respondent would pay lease rental at ₹62.50/- per sq. ft. w.e.f. 01.01.2013 or from the date of building is ready. It is further mentioned that if unit is leased any time after 01.01.2013, respondent shall pay rentals as per terms of clause 16.1 of the builder buyer agreement. Also, as per clause 15 of the agreement, respondent has agreed to pay ₹68.75/- per sq. ft. super area per month by way of assured return from the date of execution of the agreement till the construction of commercial unit is complete on full down payment.

5. That vide letter dated 31.03.2015, issued through a private company namely, Design Plus Associates, the respondent had informed that construction work of Tower-B is complete and ready for occupation. Copy of said letter is annexed at Annexure-E(colly). The respondent had reduced monthly rental before completion in two-fold manner. Firstly, it had reduced the timing to pay rental as assured return should have been paid till 14.10.2019 instead of 25.03.2018 and secondly, reduced the amount of assured return from ₹68.75/- per sq. ft. to ₹62.50/- per sq. ft.



6. That the complainant had tried to communicate the respondent on different occasions regarding status of construction and delivery of possession but the respondent had never given satisfactory response. The complainant 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 in their complaint 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 by raising unreasonable and unjustifiable demands of the complainant. The complainants have deliberately concealed the material facts which were 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 they had willingly signed the same without any intimidation.

9. That the complainants have failed to make out 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 on 14.10.2016 and these three towers are fully operational. Copy of occupation certificate is attached with the complaint at Annexure-F. Respondent company has obtained license bearing registration no.1133 of 2006 from Town and Country Planning Department which was valid till 30.05.2023.

10. That erstwhile allottee namely, Sudhir Khosla had bought the said unit from the respondent and builder buyer agreement was executed on 16.08.2012. Complainant stepped into shoes of the erstwhile allottee on 09.09.2016. Thereafter, rights/benefits granted to earlier allottee were assigned in favour of the complainants. At the time of signing agreement and purchasing the unit, complainants were well aware of the term and conditions of the builder buyer agreement. Respondent alleges that complainants had approached the respondent as an investor looking for certain investment opportunities. Complainants being 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.

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

12. That intimation dated 31.03.2015 was sent to earlier allottee whereby it was certified that construction work was 100% complete as on 25.03.2015 and the building got operational in last week of March 2015. The commitment charges payable against said premises shall be revised to ₹62.50/- per sq. ft. per month from 1st April 2015. Accordingly, assured returns were paid till 25.03.2018. Hence the complainants have received payments in terms of agreement and further rentals shall be received in terms of the leasing arrangement as 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 argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.



13. Respondent further referred Section 19(3), (4) of the RERA Act, 2016 making out ground that complainants are entitled to claim refund along with interest and compensation once the possession has not been handed over as per declaration given by promoter under subclause (C) of clause (l) of sub section 2 of Section 4. As per Section 19(3) of RERA Act, the complainants are not legally entitled to claim possession till 14.09.2022. Claim of the complainant would only arise after 14.09.2022 and/or extended time as granted by HRERA Panchkula. It is also stated that unit of the complainant's unit is non-possession able as categorically stated in the builder buyer agreement and as such physical possession of the unit was never to be handed over to the complainants.

14. That when occupation certificate has already been issued on 14.10.2016, there is no doubt that construction of the Tower in question is not complete. Moreover, earlier allottee and the complainants had opted for the option of leasing arrangement and accordingly, received assured return till 25.03.2018.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS:

15. Learned counsel for complainants have argued that original allottee booked a commercial unit no.353, measuring 750 sq. ft. on 3rd floor of Tower-B of the project namely, 'Vatika Mindscapes', Sector-27, Faridabad being promoted by respondent promoter at agreed consideration of ₹26,25,000/- on 09.08.2012. The complainants had paid ₹27,06,112/- to the respondent against



allotment of the unit. In support of the payments made, a copy of receipt issued by the respondent is annexed at page no.22 of the complaint book. Same is admitted by respondent promoter and it has also been incorporated in the Builder-buyer agreement annexed as Annexure-C at page no. 28. Builder-buyer agreement was executed on 16.08.2012 (Annexure-C). Clause 15 of Agreement provides that where the buyer had paid full basic sale consideration for the commercial unit upon signing of this agreement and had also opted for leasing arrangement after the commercial unit is ready for occupation and use, the developer had agreed to pay assured return at the rate of ₹68.75/- per sq. ft. per month from the date of execution of the agreement till construction of the allotted unit is complete. Clause 16 provides that after completion of the construction, monthly assured returns will be paid at the rate of ₹62.50/- per sq. ft. for up to 3 years from date of construction of the unit or till the unit is put on lease. Complainants alleges that respondent made payment of assured returns till March 2018 but the same were stopped thereafter. Complainants further stated that as per clause (iv) of allotment letter, respondent promised to complete the project 30.12.2012, but possession of the unit has not been offered till now. Respondent has also failed to transfer ownership rights by executing conveyance deed in favour of complainants.

16. In view of above facts, complainants have prayed for relief of possession, for getting the sale/conveyance deed executed, payment of pending



assured returns from March 2018 till valid offer of possession of the unit and delay penalty charges as per Act.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

17. Learned counsel for respondent 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 on 14.10.2016. Moreover, respondent has not violated any term of the builder buyer agreement. There is no relationship of builder and buyer between respondent and complainants as complainants were simply an investor who had approached respondent for availing investment opportunities and for steady rental income, in furtherance of said arrangement between the parties, respondent company has already made payment of assured return till March, 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.



18. Learned counsel for respondent further argued that occupation certificate for Tower-B has already been issued on 14.10.2016. Therefore, there is no doubt that construction of the Tower in question is not complete. Moreover, earlier allottee and the complainants had opted for the option of leasing arrangement and accordingly, received assured return till 25.03.2018. Respondent further referred Section 19(3), (4) of the RERA Act, 2016 making out ground that complainants are entitled to claim refund along with interest and compensation once the possession has not been handed over as per declaration given by promoter under subclause (C) of clause (l) of sub section 2 of Section 4. As per Section 19(3) the complainants are not legally entitled to claim possession till 14.09.2022. Claim of the complainants would only arise after 14.09.2022 and/or extended time as granted by HRERA Panchkula. It is also stated that unit of the complainants is non-possession able as categorically stated in the builder buyer agreement and as such physical possession of the unit was never to be handed over to the complainants. Accordingly, respondent prayed for dismissal of the complaint.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainants are entitled to possession of the unit and execution of conveyance deed?
- ii. Whether complainants are entitled to assured returns and delay penalty charges as per Act?



H. OBSERVATIONS OF THE AUTHORITY:

19. Authority has gone through the facts of the case and the submissions made by parties. The respondent firstly has taken a plea that complainants had invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore they are not entitled to the protection of the Act of 2016. In this regard, it is observed that respondent is correct in stating that Act is enacted to protect the interest of consumers in the real estate sector. However, it is a settled principle of interpretation that preamble is an introduction to the statute and states the main aims and objects of enacting statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that 'any aggrieved person' can file a complaint against the promoter if the promoter contravenes/violates the provisions of the Act or rules or regulations made thereunder. Section 31 is reproduced thereunder:

Section 31: Filing of complaints with the Authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Upon careful perusal of all terms and conditions of the buyer's agreement endorsed in favour of the complainants on 09.09.2016, it is revealed that the



complainants are buyers and have paid a total sum of ₹27,06,112/- to the promoter towards purchase of unit in its project. At this juncture, 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;

20. In view of the above-mentioned definition of 'allottee' as well as upon careful perusal of all terms and conditions of the builder buyer agreement endorsed in favour of the complainants, it is clear that complainant is an "allottee" as the subject unit no.353 in the real estate project "Vatika Mindscape" Sector 27, Faridabad, was allotted to him by the promoter. The definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. Furthermore, the concept of investor is not defined or referred in the Act. As per definitions given under Section 2 of the RERA Act, there will be a promoter, an allottee and real estate agent. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in Appeal no. 000600000010557 titled as *M/s Srushti Sangam Developers Ltd.*

Vs Sarvapriya Leasing (P)Ltd. And Anr. also held that the concept of investors not defined or referred to in the Act. Thus, the contention of respondent promoter that allottee being an investor is not entitled to protection of this Act stands rejected.

21. The respondent promoter had contended that no possession clause has been mentioned in the agreement or allotment letter and as per Section 19(3),(4) of the RERA Act, 2016, an allottee is entitled to claim possession of the plot, apartment or building or refund of the paid amount, as the case may be, as per declaration given by the promoter under sub clause (c) of (l) of Sub Section 2 of Section 4 and in the instant complaint as per declaration made by the promoter at the time of registration of the project with HRERA, Panchkula, the completion date for the project, was 14.09.2022, therefore the same may be considered as the deemed date of possession. In this regard, Authority observes that the respondent-promoter issued an allotment letter to original allottee on 09.08.2012 and subsequently entered into a builder buyer agreement on 16.08.2012 (before coming into force of the RERA Act, 2016) wherein, at clause (iv), it was committed that "the flat would be completed and ready for lease by 30.12.2012" and the original allottee would be paid lease rental of ₹68.75/- per sq. ft. super area w.e.f. 30.12.2012 or from the date the building is ready, whichever is later. Subsequently the respondent assigned all the rights in favour of the complainants on 09.09.2016 whereby the complainants stepped into the shoes of the original allottee for all intent and purposes. Therefore, the terms and



conditions of the builder buyer agreement dated 16.08.2012 (pre-RERA) remained unchanged vis a viz the complainants and the respondent. After the RERA Act of 2016 coming into force the terms of allotment cannot be re-written even by way of making declaration before the Authority. The Authority only ensures that whatever was agreed between the allottee and the promoter by way of agreement for sale is adhered by the promoter. In the captioned complaint, the promoter entered into a contract with the original allottee by way of letter of allotment dated 09.08.2012 and subsequently, by execution of builder buyer agreement dated 16.08.2012, committed to hand over the possession of the unit by 30.12.2012. Therefore, promoter was bound by the date for handing over possession, as agreed in agreement. 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."

22. After RERA Act of 2016 coming into force, under Section 3, a promoter is obligated to register every new as well as ongoing real estate project



(for which completion certificate was not issued at the time of commencement of the RERA Act of 2016) prior to marketing, advertising, selling or offering to sell the same. In case of new real estate projects launched after commencement of RERA Act of 2016, the promoter at the time of making application for grant of registration under Section 4(2)(1)(C), voluntarily declares a date for completion of the project and on grant of RERA registration the promoter mentions the same date at the time of entering into a builder buyer agreement. However, since in case of ongoing project, the promoter had already promised/agreed to a date with the allottee at the time of executing the agreement for sale, the same does not change by way of mere declaration at the time of seeking grant of registration for such ongoing project after the commencement of Act. The date mentioned in the agreement for sale/allotment letter is a date agreed between original allottee and the promoter, whereas the date declared at the time of seeking registration of ongoing project is one sided declaration by the respondent promoter. The RERA Act, 2016 nowhere provides that a date for handing over possession as agreed in the agreement for sale will stand changed/altered by way of declaration at the time of seeking registration of ongoing project and, therefore, the promoter remains liable for all the consequences and obligations arise out of failure in handing over possession by due date as committed by him in the agreement for sale/allotment letter. Hence, an allottee, as per Section 18 of the RERA Act of 2016, is entitled for possession of the unit as per agreement for sale. In this case, as per allotment letter dated 09.08.2012, the deemed date for handing over



possession was 30.12.2012 and the same remains unchanged subsequent to commencement of RERA Act, 2016 coming into force and the promoter has failed to hand over the possession of unit till date.

23. Regarding handing over possession of the unit, it is observed that complainants stepped into the shoes of the original allottee on 09.09.2016 i.e., post the deemed date of possession but prior to RERA Act coming into force in entirety. It is admitted by the respondent promoter that occupation certificate had been received for Tower-B on 14.10.2016 i.e., post complainants stepped into shoes of original allottee and the same is fully operational. Copy of occupation certificate is placed at Annexure-F of the complaint. As per clause (iv) of the allotment letter dated 09.08.2012, respondent was committed that "the flat would be completed and ready for lease by 30.12.2012" and the original allottee would be paid lease rental of ₹68.75/- per sq. ft. super area w.e.f. 30.12.2012 or from the date the building is ready, whichever is later. Clause 15 of Agreement provides that where the buyer had paid full basic sale consideration for the commercial unit upon signing of this agreement and had also opted for leasing arrangement after the commercial unit is ready for occupation and use, the developer had agreed to pay assured return at the rate of ₹68.75/- per sq. ft. per month from the date of execution of the agreement till construction of the allotted unit is complete. Clause 16 provides that after completion of the construction, monthly assured returns will be paid at the rate of ₹62.50/- per sq. ft. for up to 3 years from date of construction of the unit or till the unit is put on lease. As per agreed terms



of the allotment and agreement, the respondent had paid assured returns till March 2018 i.e., post receiving occupation certificate. It is not clarified that at which rate and how much amounts of assured returns have been paid. It is pointed out that assured returns have been paid only till the year 2018. However, he was obligated to pay assured returns till the completion of construction or the unit is put on lease. Further, it is observed that occupation certificate was received in the year 2016 and the respondent instead of leasing the unit, still continued to pay assured return till March 2018 raised a doubt that respondent intentionally had not handed over possession of the unit.

24. Further, it is observed by the Authority that as per clause (9) of the agreement, the promoter was obligated to get the conveyance deed executed in favour of complainants subject to necessary approvals. Relevant clause is reproduced herein below:

Clause 9: Conveyance deed:

Subject to the approval/no objection/clearance of the appropriate authority, as may be required in terms of statutory laws/rules, the developer will execute and get registered the conveyance deed in respect of the said unit, after all dues of the developer and other statutory dues have been paid in full by the buyer and the said commercial unit is ready for occupation, to confer upon the buyer/his nominee, marketable title to the said commercial unit free from all encumbrances in due course of time.

When there is clause for execution of conveyance deed, the respondent could not take a plea that the unit is non-possession able as there is no possession clause in the agreement. Valid offer of possession is integral part of a real estate transaction. Such possession may be notional/legal or actual physical possession.



It is apparent that despite obtaining occupation certificate in the year 2016, the respondent promoter failed to discharge his obligation to hand over possession and to get the conveyance deed executed in favour of complainants as per the terms of the agreement for sale and in terms of Section 17(1) of RERA Act 2016. Therefore, plea taken by the respondent that complainants cannot claim possession is hereby denied.

25. In view of above facts and circumstances, it is apparent that the respondent promoter has failed in its obligation to deliver possession of the unit as per builder buyer agreement and provisions of RERA Act 2016. However, complainant do not intend to withdraw from the project, therefore, as per Section 18(1), the complainants are entitled to assured return along with interest for every month of delay till actual handing over possession of the unit at such rate as may be prescribed. Further, since the complainant 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 complainant immediately. This grievance of the complainant is decided accordingly. For the reasons stated above, respondent is liable to pay outstanding assured returns along with delay interest to complainant starting from April 2018 till handing over possession at the rate prescribed in the agreement.

26. Regarding assured return/delay interest, it is observed that in the captioned complaint, complainants and respondent-promoter had entered into an



agreement for sale under assured return scheme. As per clause 15 & 16 of the agreement, in case allottee has made full payment of basic sales price, he is entitled to assured return at the agreed rate. According to this clause, respondent had to pay assured returns to complainants at the rate ₹68.75/- per sq. ft. from the date of agreement till the completion of unit and at the rate ₹62.50/- per sq. ft. for up to 3 years from the date of completion of construction or till the same is put on lease, whichever is earlier. Whenever the said unit is put on lease, the payments of assured return will come to an end and the buyer will start receiving lease rentals in respect of said commercial unit. In present matter, the respondent was under obligation to complete the construction and hand over possession up to 30.12.2012. The respondent has stated that construction of the unit is complete and occupation certificate has also been received in the year 2016. However, the unit has not been put on lease nor handed over possession to the complainants till date. The respondent had duly paid the assured returns to the complainants at the agreed rate till March 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 argument of respondent that they stopped making payment of assured return from March 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 versus 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 its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering possession to complainant. 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 complainant 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.

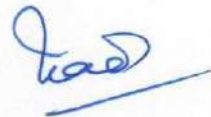
11. *Respondents are desperately trying to deny legitimate rights of the complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.*

27. Therefore, in view of above facts and circumstances, the respondent is under obligation to pay assured returns to the complainants till valid offer of possession is made or possession is handed over or the unit is put on lease. In the present case, construction of the unit is complete as ascertained from the copy of occupation certificate dated 14.10.2016, therefore, complainants are entitled to delay interest/assured returns till lawful offer of possession made to them by the respondent.

28. 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? 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 01.01.2013 i.e., the date when unit would be completed and ready for lease. Authority observes that building shall be considered complete only when a valid offer of possession is made to the complainants. The rate at which assured return has been committed



by the promoter is ₹68.75/- 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 30.12.2012 nor given a valid offer of possession to the complainant/allottee. Further, respondent has paid assured returns till March 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 (9) 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 complainant/allottee. The respondent has neither completed the unit till date nor has offered possession to the complainant. Therefore, complainant is entitled to timely possession of the unit and pending assured returns along with interest till valid offer of possession be made to him.

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 @₹62.50/- 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. Regarding relief of compensation sought by the complainant under the head litigation charges, it is made clear that nothing stated in this order shall debar the complainant from filing a complaint before the Adjudicating Officer to claim such compensation as he may be entitled under the law.



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 in respect of the unit. Till the time, possession is handed over by respondent in favour of complainants; complainant is entitled to get agreed monthly assured returns as decided in agreement for sale i.e., @ ₹62.50/- per sq. ft. per month super area.


ii. Accordingly, monthly returns @ ₹46,875/- (750 sq. ft. @ ₹62.50/-) for the unit will be paid for the entire period from April 2018 till May 2023 i.e., the month of passing of this order along with interest as per Rule 15 of HRERA Rules, 2017. The Authority has got calculated the amount of the assured returns from April 2018 till May 2023 which works out to ₹37,22,542.97/-.


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



iv. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

32. **Disposed of** in above terms. Order be uploaded on the website and file be consigned to record room after compliance.


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


.....
NADIM AKHTAR
(MEMBER)