

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

Date of decision: 12.09.2023

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/8001/2022	Gaurav Kaushik and Shwaytal Gaurav Kaushik V/s M/s Vatika Limited	Shri Varun Kathuria Advocate and Ms. Ankur Berry and Shri Ishan Singh Advocates
2.	CR/8002/2022	Shwaytal Gaurav Kaushik and Gaurav Kaushik V/s M/s Vatika Limited	Shri Varun Kathuria Advocate and Ms. Ankur Berry and Shri Ishan Singh Advocates
3.	CR/377/2023	Sushma Chawla and Liza Chawla V/s M/s Vatika Limited	Shri Krishna Sharma Advocate and Shri Ishan Singh Advocate

**CORAM:**

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

**Member****Member****ORDER**

1. This order shall dispose of all the three complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the

Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "INXT City Centre" being developed by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
<p><b>Assured return clause in complaint bearing no. 8001-2022:</b> <b>ANNEXURE A</b> <b>ADDENDUM TO THE AGREEMENT DATED 25.02.2010</b></p> <p>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 13/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 25.02.2010</p> <p>A. Till Completion of the building: Rs. 78/- per sq. ft. B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 25.02.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month.</p>	

The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.

1. If the rental is less than Rs. 65/- per sq. ft. then you shall be returned @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft.

2. If the achieved rental is higher than R. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals. [Page 30 of complaint]

**Assured Return amounting to Rs.48,45,750/- paid by the respondent to the complainant till September 2018. [Page 7 of reply]**

**Assured return clause in complaint bearing no. 8002-2022:**

**ANNEXURE A**

**ADDENDUM TO THE AGREEMENT DATED 25.02.2010**

The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 13/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 25.02.2010

A. Till Completion of the building: Rs. 78/- per sq. ft.

B. After Completion of the building: Rs. 65/- per sq. ft.

You would be paid an assured return w.e.f. 25.02.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month.

The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.

1. If the rental is less than Rs. 65/- per sq. ft. then you shall be returned @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft.

2. If the achieved rental is higher than R. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals. [Page 30 of complaint]

**Assured Return amounting to Rs.32,30,500/- paid by the respondent to the complainant till September 2018. [Page 7 of reply]**

**Assured return clause in complaint bearing no. 377-2023: Clause 12 of Builder buyer Agreement dated 18.01.2012**



### Clause 12 Assured Return and Leasing Arrangement

Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 71.5/- (Rupees Seventy One and Paise fifty only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said commercial Unit is ready and fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirm Party. It is further agreed that:

i. The Developer will pay to the Buyers Rs. 65/- (Rupees Sixty Five only) per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter.

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v. The Developer expects to lease out the said Commercial Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs. 65/- per sq. ft. super area per month for the first term (of whatsoever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs. 65/- per sq. ft. super area per month, then the Developer shall pay to Buyer a one time compensation calculated at the rate of @Rs. 120/- (Rupees One Hundred twenty Only) per sq. ft. super area for every one rupee drop in the lease rental below Rs. 65/- (Rupees Sixty Five Only) per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/lease terms of the said Commercial Unit.

vi. However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq. ft. super area, then, the Buyer shall pay to the Developer additional basic sale consideration calculated at Rs. 60/- (Rupees Sixty Only) per sq. ft. super area of the said Commercial Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs. 65/- (Rupees Sixty Five only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/lease terms of the said Commercial Unit. [Page 33-35 of complaint]

**Assured Return amounting to Rs.27,44,992/- paid by the respondent to the complainant till September 2018. [Page 5 of reply]**



1	2	3	4	5	6	7
S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/8001/2022  Gaurav Kaushik and Shwaytal Gaurav Kaushik V/s M/s Vatika Limited  DOF-19.01.2023  Reply-23.06.2023	1135A, 11 <sup>th</sup> floor, tower A of 750 sq. ft.  [Page 16 of complaint]  New unit-118, block E of 750 sq. ft.  [Page 36 of complaint]	25.02.2010  (Page 13 of complaint)	25.02.2013  [As per clause 2 of BBA dated 25.02.2010, the developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement]	TC- Rs. 58,50,000  AP- Rs. 58,50,000	<ul style="list-style-type: none"> <li>Assured return payable from December 2019 till date of order @ Rs.78/- per sq. ft. per month.</li> <li>To pay interest at prescribed rate on the unpaid monthly instalment w.e.f the date the monthly instalments were due till the date of actual payment.</li> <li>To continue paying the investment return as per BBA.</li> <li>Execute Conveyance Deed</li> <li>Restrain the respondent from raising demands at the time of offer of possession which is not as per BBA.</li> <li>DPC</li> </ul>
2.	CR/8002/2022  Shwaytal Gaurav Kaushik and Gaurav Kaushik V/s M/s Vatika Limited  DOF-19.01.2023  Reply-23.06.2023	1135B, 11 <sup>th</sup> floor, tower A of 500 sq. ft.  [page 16 of complaint]  New unit-119, block E of 500 sq. ft.  [Page 36 of complaint]	25.02.2010  (Page 13 of complaint)	25.02.2013  [As per clause 2 of BBA dated 25.02.2010, the developer will complete the construction of the said complex within three (3) years from the date of execution of	TC- Rs. 39,00,000  AP- Rs. 39,00,000	<ul style="list-style-type: none"> <li>Assured return payable from December 2019 till date of order @ Rs.78/- per sq. ft. per month.</li> <li>To pay interest at prescribed rate on the unpaid monthly instalment w.e.f the date the monthly instalments were due till the date of actual payment.</li> <li>To continue paying the investment return as per BBA.</li> <li>Execute Conveyance Deed</li> </ul>

				this agreement]		<ul style="list-style-type: none"> <li>• Restrain the respondent from raising demands at the time of offer of possession which is not as per BBA.</li> <li>• DPC</li> </ul>
3.	CR/377/2 023  Sushma Chawla and Liza Chawla V/s M/s Vatika Limited  DOF- 25.01.2023  Reply- 23.06.202 3	305, 3 <sup>rd</sup> floor, tower A of 500 sq. ft.	18.01.2012  [Page 19 of complaint)	N/A	BSP- Rs. 24,37,500  AP- Rs. 24,37,500	<ul style="list-style-type: none"> <li>• To procure OC and CC and accordingly handover possession of the subject unit.</li> <li>• Execution of conveyance deed</li> <li>• To pay outstanding assured return w.e.f. August 2018 (as no CC has been procured till date)</li> <li>• To pay outstanding assure return @ Rs.6.50/- per sq. ft. w.e.f. March 2016 till August 2018.</li> <li>• To pay penalty for delay in possession on the amount paid along with assured return till realization as per the RERA Act.</li> </ul>

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
BSP	Basic sale price
AP	Amount paid by the allottee(s)

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the

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

5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/8001/2022 titled as Gaurav Kaushik and Shwaytal Gaurav Kaushik V/s M/s Vatika Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the allottee.

**A. Project and unit related details**

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

***CR/8001/2022 titled as Gaurav Kaushik and Shwaytal Gaurav Kaushik V/s M/s Vatika Limited.***

S.no.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008

	Valid upto	13.06.2016
5.	HRERA registered or not	Not registered
6.	Allotment letter dated	25.02.2010 [Page 12 of complaint]
7.	Date of builder buyer agreement	25.02.2010 [Page 13 of complaint]
8.	Addendum to BBA dated 25.02.2010 executed on	27.07.2011 [Page 33 of complaint]
9.	Unit no. as per the BBA dated 25.02.2010	1135A, 11 <sup>th</sup> floor, tower no. A admeasuring 750 sq. ft. in Vatika Trade Centre [Page 23 of complaint]
10.	Due date of handing over possession as per BBA dated 25.02.2010	25.02.2013 [As per clause 2 of BBA dated 25.02.2010, the developer will complete the construction of the said complex within three (3) years from date of execution of this agreement]
11.	Assured return/ committed return as per Annexure A of BBA dated 25.02.2010	<b>Annexure A</b> <b>Addendum to the agreement dated 25.02.2010</b> The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq.ft. However, during the course of construction till such time the building



		<p>in which your unit is situated is ready for possession you will be paid an additional return of Rs. 13/- per sq.ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 25.02.2010</p> <p>A. Till Completion of the building: Rs. 78/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 25.02.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq.ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq.ft. the following would be payable.</p> <p>1. If the rental is less then Rs. 65/- per sq.ft. then you shall be returned @Rs. 120/- per sq.ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq.ft.</p> <p>2. If the achieved rental is higher than R. 65/- per sq.ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be</p>
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		requested to pay additional sale consideration @Rs. 120/- per sq.ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals. [Page 30 of complaint]
12.	Shifting of unit vide letter dated	17.09.2013 [Page 36 of complaint]
13.	New unit no. as per letter dated 17.09.2013	118, 1 <sup>st</sup> floor, block E admeasuring 750 sq. ft. in INXT City Centre [Page 36 of complaint]
14.	Letter 'Completion of construction for Block E' dated	26.03.2018 [Page 37 of complaint]
15.	Total sale consideration as per clause 1 of BBA dated 25.02.2010	Rs. 58,50,000/- [Page 16 of complaint]
16.	Amount paid by the complainant as per clause 2 of BBA dated 25.02.2010	Rs. 58,50,000/- [Page 16 of complaint]
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained
19.	Amount of assured return paid by the respondent to the complainant till September 2018	Rs. 48,45,750 /- [page 7 of reply filed by the respondent]

**B. Facts of the complaint**

7. The complainants have made the following submissions in the complaint: -

- a. That the respondent made false representations and claims of being a reputed developer and thereby induced the complainants to book/purchase a 750 sq. ft. unit in its project then known as "Vatika Trade Centre" by showcasing a fancy brochure which depicted that the project will be developed and constructed as state of the art being one of its kind with all modern amenities and facilities. A Builder Buyer Agreement dated 25.02.2010 was executed between the parties and the complainants were allotted unit no. 1135A, having 750 sq. ft. super area on the eleventh floor in Tower A of the said project vide allotment letter dated 25.2.2010 for a total sale consideration of Rs. 58,50,000/- which was paid upfront at the time of execution of the agreement. As per the allotment letter, the unit was to be completed by 30.09.2012. As per the Annexure - A to the BBA, the respondent was liable to pay assured monthly returns @ Rs. 78/- per sq. ft. per month till completion of construction post which it was liable to pay @ Rs. 65/- per sq. ft. per month to the complainants amongst other terms agreed between the parties.
- b. That the Builder Buyer Agreement was a pre-printed booklet drafted by the respondent containing unilateral terms and conditions favouring the respondent and prejudicing the complainants and the complainants were never given the option of changing the same. It is pertinent to mention here that in the BBA and other agreements executed between the parties, the name of the complainants was

Gaurav Yogendra Kaushik and Shwaytal Kaushik as per the then PAN card of the complainants. Thereafter, the new PAN cards of the complainants show the name as Gaurav Kaushik and Shwaytal Gaurav Kaushik as per the Aadhaar and Passport of the complainants but the PAN numbers are still the same and hence the present complaint is filed as per these names. Furthermore, the complainants had sent a letter to the respondent with the relevant documents requesting them to update their records but did not receive any response from the respondent in this regard.

- c. That the respondent unilaterally relocated the complainants to their project "INXT City Centre" and modified certain terms of agreement executed between the parties and an addendum dated 27.07.2011 was executed between the parties whereby which the complainants were unilaterally transferred to another project "VATIKA INXT CITY CENTRE" in Sector - 83, Gurgaon, Haryana. The complainants were unilaterally allotted unit no. 118 in Block E of the project vide their letter dated 17.09.2013, which was on a different floor and location than the previous unit of the complainants.
- d. That the respondent vide their letter dated 26.03.2018 falsely claimed completion of the Block where the unit of the complainant is located and informed as per Annexure - A of the Builder Buyers agreement, they will now pay monthly returns at Rs. 65/- per square foot. It is a matter of record that the project "INXT City Centre" is neither complete nor ready even today.
- e. That the respondent in furtherance of its mala fide intentions and ulterior motives without assigning any reason stopped the payment of

- the monthly returns to the complainant from October, 2018 onwards. Despite of repeated requests, the same have not been paid till date.
- f. That in June 2019, the respondent in furtherance of their malafide intentions and ulterior motives claimed change of laws to avoid their liability to pay monthly returns and was pressurising the complainants to execute an addendum post which the monthly returns due and payable to them till June, 2019, will be paid to them. The said addendum was a unilateral documents containing all terms favouring the respondent and the complainants were required to forego their claims for the payment of monthly returns post the execution of the addendum and therefore, the complainants refused for the same.
- g. That it has come to the knowledge of the complainant that the respondent has not only duped the complainant but several other buyers like them by refusing to pay the monthly returns on one pretext or the other even the project has not received the completion/occupation certificate from the competent authority till date. Buyers have been paid the monthly returns for different periods and have been denied the payment of the same on different grounds. It is further pertinent to mention here that no recent laws have been enacted which prevent the payment of monthly assured returns as claimed by the respondent as other developers are marketing project with assured return payments and are also paying the returns even today.
- h. That the respondent has not executed the conveyance deed of the unit of the complainants and has not received an occupation certificate from the competent authorities and has further refused to pay the monthly

assured rent/minimum guaranteed rent to the complainants for reasons undisclosed.

- i. That the conduct of the respondent is illegal and arbitrary and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the complainants and the conduct of the respondent has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainants and their family members.

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

8. The complainant has sought following relief(s)
  - a. Direct the respondent to pay the amount of assured returns due and payable by it to the complainant(s) from December, 2019, till date of order, to be calculated at Rs. 78/- per sq. ft. per month as per the terms of the agreement executed between the parties.
  - b. Direct the respondent to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.
  - c. Direct the respondent to continue paying the investment returns / monthly returns to the complainant(s) as per the terms of the Builder Buyers Agreement.
  - d. Direct the respondent to execute a conveyance deed for the unit of the complainant upon the completion of the project.

- e. Direct the respondent to pay penalty for delay in possession on the amount paid i.e., along with assured return till realisation as per the Act.
  - f. The respondent be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreements executed between the parties.
  - g. The Authority may pass such order or further orders and grant any further relief as it may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.
9. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

10. The respondent contested the complaint on the following grounds:
- a. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers' agreement dated 25.02.2010.
  - b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before the Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is

humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".

- c. That section 2(4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the *Explanation* to the section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013. The Companies Act, 2013 in section 2 (31) defines "Deposit" as "*deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India*". The Legislature while defining the term "*deposit*" intentionally used the term *prescribed* so as to further clarify and connect the same to be read with rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules,



2014. Further the Explanation for the clause (c) of section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

- d. That Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" as '*means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule*'. Thus the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs. 48,45,750/- till September, 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
- e. That as per section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot,

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directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- f. That further the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 16.08.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this

Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

- g. That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That the Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter simpliciter understanding that any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- h. That it is also relevant to mention here that the commercial unit of the Complainants was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainants. Hence,

the commercial space booked by the complainants is not meant for physical possession and rather is for commercial gain only.

- i. That further in the matter of *Bharam Singh & Ors vs. Venetian LDF Projects LLP* (Complaint No. 175 of 2018) and *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns.
- j. The complaint has been filed by the complainants just to harass the respondent and to gain the unjust enrichment. For the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- k. That the complainants entered into an agreement i.e., BBA dated 25.02.2010 with respondent owing to the name, good will and reputation of the respondent company. That it is a matter of record and admitted by the complainants that the respondent duly paid the assured return to the complainants till September, 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent

managed to complete the construction and duly issued letter of completion on 26.03.2018.

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

- m. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the Promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- n. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence, the complaint deserves to be dismissed.

- o. That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the complaint filed by the complainants deserves to be dismissed with heavy costs. Various contentions raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead the Authority, for the reasons stated above. It is further submitted that none of the relief as prayed for by the complainants is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.
- E. Jurisdiction of the authority**
12. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be



decided by the adjudicating officer if pursued by the complainants at a later stage.

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

16. The common issues with regard to assured return and execution of conveyance deeds is involved in both the aforesaid complaints.

**F.I Assured return**

17. The complainants are seeking unpaid assured returns on monthly basis as per addendum to the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019). But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured returns up to September 2018 but did not pay the same amount after coming into force of the Act of 2019 as it was declared illegal.

18. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for

sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral part of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017.* Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for

sale till the execution of conveyance deed of the unit in favour of the allottee.

Now, three issues arise for consideration as to:

- i. Whether the authority is within its jurisdiction to vary its earlier stand regarding assured returns due to changed facts and circumstances.
  - ii. Whether the authority is competent to allow assured returns to the allottee in pre-RERA cases, after the Act of 2016 came into operation,
  - iii. Whether the Act of 2019 bars payment of assured returns to the allottee in pre-RERA cases.
19. While taking up the cases of *Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018)*, and *Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP*" (complaint no 175 of 2018) decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottee that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of "*prospective overruling*" and which provides that the law declared by the court applies to the cases arising in future only

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

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

into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(1)(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.***, (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act, 2019 or any other law.

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

- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

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

- i. *as an advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property;*
- ii. *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

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

23. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act, 2019 mentioned above.
24. It is evident from the perusal of section 2(4)(I)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.
25. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as Nikhil Mehta, Pioneer Urban Land and Infrastructure which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the



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

26. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e., explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming

refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under:-

*(2) The following shall also be treated as Regulated Deposit Schemes under this Act namely:-*

- (a) deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and*
- (b) any other scheme as may be notified by the Central Government under this Act.*

27. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance,

the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

28. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
29. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.

**F. II Delay possession charge.**

30. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession

charges as provided under the provisions of section 18(1) of the Act which reads as under:

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

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

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

31. A builder buyer agreement dated 25.02.2010 was executed between the parties. The due date is calculated as per clause 2 of BBA i.e., 3 years from the date of execution of this agreement. Therefore, the possession was to be handed over by 25.02.2013. The relevant clause is reproduced below:

*"The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs. As per Annexure 'A' (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession."*

32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

33. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

35. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 25.02.2010, the possession of the subject unit was to be delivered within stipulated time i.e., 25.02.2013.
36. However now, the proposition before it is as to whether the allottee who is 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?
37. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per "Annexure A - Addendum to the agreement dated 25.02.2010". The rate at which assured return has been committed by the promoter is Rs. 78/- 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 i.e., assured return in this case is payable a Rs. 58,500/- per month whereas the delayed possession charges are payable approximately Rs. 52,406/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said



building. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable for the first 3 years after the date of completion of the project or till the date of said unit/space is put on lease, whichever is earlier. The purpose of delayed possession charges after due date of 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 due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

38. Accordingly, the 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 from the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
39. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of BBA dated 25.02.2010, the promoter had agreed to pay to the complainants allottee Rs.78/- per sq. ft. on monthly basis till completion of



the building and Rs.65/- per sq. ft. on monthly basis after the completion of the building. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

40. In the present complaint, vide letter dated 26.03.2018, the respondent has intimated the complainants that the construction of Block E is complete wherein the subject unit is located. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., **September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the first 36 months after**





**the completion of the project or till the date the said unit is put on lease, whichever is earlier.**

41. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.75% p.a. till the date of actual realization.

### **F. III Conveyance deed**

42. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
43. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

#### ***"17. Transfer of title.-***

*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by*

*h*

*the promoter within three months from date of issue of occupancy certificate."*

44. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

**G. Directions of the authority**


45. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
- The the respondent is directed to pay the amount of assured return at the agreed rate i.e., **@ Rs. 78/- per sq. ft. per month** from the date the payment of assured return has not been paid i.e., **September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the first 36**



**months after the completion of the project or till the date the said unit is put on lease, whichever is earlier.**

- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.75% p.a. till the date of actual realization.
  - iii. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.
  - iv. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
46. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
47. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
48. File be consigned to the registry.

  
**(Sanjeev Kumar Arora)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

Date: 12.09.2023