

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

Date of decision: 17.10.2023

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7385/2022	Arun Budhiraja and Ashwani Budhiraja V/s M/s Vatika Limited	Shri Harshit Goyal, Advocate and Ms. Ankur Berry & Shri Ishan Singh, Advocates
2.	CR/7386/2022	Arun Budhiraja V/s M/s Vatika Limited	Shri Harshit Goyal, Advocate and Ms. Ankur Berry & Shri Ishan Singh, Advocates
3.	CR/7387/2022	Arun Budhiraja and Ashwani Budhiraja V/s M/s Vatika Limited	Shri Harshit Goyal, Advocate and Ms. Ankur Berry & Shri Ishan Singh, Advocates
4.	CR/7388/2022	Ashwani Budhiraja V/s M/s Vatika Limited	Shri Harshit Goyal, Advocate and Ms. Ankur Berry & Shri Ishan Singh, Advocates

CORAM:Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora**Member**
Member
Member**ORDER**

1. This order shall dispose of all 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, 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:

Project Name and Location	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
<p>Assured return clause in complaint bearing no. 7385-2022: ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 08.05.2010</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. 6.50/- 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 08.05.2010</p> <p>A. Till Completion of the building: Rs. 71.50/- per sq. ft. B. After Completion of the building: Rs. 65/- per sq. ft.</p>	

You would be paid an assured return w.e.f. 08.05.2010 on a monthly basis before the 15th 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 refunded @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 Rs. 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 37 of complaint]

Assured Return amounting to Rs.32,17,500/- paid by the respondent to the complainant till September 2018. [Page 6 of reply]

Assured return clause in complaint bearing no. 7386-2022:

ANNEXURE A

ADDENDUM TO THE AGREEMENT DATED 13.08.2010

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. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 13.08.2010

A. Till Completion of the building: Rs. 71.50/- per sq. ft.

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

You would be paid an assured return w.e.f. 13.08.2010 on a monthly basis before the 15th 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 refunded @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 Rs. 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 37 of complaint]

Assured Return amounting to Rs.32,20,000/- paid by the respondent to the complainant till September 2018. [Page 6 of reply]

Assured return clause in complaint bearing no. 7387-2022:

ANNEXURE A

ADDENDUM TO THE AGREEMENT DATED 08.05.2010

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. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 08.05.2010

A. Till Completion of the building: Rs. 71.50/- per sq. ft.

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

You would be paid an assured return w.e.f. 08.05.2010 on a monthly basis before the 15th 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 refunded @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 Rs. 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 37 of complaint]

Assured Return amounting to Rs.32,17,500/- paid by the respondent to the complainant till September 2018. [Page 6 of reply]

Assured return clause in complaint bearing no. 7388-2022:

ANNEXURE A

ADDENDUM TO THE AGREEMENT DATED 24.08.2011

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. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 24.08.2011

A. Till Completion of the building: Rs. 71.50/- per sq. ft.

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

You would be paid an assured return w.e.f. 24.08.2011 on a monthly basis before the 15th 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 refunded @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 Rs. 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 37 of complaint]

Assured Return amounting to Rs.30,19,250/- paid by the respondent to the complainant till September 2018. [Page 6 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/7385/2022 Arun Budhiraja and Ashwani Budhiraja V/s M/s Vatika Limited DOF- 08.12.2022 Reply- 31.03.2023	772, 7 th floor, tower A of 500 sq. ft. [Page 22 of complaint] New unit- 236, 2 nd floor block B of 500 sq. ft. [Page 39 of complaint]	26.05.2010 (Page 19 of complaint)	26.05.2013 [As per clause 2 of BBA dated 26.05.2010, the developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement]	TC- Rs. 20,00,000 AP- Rs. 20,00,000	<ul style="list-style-type: none"> Direct the respondent to pay pending monthly assured return of Rs.71.50/- per sq. ft. (Rs.35,750/- per month) accrued from month of September 2018 along with interest to the complainant. To pay delayed possession charges from due date of delivery of possession of 26.05.2013 till date of offer of possession along with occupation certificate of booked unit. To execute and register conveyance deed of booked unit.

2.	CR/7386/ 2022 Arun Budhiraja V/s M/s Vatika Limited DOF- 08.12.2022 Reply- 03.04.2023	633, 6 th floor of 500 sq. ft. [Page 21 of complaint] New unit- 234, 2 nd floor block B of 500 sq. ft. [Page 38 of complaint]	13.08.2010 (Page 18 of complaint)	13.08.2013 [As per clause 2 of BBA dated 13.08.2010, the developer will complete the constructio n of the said complex within three (3) years from the date of execution of this agreement]	TC- 20,00,000 AP- 20,00,000	Rs. Rs.	<ul style="list-style-type: none"> Direct the respondent to pay pending monthly assured return of Rs.71.50/- per sq. ft. (Rs.35,750/- per month) accrued from month of September 2018 along with interest to the complainant. To pay delayed possession charges from due date of delivery of possession of 13.08.2013 till date of offer of possession along with occupation certificate of booked unit. To execute and register conveyance deed of booked unit.
3.	CR/7387/ 2022 Arun Budhiraja and Ashwani Budhiraja V/s M/s Vatika Limited DOF- 08.12.2022 Reply- 03.04.2023	1147, 11 th floor, tower A of 500 sq. ft. [Page 21 of complaint] New unit- 250, 2 nd floor block B of 500 sq. ft. [Page 38 of complaint]	08.05.2010 (Page 18 of complaint)	08.05.2013 [As per clause 2 of BBA dated 08.05.2010, the developer will complete the constructio n of the said complex within three (3) years from the date of execution of this agreement]	TC- 20,00,000 AP- 20,00,000	Rs. Rs.	<ul style="list-style-type: none"> Direct the respondent to pay pending monthly assured return of Rs.71.50/- per sq. ft. (Rs.35,750/- per month) accrued from month of September 2018 along with interest to the complainant. To pay delayed possession charges from due date of delivery of possession of 08.05.2013 till date of offer of possession along with occupation certificate of booked unit. To execute and register conveyance deed of booked unit.

4.	CR/7388/ 2022 Ashwani Budhiraja V/s M/s Vatika Limited DOF- 08.12.2022 Reply- 31.03.2023	483, 4 th floor, tower A of 500 sq. ft. [Page 21 of complaint] New unit- 421, tower C of 500 sq. ft. [Assignment letter dated 09.09.2014, Page 40 of complaint]	07.07.2011 (Page 18 of complaint)	07.07.2014 [As per clause 2 of BBA dated 07.07.2011, the developer will complete the constructio n of the said complex within three (3) years from the date of execution of this agreement]	TC- 21,94,000 AP- 21,94,000	Rs. Rs.	<ul style="list-style-type: none"> Direct the respondent to pay pending monthly assured return of Rs.71.50/- per sq. ft. (Rs.35,750/- per month) accrued from month of September 2018 along with interest to the complainant. To pay delayed possession charges from due date of delivery of possession of 07.07.2014 till date of offer of possession along with occupation certificate of booked unit. To execute and register conveyance deed of booked unit.
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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/7385/2022 titled as Arun Budhiraja and Ashwani Budhiraja 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/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 up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Allotment letter dated	26.05.2010
		[Page 17 of complaint]

7.	Date of builder buyer agreement	26.05.2010 [Page 19 of complaint]
8.	Unit no. as per the BBA dated 26.05.2010	772, 7 th floor, tower no. A admeasuring 500 sq. ft. in Vatika Trade Centre [Page 22 of complaint]
9.	Shifting of unit vide letter dated	17.09.2013 [Page 39 of complaint]
10.	New unit no. as per letter dated 17.09.2013	236, 2 nd floor, block B admeasuring 500 sq. ft. in INXT City Centre [Page 39 of complaint]
11.	Due date of handing over possession as per BBA dated 26.05.2010	26.05.2013 [As per clause 2 of BBA dated 26.05.2010, the developer will complete the construction of the said complex within three (3) years from date of execution of this agreement, page 22 of complaint]
12.	Assured return/ committed return as per Annexure A of BBA	<p style="text-align: center;">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 08.05.2010</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. 6.50/- 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 08.05.2010</p>

		<p>A. Till Completion of the building: Rs. 71.50/- 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. 08.05.2010 on a monthly basis before the 15th 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 than Rs. 65/- per sq. ft. then you shall be refunded @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.</p> <p>2. If the achieved rental is higher than Rs. 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.</p> <p>[Page 37 of complaint]</p>
13.	Letter 'Completion of construction for Block B' dated	29.03.2016 [Page 40 of complaint]
14.	Total sale consideration as per clause 1 of BBA dated 26.05.2010	Rs. 20,00,000/- [Page 22 of complaint]
15.	Amount paid by the complainants as per clause 2 of BBA dated 26.05.2010	Rs. 20,00,000/- [Page 22 of complaint]

16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained
18.	Amount of assured return paid by the respondent to the complainants till September 2018	Rs. 32,17,500 /- [page 6 of reply filed by the respondent]

B. Facts of the complaint

7. The complainants have made the following submissions in the complaint: -
- a. That respondent company issued allotment letter dated 26.05.2010 in favour of complainants. The builder buyer agreement was duly executed between the allottees and the respondent on 26.05.2010 in respect of booked unit no 722, 7th Floor, Tower A later changed to Unit No. 236, 2nd floor, Block-B in real estate project namely INXT City Center. The addendum to the builder buyer agreement was also executed between complainants and respondent company and was attached as Annexure A of the builder buyer agreement.
 - b. That as per clause 2 of builder buyer agreement and preamble paragraph of addendum to the agreement, the respondent company was liable to pay assured return amount of Rs. 71.50/- per sq. ft. per month from the date of execution of builder buyer agreement till the date of offer of possession. The respondent company has failed to pay any assured return amount September 2018 till date to the complainant.
 - c. As per clause 32.2 of builder buyer agreement and preamble paragraph of addendum to the agreement, the respondent was also liable to pay assured return amount of Rs. 65/- per sq. ft. per month from the date

- of offer of possession till first 36 months from date of completion or till the date the said unit is put on lease, whichever is earlier.
- d. As per clause 2 of the builder buyer agreement dated 26.05.2010, the respondent company was liable to deliver possession of the booked unit within a period of 3 years from the date of execution of the agreement. Therefore, the due date of delivery of possession is 26.05.2013. The respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainants till date. The respondent company also issued illegal and unlawful Letter dated 29.03.2016 claiming completion of construction of Block B. However, the respondent company has failed to obtain occupation certificate in respect of Block B where the booked unit is situated till date.
- e. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent and in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.
- f. Therefore, the present complainant is forced to file present complaint before this hon'ble authority under section 31 of the Real Estate Regulation and Development Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.
- C. Relief sought by the complainants:**
8. The complainant has sought following relief(s)

- a. Direct the respondent to pay pending monthly assured return of Rs. 71.50/- per sq. ft. (Rs. 35,750/- per month) accrued from the Month of September 2018 along with interest to the complainants.
 - b. Direct the respondent to pay delayed possession charges from due date of delivery of possession of 26.05.2013 till date of offer of possession along with occupation certificate of booked unit.
 - c. Direct the respondent to execute and register the conveyance deed of the booked unit.
 - d. Any other relief which this hon'ble authority deems fit and proper.
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 26.05.2010.
 - b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have 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. 32,17,500/- 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, 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 17.05.2023. 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, this Hon'ble authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019.

- g. 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 as is clear from the absence of clause of possession. 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.
- h. 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 has taken upheld its earlier decision of not entertaining any matter related to assured returns.
- i. That the complaint has been filed by the complainants just to harass the respondent and to gain the 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. For the fair adjudication of grievance as alleged by the complainants, 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.

- j. That the complainants entered into an agreement i.e., BBA dated 26.05.2010 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.
- k. 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.

- l. 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.
- m. 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. The complainants were sent the letter dated 29.03.2016 informing of completion of construction. 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.

- n. 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. 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, delay possession charges and execution of conveyance deeds is involved in 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), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.* wherein the authority while reiterating the principle of prospective ruling, has held that 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 and it was held 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 the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

18. 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.
19. 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.
20. 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.

21. 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."

22. A builder buyer agreement dated 26.05.2010 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 26.05.2013. 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."

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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."

24. 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., 17.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
25. 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;"

26. 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 26.05.2010, the possession of the subject unit was to be delivered within stipulated time i.e., 26.05.2013.
27. 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?
28. 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". The rate at which assured return has been committed by the promoter is Rs. 71.50/- 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. 35,750/- per month whereas the delayed possession charges are payable approximately Rs. 17,916/- 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.

29. 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 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.
30. 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 26.05.2010, the promoter had agreed to pay to the complainants allottee Rs.71.50/- 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.

31. In the present complaint, vide letter dated 29.03.2016, the respondent has intimated the complainants that the construction of Block B 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. 71.50/- 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.**

32. 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

33. 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.
34. 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 the promoter within three months from date of issue of occupancy certificate."


35. 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

36. 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 respondent is directed to pay the amount of assured return at the agreed rate i.e., @ **Rs. 71.50/- 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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
39. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 17.10.2023