

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

Complaint no. :	729 of 2023
Date of filing complaint:	17.02.2023
Order Reserve On:	03.05.2024
Order Pronounce On:	05.07.2024

Divya Grover R/O: H. no. 493 P, Sector-22A, Gurugram	Complainant
Versus	
M/s Vatika Limited Regd. office: A-002, INXT City Centre Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Varun Kathuria (Advocate)	Complainant
Sh. Shubham Maan (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 provision 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Inxt City Center" at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.72 acres
4.	DTCP License	122 of 2008 dated 14.06.2008
	valid upto	13.06.2018
	Licensee name	M/s Trishul Industries
5.	RERA registered/ not registered	Not registered
6.	Allotment letter	01.10.2010 (page no. 15 of complaint)
7.	Date of execution of builder buyer's agreement	01.10.2010 (page no. 19 of complaint)
8.	Unit no.	2111, 21 st floor, Tower A (Page no. 21 of complaint)
9.	Unit area admeasuring	500 sq. ft. (Page no. 21 of complaint)
10.	Addendum agreement	01.10.2010 (page no. 36 of complaint)
11.	Total consideration	Rs. 20,00,000/- (page no. 21 of complaint)
12.	Total amount paid by the	Rs. 20,00,000/-

	complainant	(page no. 21 of complaint)
13.	Assured return clause	This addendum forms an integral part of builder buyer agreement dated 01.10.2010 <ol style="list-style-type: none"> Till completion of building @ Rs. 71.50/- per sq. ft. After completion of the building @ Rs. 65/- per sq. ft. You would be paid an assured return w.e.f. 01.10.2010 on a monthly basis before the 15 th of each calendar month.
14.	Date of offer of possession to the complainant	Not offered
15.	Occupation certificate	Not obtained
16.	Assured return amount paid by the respondent till 01.09.2018	Rs.29,80,250/- (page 98 of reply)

B. Facts of the complaint:

- That the complainant, based on the promises and assurance of the respondent purchased a 500 sq. ft. commercial unit in its project Vatika Trade Centre and duly paid complete sale consideration to the amount of Rs. 20,00,000/-. Upon payment the complete sale consideration the respondent promptly issued an allotment letter dated 01.10.2010 in favour of the complainant for unit no. 2111, 20th Floor, Vatika Trade Centre, Gurgaon, for super area of 500 sq.ft.
- Thereafter on the same day being 01.10.2010, the respondent also executed the builder buyer agreement, wherein the respondent reaffirmed vide clause 2, that the commercial unit would be completed



in 3 years. As per the annexure -A of the builder buyer agreement, the respondent assured the complainant that complainant will receives monthly assured return @ Rs. 71.50 per sq. ft. per month till the completion of construction and after completion an amount of Rs. 65 per sq. ft. per month after completion. The respondent paid the assured returns @ Rs. 71.50 per sq. ft. per month till February 2018, but from March, 2018 the respondent unanimously reduced the assured returns to Rs. 65 per sq. ft. per month.

5. That on 27.07.2011, the respondent without taking any consent from the complainant shifted the unit of the complainant from the project 'Vatika Trade Centre' to 'Vatika INXT City Centre'.
6. That to the utter dismay of the complainant even the reduced assured returns were stopped from October, 2018 onwards. Despite repeated requests, the same have not been paid to the complainant till date.
7. That the ill intention of the respondent is visible from the fact that the respondent issued a completion letter dated 27.03.2018, claiming that the unit was completed in last week of February, 2018, and talks were going on with prospective tenants, even though till date no occupation certificate has been received by the respondent.
8. That the complainant has become aware that the respondent has been duping innocent buyers by refusing to pay the monthly returns on one pretext or another. Further certain buyers have been paid the monthly returns for different periods and have been denied the payment of the same on different grounds.
9. That the respondent has not even offered the possession of the commercial unit of the complainant to her and has further stopped responding to the communications of the complainant and has also



restricted entry into its office for the complainant and other buyers and has failed to apprise the complainant regarding the true and correct status of the project where the unit of the complainant is located and further has refused to pay the monthly assured returns/minimum guaranteed rent to the complainant for reasons undisclosed.

10. That the conduct of the respondent is illegal and arbitrary and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the complainant and the conduct of the respondent has caused and is continuing to cause a great amount of financial stress, grief and harassment to the complainant. The present claim is within limitation in view of the cause of action being running cause of action. Hence the present complaint.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s):

- (i) Direct the respondent to pay the amount of assured return due and payable to the complainant from September 2018 till the date of the order to be calculated @ 71.50/- per sq. ft. per month for the period till the occupation/ completion certificate is received and after receiving of occupation certificate the assured return be paid @ minimum Rs. 65/- per sq. ft. per month.
- (ii) Direct the respondent to continue paying the monthly returns to the complainant as per the terms of the builder buyer agreement dated 01.10.2010.
- (iii) Direct the respondent to pay interest at the prescribed rate on the unpaid monthly assured return to the complainant to be calculated from when the monthly returns were abruptly stopped/reduced.



- (iv) Direct the respondent to execute the conveyance deed of the unit in favour of the complainant when the occupation certificate is received.
- (v) Restrain the respondent from demanding any amount from the complainant at the time of offer of possession which do not form part of agreement execute between the parties.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

12. That in the year 2010, the complainant learned about the project launched by the respondent titled as "Vatika Trade Centre" (herein referred to as 'Project') situated at Sector 83, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
13. That after having dire interest in the project constructed by the respondent the complainant booked a unit under the assured return scheme, on his own judgement and investigation. It is evident that the complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.
14. That on 01.10.2010, a builder buyer agreement was executed between the complainant and the respondent wherein the unit bearing no. 2111, admeasuring 500 Sq. ft. at 20th Floor, for a total sale consideration of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) in the said project.
15. That on 01.10.2010, an addendum agreement, was executed between the complainant and the respondent, under which the respondent



assured to provide assured return of Rs. 65/- per sq. ft. for the unit booked by the original allottee.

16. That the respondent vide letter dated 27.07.2011, the respondent herein allocated a new unit to the complainant and upon final allocation allotted a unit bearing no. 324, 3rd floor, block 'F' admeasuring 1250 Sq. Ft. in favor of the complainant in place of the earlier allotted unit bearing no. 2111, 4th Floor, admeasuring 500 Sq. ft..
17. That the original allottee and subsequently the complainant were well aware of the fact, that the unit in question was subject to be leased out post completion and the same was evidently mentioned and agreed by the original allottee in the agreement dated 01.10.2010.
18. That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the said Allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession.
19. That the issue pertaining to the **relief of assured return** is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '**Vatika Limited vs. Union of India and Anr.**' in **CWP No. 26740 of 2022**, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing and the same has now been listed for 16.08.2023.
20. That the Hon'ble Appellate Tribunal, while considering an Appeal bearing no. **647 of 2021**, titled as '**Vatika Limited vs. Vinod Agarwal**', has deferred the same as the jurisdiction of the Hon'ble Tribunal in the



matters pertaining to Assured Returns is under challenge before the Hon'ble High Court.

21. The Hon'ble UP-REAT while adjudicating an appeal titled as "*Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)*" has held that the issue of Assured Return does not fall within the ambit of the Act of 2016 and dismissed the appeal filed by the Appellant/Allottee.
22. That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of prevailing laws. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
23. That later, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions.
24. That since starting the respondent herein was committed to complete the project and has invested each and every amount so received from the complainant towards the construction of the same. However, the construction was slightly delayed due to the reasons beyond the control of the respondent and the same are reproduced herein for the ready reference of the Hon'ble Authority.
 - Construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its



notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
- Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.
- That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed

lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State.

25. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

26. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

27. 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

28. 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.



29. 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 respondent

F.I Objection regarding force majeure conditions:

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court and various govt. schemes but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.12.2012. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainant:

G.I Direct the respondent to pay the amount of assured return due and payable to the complainant from September 2018 till the date of the order to be calculated @ 71.50/- per sq. ft. per month for the period till the occupation/ completion certificate is received and

after receiving of occupation certificate the assured return be paid @ minimum Rs. 65/- per sq. ft. per month.

G.II. Direct the respondent to continue paying the monthly returns to the complainant as per the terms of the builder buyer agreement dated 01.10.2010.

G.III. Direct the respondent to pay interest at the prescribed rate on the unpaid monthly assured return to the complainant to be calculated from when the monthly returns were abruptly stopped/reduced.

G.IV. Direct the respondent to execute the conveyance deed of the unit in favour of the complainant when the occupation certificate is received.

G.V. Restrain the respondent from demanding any amount from the complainant at the time of offer of possession which do not form part of agreement execute between the parties.

31. In the present matter the complainant purchased a shop bearing no. 2111 admeasuring 500 sq. ft. in the project namely Vatika Inxt City Centre located in sector 83, Gurugram for a total sale consideration of ₹20,00,000/-. The complainant entered into an addendum agreement dated 01.10.2010 according to which the respondent promised to pay assured return w.e.f. from 01.10.2010 on monthly basis an amount of ₹71.50/- per sq. ft. and after completion of the building @ ₹65/- per sq. ft. The respondent paid an amount of ₹29,80,250/- till 01.09.2018. The complainant is here before the authority seeking assured returns as promised in the agreement. The authority vide order dated 10.11.2021, awarded assured return to the allottees. Although as on date the issue regarding assured return is pending for adjudication before the Hon'ble High Court of Punjab & Haryana in the matter of '**Vatika Limited vs. Union of India and Anr.**' in CWP No. 26740 of 2022 but vide order



dated 22.11.2023 the Hon'ble high court has cleared that the authority is at liberty to proceed further in the on-going matters that are pending with them.

32. While elaborating upon the said issue it would be correct to through some light upon the provisions of the Act, 2016. As per the facts of the present matter the respondent agreed to complete the construction of the said building within 3 years from the date of the execution of the agreement i.e., till 01.10.2013. Although there was the leasing arrangement between the parties therefore, no physical possession was ever to be handed over to the allottee but the said property shall be put on lease by the respondent only after completing the construction works and receiving occupation certificate from the competent authority. Since there is no document place on record which shows that the occupation of the said project has been received nor it has been put on lease till date therefore the delay on part of the respondent is established and the allottee is entitled for delay compensation as per the provisions of the Act, 2016. On the other hand once the promoter/builder made offers and same are accepted by the allottees with legitimate expectation, the obligation cast upon the promoter/builder is to complete the same within the time schedule mentioned in the BBA and if they fail to discharge the same the affected allottees are entitled to the interest and/or compensation for delayed delivery of possession, as the allottees have parted with money which was earning interest. If an allottee chooses to remain in the project and in case the allottee seeks refund then he is entitled for interest on the deposited amount and/or compensation in accordance with the provisions of the Act 2016.

33. As far as assured return is concerned it cannot be mistook as compensation/penalty for the delay in possession as it was being paid



much before the default has occurred. The concept of 'Assured Return' has no place in the Real Estate (Regulation and Development) Act of 2016. Further, as per section 18 the allottee is only entitled for interest on paid up amount for every month of delay. This case does not fall within the ambit of provisions of section 18 of the Act, 2016. Moreover, the respondent promoter stopped paying the assured return after coming into force of BUDS Act, 2019 with a prior intimation of the same through a combine email dated 30.11.2018 to all its allottees. The respondent through the said mail requested the complainant-allottee for executing an addendum agreement between the parties for deletion of the said clause of assured return. Thereafter the complainant neither approached the respondent w.r.t. the said issue nor made any communication vide mail, also no legal recourse was followed by the complainant to recover the assured return amount if the complainant was not agreed with the above said mail by the respondent for stopping assured return after coming into force of BUDS Act, 2019. Thereafter in the year, 2023 filed the said complaint seeking the relief of assured return.

34. Also, the Uttar Pradesh Real Estate Appellate Tribunal (UPREAT) while adjudicating an appeal titled as "Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)" has held that the issue of assured return does not fall within the ambit of the act of 2016 and dismissed the appeal filed by the appellant/allottee. The relevant extract of order of the Hon'ble UP Appellate Tribunal is reproduced herein for ready reference:

"10. In our considered view, the assured return or committed charges are independent commercial arrangements between the parties which sometime a promoter/developer offers, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The



commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of the Real Estate (Regulation and Development) Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

10.1. On the basis of the above, we are of the considered view that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return/committed charges or commercial effect in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot....."

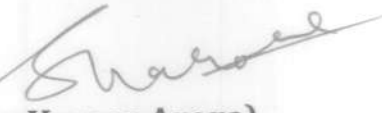
35. Further, the Hon'ble National Company Law Tribunal, Chandigarh Bench, Chandigarh also held in the case titled as Ravi Luthra & 12 Ors. Vs. Vatika Ltd. (CP(IB) No. 663/Chd/Hry/2019) that the applicants claiming assured returns are not "allottees" and rather "speculative Investors" and therefore, not "Financial Creditors". The relevant extract of order is reproduced herein for ready reference:

"19. As we have already noted from the pleadings, the Applicants in the present case are claiming assured returns @ Rs. 163.33 per sq. feet, and over and above, they have claimed 18% interest on their claims. The clause 4 of the allotment letter, though cancelled as on date, regarding assured return @ Rs. 163.33 per sq. feet along with delivery of unit and the claims of the Applicants towards the assured returns along with exorbitant interest, reflects that the Applicants are the Speculative Investors, who have invested their money to get return on monthly basis. As we have found in the previous paragraph, the Hon'ble NCLAT in Mrs. Nidhi Rekhan (Supra), while relying on the Judgement of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. and Anr.v Union of India and Ors. has clearly held that a Speculative Investor is not a Financial Creditor.

20. In view of the above, we conclude that Applicants herein claiming assured returns are not "allottees" and rather "Speculative investors" and therefore, not "Financial Creditors". Hence, we have no other option but to dismiss the Application"



36. Moreover, the issue of assured return is merely a contractual obligation which the respondent was obligated to perform but in absence of violation of any provisions of the Act, 2016 thereof. Accordingly, the authority observed that the present compliant filed by the complainant is not maintainable for two fold reasons. Firstly, the complainant has failed to prove as to what provisions of this Act, or rules & regulations made thereunder has been violated by the respondent herein. Secondly, the issue of assured return on the basis of which the present complaint has been filed by the complainant is not in the nature of the delay possession charges as covered under section 18 of the Act, 2016. The assured return was being paid by the respondent to the complainant allottee much before the due date of possession which clearly shows the complainant has invested his money to get return on monthly basis which is merely a commercial transaction between them. Moreover, the assured return is neither defined in the Act, 2016 nor in the rules, 2017.
37. In the light of the aforesaid provisions and above stated reasons, the present relief stands dismissed as not maintainable with a liberty to the complainant to approach the appropriate forum for redressal of her grievance.
38. Complaint stands disposed of.
39. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024