



HARERA
GURUGRAM

Complaint No. 1955 and 1956 of
2022

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

Date of decision: 03.01.2024

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1955/2022	Rishi Gandotra and Gaurav Gandotra V/s M/s Vatika Limited	Shri Amitabh Narayan, Advocate and Ms. Ankur Berry Advocate
2.	CR/1956/2022	Rishi Gandotra and Gaurav Gandotra V/s M/s Vatika Limited	Shri Amitabh Narayan, Advocate and Ms. Ankur Berry Advocate

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the 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, refund, etc.

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:

Project Name and Location	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
Assured return clause in complaint bearing no. 1955-2022: CLAUSE 12 TO THE AGREEMENT DATED 23.05.2016	
<p>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. 71.50 per sq. ft. super area of the 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 of 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 Confirming Party. It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial Unit as committed return for up to three years from the date of</p>	



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 documents as may be executed and as described hereinafter.

(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 whatever 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 the Buyer a onetime compensation calculated at the rate of @ Rs.120/- per sq. ft. super area for every one rupee drop in the lease rental below Rs. 65/- per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/ lease terms of the 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/- 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/- 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.

**Assured return clause in complaint bearing no. 1956-2022:
CLAUSE 12 TO THE AGREEMENT DATED 23.05.2016**

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. 71.50/- per sq. ft. super area of the 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 of 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 Confirming Party. It is further agreed that:

- (i) The Developer will pay Rs. 65/- to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial Only Unit as committed return for up to 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 documents as may be executed and as described hereinafter.
- (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 whatever 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 the Buyer a onetime compensation calculated at the rate of @ Rs.120/- per sq. ft. super area for every one rupee drop in the lease rental below Rs. 65/- per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/ lease terms of the 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/- 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/- 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.

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/1955/2022 Rishi Gandotra and Gaurav Gandotra V/s M/s Vatika Limited DOF- 05.05.2022 Reply- 24.08.2023	1116, 11 th Floor, Block F of 500 sq. ft. [Page 57 of complaint]	23.05.2016 (Page 26 of complaint)	23.05.2019 (Deemed due date) <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for	TC- Rs. 17,50,000 /- AP- Rs. 17,50,000 /-	<ul style="list-style-type: none"> • Refund the sum deposited by the complainants with the respondent along with interest. • Pay to the complainants an amount of Rs. 22,750/- from April 2018 till October 2018 i.e. amount of difference in relation to the commitment charges. • Pay compensation @Rs 71.5- per sq. ft. per month from November 2018 till the complainants withdrew from the project. • The respondent promoters be punished under section 59 of the Act and directed to pay a penalty of 10% of the estimated cost of the project.



				<p>completion of the contract.</p> <p>In view of the above-mentioned reasoning, the date of execution of BBA i.e. 23.05.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 23.05.2019.</p>		
2.	CR/1956/2022 Rishi Gandotra and Gaurav Gandotra V/s M/s Vatika Limited DOF- 05.05.2022 Reply- 24.08.2023	1120, 11 th Floor, Block F of 500 sq. ft. [Page 56 of complaint]	23.05.2016 (Page 27 of complaint)	23.05.2019 (Deemed due date) <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable	TC- Rs. 17,50,000 /- AP- Rs. 17,50,000 /-	<ul style="list-style-type: none">• Refund the sum deposited by the complainants with the respondent along with interest.• Pay to the complainants an amount of Rs. 22,750/- from April 2018 till October 2018 i.e. amount of difference in relation to the commitment charges.• Pay compensation @Rs 71.5.- per sq. ft. per month from November 2018 till the complainants withdrew from the project. The respondent promoters be punished under section 59 of the Act and directed to pay a penalty of 10% of the estimated cost of the project.



				<p><i>time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</i></p> <p>In view of the above-mentioned reasoning, the date of execution of BBA i.e. 23.05.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 23.05.2019.</p>		
--	--	--	--	---	--	--

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/1955/2022 titled as Rishi Gandotra and Gaurav Gandotra 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 complainant-allottees.

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/1955/2022 titled as Rishi Gandotra and Gaurav Gandotra
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 up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Date of builder buyer agreement	23.05.2016 [Page 26 of complaint]



7.	Unit no.	1116, 11 th Floor, Block F of 500 sq. ft. [Page 57 of complaint]
11.	Due date of handing over possession	<p>23.05.2019 (Deemed due date)</p> <p><i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</p> <p>In view of the above-mentioned reasoning, the date of execution of BBA i.e. 23.05.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 23.05.2019.</p>
12.	Assured return/ committed return as per Annexure A of BBA	<p>Assured return clause in complaint bearing no. 1956-2022: CLAUSE 12 TO THE AGREEMENT DATED 23.05.2016</p> <p>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. 71.50/- per sq. ft. super area of the 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 of 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</p>



		<p>Developer or the Confirming Party. It is further agreed that:</p> <p>(i) The Developer will pay Rs. 65/- to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial Only Unit as committed return for up to 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 documents as may be executed and as described hereinafter.</p> <p>(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 whatever 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 the Buyer a onetime compensation calculated at the rate of @ Rs.120/- per sq. ft. super area for every one rupee drop in the lease rental below Rs. 65/- per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/ lease terms of the Commercial Unit.</p> <p>(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/- 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/- 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.</p>
14.	Total sale consideration	Rs. 17,50,000/- [Page 27 of complaint]
15.	Amount paid by the complainants	Rs. 17,50,000/- [Page 23 of complaint]



16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

B. Facts of the complaint

7. The complainants have made the following submissions in the complaint: -
- The respondent misled the complainants by giving false promises that the project would be completed by 31.05.2017. The respondent further promised an assured return/monthly rent/commitment charges @ Rs. 71.50/- per sq. ft. till the completion of the project. Thereafter, upon completion of the project, a lease rental at the rate of Rs.65/- per square feet was promised.
 - Induced by the representations made by the respondent-developer, the complainants invested their hard-earned money in India Next City Centre, Gurugram.
 - The respondent allotted the unit bearing no. 1116 vide letter dated 29.04.2016 on 11th Floor having a super area of 500 sq. ft. in block/tower F, which was to be constructed and made ready for possession by 31.05.2017 with all promised amenities as per the representation of the respondent.
 - The complainants on the insistence of the respondent paid the entire sale consideration of Rs.17,50,000/-. The basic sale price was calculated at the rate of Rs. 3500 per sq. ft. of approximately 500 sq. ft. super area along-with the tax amount of Rs. 76,125/-. The payment of sale price was made vide cheque number 000191 dated on 20.03.2016 for Rs. 18,26,612.5. Thereafter, a builder buyer agreement dated 23.05.2016 was executed by the respondent. The tabulation in relation to the payment made to the respondent is provided below:



Mode of Payment	Date	Amount (INR)	Name of bank
Cheque No. 000191	20.03.2016	18,26,125	HDFC

- e. As per clause 12 of the builder buyer agreement, the respondent had agreed to pay Rs. 71.50 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 the builder buyer agreement i.e. May 23, 2016 till the completion of construction of the project. Further, the same clause also provided that the respondent will pay to the complainants Rs.65/- per sq. ft. super area of the said commercial unit as committed return for up to 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.
- f. Accordingly, the respondent started making payments of the assured returns w.e.f. June 2016 directly into the bank account of the complainants at the rate of Rs. 71.50 per sq. ft. However, the respondent paid the assured returns at the rate of Rs. 71.50 per sq. ft. only till February 2018 and thereafter the said rate was unilaterally reduced by the respondent to Rs. 65 per sq. ft. That this rate was to be reduced from Rs. 71.50 per sq. ft. to Rs. 65 per sq. ft. only after completion of the project. The project has not even been completed till today leave alone the promised amenities.
- g. The respondent made the payment of the assured returns at the rate of Rs. 65 per sq. ft. till September 2018. However, after September 2018, the respondent abruptly stopped making payment of any amount by way of assured returns.

- h. To this date, the respondent has not even registered the project with the Hon'ble Real Estate Regulatory Authority, Gurugram, Haryana. The land proposed to be developed far exceeds five hundred square meters. Even the apartments proposed to be developed are in thousands. The project comes within the ambit of RERA Act and was mandatorily required to be registered. The respondent has not complied with the said mandate provided under Section 3 of the Real Estate (Regulation and Development Act), 2016. The respondent has not registered the project with the RERA Authority as provided by Section 3 of RERA. On account of the above, the respondent could not have advertised, booked, sold or offered for sale or invited persons to purchase a unit or apartment. The respondent has thrown to the winds the mandate of Section 3 of the RERA Act. The respondent has committed an offence by infringing Section 3 read with Section 59 of the RERA Act. The respondent-promoter is liable to be punished under Section 59 of the RERA Act. The respondent is liable to pay a penalty of 10% of the estimated cost of the real estate project. The directors of the respondent, namely, Mr. Gautam Bhalla, Mr. Anil Bhalla, Mr. Brij Kishore Singh, Mr. Surender Singh, Mr. Vijender Kumar, Mr. Keshav Jha and Mr. Manish Agarwal are liable to be imprisoned for a term of three years or with further fine of 10 per cent or with both on account of continued violation of Section 3 of the RERA Act.
- i. The complainants have been regularly and repeatedly following up with the respondent and its officials and enquiring about the payment of the assured returns and the status of the project. However, there has been neither any payments of the assured returns from October 2018 nor delivery of possession of the commercial unit. When the



complainants visited the project site, they were surprised to find that the work on the project site was still not completed. The survey of the project site revealed that there was a lot of work that needed to be done.

- j. Photographs taken by the complainants of the project reveal that the project with all the promised amenities is far from complete.
- k. As per the website of the Directorate of Country Town and Planning, Haryana, the license to construct is valid only till 13th June 2016. Thereafter there are no documents/ information on the website of further extension of license to construct in favour of respondent.
- l. Due to the above misdeeds and fraudulent activities of the respondent, FIR No. 0037 dated 14.02.2021 and FIR No. 0038 dated 14.02.2021 u/S. 406/420/120B IPC was registered at EOW, Mandir Marg, New Delhi against the respondent. Further, the complainants had also filed two complaints both dated October 5, 2021 bearing diary number D - 3088 and D-3089 against the respondent along with its directors and other officials for cheating, fraud, malicious malpractices, criminal breach of trust and so on. It is not known as to whether any progress has been made to bring the culprits to Court or whether the FIR has been put in cold storage.
- m. The complainants demanded the amounts from the respondent vide e-mail dated 06.04.2022. However, no payment was made by the respondent to the complainants despite demand.

C. Relief sought by the complainants:

8. The complainant has sought following relief(s)

- a. Refund the sum deposited by the complainants with the respondent along with interest.
 - b. Pay to the complainants an amount of Rs. 22,750/- per month from April 2018 till October 2018 i.e. amount of difference in relation to the commitment charges.
 - c. Pay compensation @Rs 71.5/- per sq. ft. per month from November 2018 till the complainants withdrew from the project.
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. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by them cannot be said to fall within the realm of jurisdiction of this Ld. Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company 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".
 - b. As per Section 3 of the BUDS Act, all unregulated deposit scheme has been strictly banned and deposit takers such as builders, cannot,



directly or indirectly promote, operate, issue any 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 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 opposite parties/respondent company has become illegal by the operation of law and the opposite parties/respondent company cannot be made to run a scheme which has become infructuous by law.

- c. The fair adjudication of grievance as alleged by the complainants require detailed deliberation by leading the evidence and cross-examination, thus only the civil court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.
- d. The commercial unit of the complainants are 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 clause 12(viii) of the agreement, the said commercial space shall be deemed to be legally possessed by the complainants. Hence, the commercial space booked by the complainants are not meant for physical possession.
- e. The complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given

people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainants have instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the BBA dated 23.05.2016.

- f. The complainants entered into an agreement i.e. builder buyer's agreement dated 23.05.2016 with respondent company owing to the name, good will and reputation of the respondent company. That according to the terms of the BBA dated 23.05.2016, the construction of unit was completed and the same was duly informed to the complainants vide letter dated 27.03.2018. That due to external circumstances which were not in control of the respondent, minor timeline alterations occurred in completion of the project. That even though the respondents suffered from setback due to external circumstances, yet the respondents managed to complete the construction.
- g. The respondent company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:
- (a) Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of *Sector roads* 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely;
 - (b) Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains,

- delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of ground water,
- (c) Total and Partial *Ban on Construction* due to the directives issued by the National Green Tribunal during various times since 2015.
- (d) The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- (e) Additionally it imposed a set of *partial restrictions*, some of which are
- i. No construction activities between 6 pm till 6 am (174 days)
 - ii. Stop the usage of Diesel Generator Sets (128 days).
 - iii. Stop entry of Truck Traffic into Delhi.
 - iv. Close brick kilns, Hot Mix plants and Stone Crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
 - vi. This year, partial restrictions continued to be in place in NCR region.
- (f) The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.

(g) Upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the government authorities. The incompleteness of such development works resulted in minor alterations in timelines of the project, however the respondent yet managed to complete the project.

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 objections raised by the respondent.

F.I Objection regarding force majeure.

16. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC, NGT to stop construction, notification of the Haryana state pollution control board, etc. Further, the respondent cited lack of labor and construction material. The plea of the respondent regarding various orders



of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Further, the promoter should have foreseen issues such as labour and material shortage beforehand and thus, the promoter-respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

17. The common issues regarding assured return, refund, etc. involved in the aforesaid complaints.

G.I Refund the sum deposited by the complainants with the respondent along with interest.

G.II Pay to the complainants an amount of Rs. 22,750/- per month from April 2018 till October 2018 i.e. amount of difference in relation to the commitment charges.

G.III Pay compensation @Rs 71.5/- per sq. ft. per month from November 2018 till the complainants withdrew from the project.

18. The aforesaid reliefs being connected are therefore dealt with together.

19. The complainants were allotted unit no. 1116, 11th floor, block/tower F in the project "Vatika INXT City Centre", Gurugram, Haryana of the respondent/builder for a total consideration of Rs. 17,50,000/-. The agreement to sell was executed between the parties on 23.05.2016.



However, there was no timeline provided for the possession. Therefore, in view of the judgement in *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*, where the Hon'ble Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.* In view of the above-mentioned reasoning, the date of the agreement to sell dated 23.05.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 23.05.2019.

20. It has come on record that against the total sale consideration of Rs. 17,50,000/-, the complainants have paid a sum of Rs. 17,50,000/- to the respondent. However, the complainants contended that the unit was not offered to them despite this, and no occupation certificate has yet been obtained. Hence, in case allottees wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by the Hon'ble Supreme Court of



India in the cases of ***Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. (supra)*** reiterated in the case of ***M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)*** wherein it was observed as under: -

“The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondents/promoter in respect of the unit with interest at such rate as may be prescribed.



22. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
23. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.
24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
25. Further, it comes to the notice of this Authority that the complainant has already received a certain amount towards assured return as per the terms agreed between them. However, in this case the allottee intends to withdraw from the project. Therefore, a refund of the paid-up amount will



be granted only after deducting the amount/assured return already credited in the account of the complainant.

26. The authority hereby directs the promoter to return the amount received by it i.e., Rs.17,50,000/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount after adjusting the amount/assured return paid by respondent, if any within the timelines provided in rule 16 of the Rules *ibid*.

H. Directions of the authority

27. 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:

- i. The promoter is directed to return the amount received by it i.e., Rs.17,50,00/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount after adjusting the amount/assured return paid by respondent, if any within the timelines provided in rule 16 of the Rules *ibid*.



HARERA
GURUGRAM

Complaint No. 1955 and 1956 of
2022

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
29. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
30. File be consigned to the registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 03.01.2024

HARERA
GURUGRAM