

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

Date of decision: 07.02.2024

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6079/2022	Amit Mehta HUF & Vikram V/s M/s Vatika Limited	Shri Harshit Goyal Shri Harshit Batra
2.	CR/6142/2022	Amit Mehta HUF V/s M/s Vatika Limited	Shri Harshit Goyal Shri Harshit Batra

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, 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.
Assured return clause in complaint bearing no. 6079-2022: CLAUSE 12 in AGREEMENT DATED 20.01.2012 Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 71.5/- per sq ft super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that: (i) The Developer will pay to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter. 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/- 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 only 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 said Commercial Unit.

(vi) However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq. ft. super area, then, the Buyer shall pay to the Developer additional/basic sale consideration calculated at Rs. 60/- per sq. ft. super area of the said Commercial Unit for every one rupee increase in the lease per sq. ft super/area of rental over and above the said minimum lease rental of Rs. 65/- per sq. ft. super area 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. 6142-2022:

CLAUSE 12 in AGREEMENT DATED 20.01.2012

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. 65/- per sq ft super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:

(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 completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter.

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/- 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 Rs. 126/- only 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 said Commercial Unit.

(vi) However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq. ft. super area, then, the Buyer shall pay to the Developer additional/basic sale consideration calculated at Rs. 63/- per sq. ft. super area of the said Commercial Unit for every one rupee increase in the lease per sq. ft super/area of rental over and above the said minimum lease rental of Rs. 65/-per sq. ft. super area 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 bullder buyer agreement	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/6079/2022 Amit Mehta HUF & Vikram V/s M/s Vatika Limited DOF-01.09.2022 Reply-06.06.2023	F-444 4 th Floor, Tower F of 500 sq. ft. [Page 43 of complaint]	20.01.2012 (Page 20 of complaint)	30.09.2014 (Page no. 18 of complaint)	BSP: Rs. 21,94,000/- AP: Rs. 22,50,495/- (Page no. 22 of complaint)	<ul style="list-style-type: none"> To Direct the respondent to pay pending Assured monthly return charges of Rs. 71.50/- per sq. ft. per month accrued from the month of September 2018 to the complainants. To direct the respondent to pay DPC till date of offer of possession. To direct the respondent to execute and register the conveyance deed of the booked unit.

2	CR/6142/ 2022 Amit Mehta HUF V/s M/s Vatika Limited DOF- 05.09.2022 Reply- 06.06.2023	235, 2 nd Floor, D block of 500 Sq. Ft. [Page 45 of complaint]	25.07.2012 (Page 18 of complaint)	30.09.2014 (Page no. 16 of complaint)	BSP: Rs. 41,05,000/- (Page no. 20 of complaint) AP: Rs. 42,31,845/- (Page no. 20 of complaint)	<ul style="list-style-type: none"> To Direct the respondent to pay pending Assured monthly return charges of Rs. 65/- per sq. ft. per month accrued from the month of September 2018 to the complainant. To direct the respondent to pay DPC till date of offer of possession. To direct the respondent to execute and register the conveyance deed of the 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)

- 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.
- 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/6079/2022 titled as "Amit Mehta HUF & Vikram HUF Vs Vatika Ltd." 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/6079/2022 titled as "Amit Mehta HUF & Vikram HUF Vs Vatika Ltd.

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	10.718 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	20.01.2012 [Page 20 of complaint]

7.	Unit no. as per the BBA dated 20.01.2012	232A, 2 nd floor, Block A admeasuring 500 sq. ft. in Vatika India Next City Centre [Page 22 of complaint]
8.	Endorsement of unit to the complainants	17.09.2015
9.	New unit no. as per letter dated 17.09.2015	F 444, Tower No. F, 4 th Floor admeasuring 500 Sq. Ft. (Page no. 43 of complaint)
10.	Due date of handing over possession as per allotment letter dated 02.02.2011	30.09.2014 (Page no. 18 of complaint)
11.	Assured return/ committed return as per BBA	Clause 12 *...the Developer has agreed to pay Rs. 71.5/- per sq ft super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. *...The Developer will pay to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial unit as committed return return for upto three years from the date of completion of construction of the said

		<i>Building or till the said Commercial Unit is put on lease, which ever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter."</i>
12.	Basic sale consideration	Rs. 21,94,000/- [Page 22 of complaint]
13.	Amount paid by the complainant	Rs. 22,50,495/- [Page 22 of complaint]
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

B. Facts of the complaint

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

- a. That the complainants are allottees of the real estate project "INXT City Centre" developed by Vatika Limited.
- b. That the respondent company i.e., Vatika Limited is a real estate development company and is engaged in the development of multiple real estate projects across Gurugram.
- c. The respondent issued allotment letter dated 02.12.2011 in favor of the original allottee i.e., M/s. Enlightening Human Resources Pvt. Ltd in respect of the booked unit bearing Unit no. 444, Tower F (Old Unit No.

- 232) at 4th Floor in INXT City Centre, NH-8, Sector-83, Gurgaon admeasuring 500 sq. ft super area with detailed terms and conditions.
- d. The builder buyer agreement was duly executed between the original allottee and the respondent on 20.01.2012 and later it was endorsed in favor of complainants vide endorsement certificate dated 17.09.2015.
 - e. As per clause 12 of the builder buyer agreement dated 20.01.2012, the developer had agreed to pay Rs 71.5/- per sq ft super area 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 building.
 - f. As per clause 12 (i) of the builder buyer agreement dated 20.01.2012, the developer will also pay Rs 65 per sq ft super area per month as assured return for up to three years from the date of completion of construction of the building or the said unit is put to lease whichever is earlier. The respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date and also failed to pay pending promised assured return.
 - g. As per clause (iv) of the allotment letter dated 02.12.2011, the respondent company was liable to deliver possession of the booked unit 30.09.2014. The respondent has failed to offer possession of the booked unit.
 - h. The complainants have invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent. 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.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s)

- a) Direct the respondent to pay pending Assured monthly return charges of Rs. 71.50/- per sq. ft. per month accrued from the month of September 2018 to the complainant.
 - b) Direct the respondent to pay DPC from due date of possession till date of offer of possession.
 - c) Direct the respondent to execute and register the conveyance deed of the booked unit.
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 are simply investors who approached the respondent for investment opportunities and for steady assured returns and rental income. That the complainants being investors in the project have no locus standi to file the present complaint.
 - b. In the year 2010, M/s Enlightening Human Resources Pvt. Ltd. (Erstwhile investors), learned about the commercial project launched by the respondent under the name and title 'Vatika Trade Centre' (now, Vatika INTX City Center) and through its authorised representative repeatedly visited the office of the respondent to know the details of the said project. After having an interest in the commercial project being developed by the respondent the erstwhile investors tentatively booked a unit bearing no. 232(A), 2nd Floor, Tower/ Block A tentatively admeasuring 500 Sq. ft. The unit was allotted on 02.12.2011, and a buyer's agreement was signed on 20.01.2012. That the unit of the complainants was tentative and subject to change. Consequently, the

- complainants were allocated the unit no. F444 on 4th floor, Tower F admeasuring 500 sq. ft.
- c. Thereafter, the erstwhile investors endorsed unit to the complainants herein for the transfer/sale of the unit in question.
- d. That the respondent herein had been paying the committed return of Rs. 71.5/- per sq. ft. for every month to the complainants without any delay since 20.01.2012 till sept 2018, after the completion of the project/operationalization of the building in Feb 2018, as communicated to the complainants vide letter dated 27.03.2018, the returns of Rs. 65/- per sq. ft. were paid from Feb 2018 to sept 2018. As of Sept 2018, the complainants had already received an amount of Rs. 6,62,125/- as assured return under the aforesaid agreement. However, post September 2018, the respondent could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same. The enactment of the BUDS Act forced the respondent to discontinue the payments of assured returns.
- e. Furthermore, the project was hindered due to several reasons beyond the control of the respondent, such as direction of Hon'ble National Green Tribunal, Environment pollution control authority, Haryana state pollution control board, Commissioner municipal corporation Gurugram, Hon'ble Supreme court, Covid 19 pandemic, etc. which cause a delay of around 582 days.
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 complainant.

E. Jurisdiction of the authority

12. 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 complainant at a later stage.

F. Findings on objections raised by the complainant.

F.1 Objection regarding the complainant being an investor.

16. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to: protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the space buyer's agreement, it is revealed that the complainants are buyers and they have paid a total price of Rs. 22,50,495/- to the promoter towards the purchase of an apartment in its project, At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" about a real estate project, means the person to whom a plot, apartment, or building, as the case may be, has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such

plot, apartment or building, as the case may be, is given on rent;"

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having the status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt Ltd. Vs. Sarvapriya Leasing (P) Ltd. Anr. has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of a promoter that the allottee being an investor is not entitled to protection of this act also stands rejected.

F.II Objections regarding force majeure.

18. The respondent-promoter has raised the contention that the construction of the unit of the complainants have been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court, etc. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed 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. Furthermore, the respondent should have foreseen such situations. 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. Further, the plea advanced in view of Covid 19

pandemic has no merit since the due date of possession for the complainants' unit was much prior to the occurrence of the pandemic.

G. Findings on the relief sought by the complainant.

19. The common issues with regard to assured return, delay possession charges and execution of conveyance deeds is involved in the aforesaid complaints.

G.I Assured return

20. The complainants are seeking unpaid assured returns on monthly basis as per clause 12 of the agreement dated 20.01.2012 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)(I)(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.

21. 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.
22. 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.
23. 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 complainant besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on.

G. II Delay possession charge.

24. 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."

25. A builder buyer agreement dated 20.01.2012 was executed between the parties. The due date is calculated as per the allotment letter dated 02.12.2011. As per the allotment letter, the flat was to be completed and ready for lease by 30.09.2014. The relevant portion of the allotment letter is reproduced below:

"iv. The flat would be completed and ready for lease by 30.09.2014."

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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."

27. 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., 07.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
28. 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;"*

29. 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 possession of the subject unit was to be delivered within stipulated time i.e., 30.09.2014.
30. 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?

31. 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 "Clause 12 of the agreement". The rate at which assured return has been committed by the promoter is Rs. 71.5/- per sq. ft. of the super area per month (Till the completion of the building) and at Rs. 65/- per sq. ft. (After completion of the building) 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 at Rs. 35,750/- per month (Till completion of building) whereas the delayed possession charges are payable approximately Rs. 20,348/- per month. By way of assured return, the promoter has assured the allottees that they 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 even after completion of the building. 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.
32. 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.

33. 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. As per clause 12 of BBA dated 20.01.2012, the promoter had agreed to pay to the complainant allottee Rs.71.5/- 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 assured return was paid by the respondent-promoter till January 2018 at the rate of Rs. 71.5/- per sq ft and thereafter, the Assured return was paid at decreased rate of Rs. 65/- per sq. ft. but later on after September 2018, 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.
34. In the present complaint, in February 2018, the respondent had intimated the complainants that the construction of the tower 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 as per the terms of the clause 12 of the buyer's agreement.

35. 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 complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G. III Conveyance deed

36. With respect to the conveyance deed, clause 6 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.
37. 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."

38. 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 date of receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Directions of the authority

39. 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 handover possession to the complainants as per the terms of agreement signed between them.
- ii. The respondent is directed to pay the amount of assured return at the agreed rate as per clause 12 of agreement dated 20.01.2012 i.e. at Rs.71.5/-sq. ft. per month on super area of the unit till completion of construction of the said Building and thereafter at the rate of Rs. 65/- per sq. ft. per month on super area up to three years from the date of completion of construction of the said building or till the said unit is put on lease, whichever is earlier. The amount of assured return already paid i.e. Rs. 6,32,125/- by the respondent to the complainants shall be deducted before paying the residual assured return.
- iii. The respondent is directed to pay the outstanding accrued assured return amount till date along with interest rate of 8.85% per annum

- 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 @ 8.85% p.a. till the date of actual realization.
- iv. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the date of receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.
- v. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
42. File be consigned to the registry.



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 07.02.2024