

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

Complaint no.	312/2023
Date of filing complaint	02.02.2023
First date of hearing	02.08.2023
Date of decision	10.04.2024

Karuna Bindra Resident of: K-17/2, DLF City, Phase II, Gurgaon	Complainant
Versus	
M/s Vatika Private Limited Regd. office: Unit No. A-002, INXT City Centre, Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram – 122012, Haryana	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Mr. Vinay Yadav (Advocate)	Complainant
Ms. Ankur Berry (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities, and functions under the provisions of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre, Sector- 83, Gurugram (Earlier- Vatika Trade Centre, Sector 83, Gurugram)
2.	Project area	10.718 acres
3.	Nature of the project	Commercial Unit
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 valid upto 13.06.2016
5.	Name of licensee	Trishul Industries
6.	RERA Registered/ not registered	Lapsed Project Registration no.263 of 2017 dated 03.10.2017 valid upto 02.10.2022
7.	Unit no.	141, Block E (Page no. 41 of complaint) Earlier- 1222A, 12 th floor, tower A (Page no. 24 of complaint)
8.	Unit area admeasuring	500 sq. ft. (Super Area) (Page no. 41 of complaint)
9.	Date of execution of BBA	30.03.2010 (Page no. 20 of complaint)
10.	Relocation to Vatika INXR City Centre	27.07.2011 (Page no. 43 of complaint)
11.	Possession clause	Clause 2 ".....The developer will complete the construction of the said complex within three(3) years from the date of execution of this agreement....." (Emphasis supplied)

		(Page no. 24 of complaint)
12.	Due date of possession	30.03.2013 (Calculated to be 3 years from the date of execution of agreement)
13.	Assured return on monthly basis from 23.04.2010 i.e., from the date of BBA	Addendum dated 30.03.2010- Annexure A of BBA <i>"A) Till the completion of the building @ Rs. 78/- per sq. ft. B) After completion of the building @ Rs. 64/- per sq. ft."</i> (Page no. 40 of complaint)
14.	Total Sale Price	Rs. 22,50,000/- (Page no. 24 of complaint)
15.	Amount paid by the complainants	Rs. 22,50,000/- (Page no. 23 of complaint)
16.	Assured Returns paid by respondent to complainant till October, 2018	Rs. 32,30,500/- (Page no. 40 of reply)
17.	Occupation certificate /Completion certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the respondent had widely advertised that their upcoming Vatika Trade Centre project, Gurgaon, Haryana was a state of the art project being one of its kind with all modern amenities and facilities.
4. That on the basis of representations and promises of the respondent, on 15.02.2010 the complainant filled a pre-printed application form, paid the booking amount of Rs. 1,00,000/- and booked a commercial unit admeasuring 500 sq. ft. area @ Rs. 4500/-.
5. That some of the clauses in the buyer's agreement were completely one-sided. The buyers' agreement was a fixed set of papers, which was asked to be signed by the complainant and no modification was entertained by

the respondent. On request to change the one-sided clauses, it was told that the buyer's agreement had to be signed as is and in case it was not acceptable then the allotment would stand cancelled and earnest/application money would be forfeited. The complainant was left with no other option than to sign the said one-sided buyers' agreement.

6. That accordingly a builder buyer agreement dated 30.03.2010 was executed between the complainant and the respondent which specified the terms and conditions of the booking and allotment of unit of the complainant.
7. That the respondent also issued an allotment letter dated 30.03.2010 and allotted unit no. 1222A, admeasuring 500 sq. ft. in the project "Vatika Trade Centre" to the complainant. The respondent also stated in the said allotment letter that the said unit will be complete and ready for lease by 30.09.2012.
8. That an addendum to the agreement dated 30.03.2010 was also executed between the respondent and the complainant which specified that the respondent was liable to pay monthly assured returns to the complainant calculated @Rs. 78/- per sqft. Per month till the completion of the building and would then be liable to pay monthly assured returns calculated @ Rs. 65.00/- per sq.ft. per month to the complainant post completion of the building.
9. That it is important to note that as per the terms contained in clause 2 of the buyer's agreement, the respondent had promised to handover the possession of the said unit within a period of three years from the date of execution of the agreement. So, the date of handover of possession of the unit was to be 29.03.2013.

10. That further as per clause 2 of the said builder buyer agreement, the respondent undertook to make payment as per Annexure A of the builder buyer agreement by way of committed return for the period of construction, which the complainant accepted. The respondent also agreed that in the event of a time overrun in completion of the said complex the respondent shall continue to pay to the complainant the aforementioned assured return until the unit is offered by the developer for possession.
11. That respondent unilaterally issued letter dated 27th July 2011 to the complainant changing the location of the project where the unit of the complainant was booked. The complainant was subsequently and unilaterally allotted unit no. 141 in block E of the project "Vatika Inxt City Centre", located at Sector 83, Gurgaon.
12. That the complainant has paid the complete amount of sales consideration at of Rs. 22,50,000/- before the signing of the builder buyer agreement.
13. That when the complainant approached the Respondent Company again and again to know about the why the payment has stopped the payment of assured return, the respondent maliciously approached the complainant with an offer to clear the arrears of assured returns on the condition that the complainant would execute an addendum agreement whereby which the complainant will have to forego any and all rights accrued in its favour as per clause 32 of the BBA. Furthermore, additional obligations were imposed on the complainant if the unit had to be leased.
14. That the complainant was coerced into signing the said addendum on the condition of payment of arrears of assured returns and on the

misinformation that the building had received a completion/occupation certificate from the competent authority and had no option to modify the said agreement. It is pertinent to mention here that the complainant was falsely made to believe that the building where its unit is located is complete and ready and would be leased soon and so no loss actually be caused to if the addendum was signed. Even after signing of the said addendum, the respondent did not clear the arrears of assured return.

15. The aforementioned actions of the respondent clearly amount to a breach of trust, cheating and failure to fulfil the terms of the agreement, which entitles the complainant to approach the Authority and claim the amount of assured return and to seek handover of physical possession of the unit booked by them, along with interest from the date they have made the payment for the same.

C. Relief sought by the complainants:

16. The complainant has sought the following relief(s):
- Direct the respondent to pay monthly Assured returns.
 - Direct the respondent to pay delayed possession charges from due date of delivery of possession till date of offer of possession along with occupation certificate of the booked unit.
 - Direct the respondent to execute and register the conveyance deed of the booked unit and handover the vacant physical possession of the unit with immediate effect.
 - Declare the addendum dated 12.12.2019 to be null and void.
17. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

18. The respondent contested the complaint on the following grounds:

- a. That the complainant has 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 30.03.2010.
- b. That 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 company having not taken registration from SEBI Board cannot run, operate, and 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.
- d. That 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.

- 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 opposite parties / respondent company has become illegal by the operation of law and the opposite parties / respondent company cannot be made to run a scheme which has become infructuous by law.
- 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 notified the appointment of competent authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, the

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 complainant was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant' is not meant for physical possession.
- h. That the complainant has come before this authority with un-clean hands. The complaint has been filed by the Complainant just to harass the Respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the buyer agreement dated 30.03.2010. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- i. The present complaint of the complainant 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.

- j. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead the Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are 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 this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

19. 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:

20. 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

21. 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 the entire Gurugram District for all purposes 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

22. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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.

23. 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 relief sought by the complainants.

F.I Direct the respondent to pay monthly Assured returns.

F.II Direct the respondent to pay delayed possession charges from due date of delivery of possession till date of offer of possession along with occupation certificate of the booked unit.

24. 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 returns

25. The complainant is seeking unpaid assured returns on monthly basis as per addendum to builder buyer agreement dated 30.03.2010 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum to builder buyer 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.

26. 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.
27. 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.
28. 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.

F.II Delay possession charges.

29. In the present complaint, the complainant 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."*

30. The builder buyer agreement was executed between the parties on 30.03.2010. As per clause 2 of the builder buyer agreement, the due date of possession is to be calculated 3 years from the date of execution of the said agreement. Accordingly, the due date of possession comes out to be 30.03.2013. As per the addendum to the builder buyer agreement dated 30.03.2010, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.
31. **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. *ibid.* 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."

32. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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., 27.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
33. The definition of term 'interest' as defined under Section 2(z) 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:

"(z) "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;"

34. On consideration of documents available on record and submissions made by the complainant 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 completed within a stipulated time i.e., by 04.05.2019.

35. 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 ?
36. 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 "Addendum to builder buyer agreement". The rate at which assured return has been committed by the promoter is Rs. 78/- per sq. ft. of the super area per month till the 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. 39,000/- per month till completion of building whereas the delayed possession charges are payable approximately Rs. 20,344/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottee 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 allottee 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.

37. 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.
38. 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 allotment letter. As per addendum to builder buyer agreement dated 30.03.2010, the promoter had agreed to pay to the complainant allottee Rs.78/- per sq. ft. on monthly basis till 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 October 2018 at the rate of Rs. 78/- per sq ft, but later on after October 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.
39. In the present complaint, OC/CC for the block in which unit of complainant is situated 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 addendum to builder buyer agreement dated 30.03.2010.

40. 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.

F.III Conveyance Deed

41. 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."

42. 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 complainant as per norms of the state government.

F.IV Declare the addendum dated 12.12.2019 to be null and void.

43. The complainant herein seeks the relief to declare the addendum dated 12.12.2019 as null and void. On perusal of case file, it has come within the knowledge of the Authority that only a single page of the addendum dated 12.12.2019 has been annexed as Annexure A5 to the complaint. Therefore, vide proceedings dated 21.02.2024 the complainant was directed to submit the entire copy of said addendum dated 12.12.2019 to ensure proper adjudication of the relief sought. However, the complainant has failed to provide the same. Hence, no findings can be made with respect to the above mentioned relief.

G. Directions issued by the Authority:

44. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. The respondent is directed to handover possession of the unit on obtaining the occupation certificate to the complainant, as per the addendum to builder buyer agreement dated 30.03.2010.
 - II. The respondent is directed to pay the amount of assured return at the agreed rate as per addendum to builder buyer agreement dated 30.03.2010 i.e. at Rs. 78/- sq. ft. per month on super area of the unit till completion of construction of the said Building (i.e., till the date of receipt of OC). The amount of assured return already



paid i.e. Rs. 32,30,500/- by the respondent to the complainant 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 10.85% per annum 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 @ 10.85% 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 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.
 - V. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
45. Complaint stands disposed of.
46. File be consigned to the Registry.

HARERA
GURUGRAM

Dated: 10.04.2024

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