

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

Date of decision: 16.04.2024

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7485/2022	Yogander Kumar Sharma & Prameshwari Sharma V/s M/s Vatika Limited & Ors.	Shri Sanjay Narayan, Adv. Shri Harshit Batra, Adv.
2.	CR/7487/2022	Yogander Kumar Sharma & Ors. V/s M/s Vatika Limited & Ors.	Shri Sanjay Narayan, Adv. Shri Harshit Batra, Adv.

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
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, "High Street at INXT" being developed by the same respondents/promoters i.e., M/s Vatika Limited. The terms and conditions of the allotment letter against the allotment of unit in the said project of the respondents/builders 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, register the builder buyer agreement, physical possession of the subject unit 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	"HIGH STREET" at INXT, Sector 83, Gurugram, Haryana.
Assured return clause in complaint bearing no. 7485-2022: CLAUSE 3 & 4 OF ALLOTMENT LETTER DATED 20.04.2016	
<ol style="list-style-type: none"> 3. The developer shall remit an assured return of Rs. 86.03/- per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said commercial unit soon. 4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises @100/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs.100/- per sq.ft. the following would be applicable. <ol style="list-style-type: none"> a. If the achieved rental is less then Rs.100/- per sq.ft. then you shall be refunded @150/- per sq.ft. (Rupees One Hundred Fifty) for every Rs.1/- by which achieved rental is less then Rs.100/- per sq. ft. b. If the achieved rental is more then 100/- per sq. ft. shall be liable to pay additional sales consideration @ Rs.75/- per sq. ft. for every rupee of additional rental achieved. [Page 61 of the complaint] 	
Assured Return amounting to Rs.10,69,974/- have been paid by the respondents to the complainants till 30.10.2018. [Page 3 of reply]	



Assured return clause in complaint bearing no. 7487-2022:

ANNEXURE A

CLAUSE 4 & 5 OF ALLOTMENT LETTER DATED 29.01.2018

4. The developer shall remit an assured return of Rs. 81.65/- per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said commercial unit soon.
5. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises @100/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs.100/- per sq. ft. the following would be applicable.
 - a. If the achieved rental is less then Rs.100/- per sq. ft. then you shall be refunded @133.33/- per sq. ft. (Rupees One Hundred Thirty Three Three) for every Rs.1/- by which achieved rental less then Rs.100/- per sq. ft.
 - b. If the achieved rental is more then 100/- per sq. ft. shall be liable to pay additional sales consideration @ Rs.66.67/- per sq. ft. for every rupee of additional rental achieved. [Page 65 of the complaint]

Assured Return amounting to Rs.5,36,626/- have been paid by the respondents to the complainants till 30.10.2018. [Page 3 of reply]

1	2	3	4	5	6	7
S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/7485/2022 Yogander Kumar Sharma & Prameshwari Sharma V/s M/s Vatika Limited DOF-09.12.2022 Reply-24.04.2023	159, 1 st floor, Sector-83 admeasuring 805 sq. ft. [Page 60 of complaint]	N.A. [receiving by respondents of accepting signed BBA by the complainants]	N.A.	TC- Rs.56,35,000/- AP- Rs.29,68,235/-	<ul style="list-style-type: none"> • Direct the respondents to pay outstanding assured return from November, 2018 till today along with interest to the complainants. • To pay assured return on monthly basis further till completion of project/offer of possession after obtaining OC & other necessary clearance. • To register 'builder buyer agreement' & to complete the project in strict conformity with original plan without



						<ul style="list-style-type: none">making any changes of any nature in same.To handover physical possession of the subject unit after physical demarcation as lockable unit.To execute and register conveyance deed of booked unit in favour of complainants after completing construction and obtaining occupation certificate & other necessary clearances.To pass order/directions for investigation (forensic audit)Litigation cost
2.	CR/7487/2022 Yogander Kumar Sharma & Ors. V/s M/s Vatika Limited DOF-09.12.2022 Reply-24.04.2023	143, 1 st floor, sector-83 admeasuring 990 sq. ft. [Page 64 of complaint]	N.A. [receiving by respondents of accepting signed BBA by the complainants]	N.A.	TC-Rs. 69,30,000/- AP-Rs. 33,37,488/-	<ul style="list-style-type: none">Direct the respondents to pay outstanding assured return from November, 2018 till today along with interest to the complainants.To pay assured return on monthly basis further till completion of project/offer of possession after obtaining OC & other necessary clearance.To register 'builder buyer agreement' & to complete the project in strict conformity with original plan without making any changes of any nature in same.To handover physical possession of the subject unit after physical demarcation as lockable unit.To execute and register conveyance deed of booked unit in favour of



						<p>complainants after completing construction and obtaining occupation certificate & other necessary clearances.</p> <ul style="list-style-type: none"> • To pass order/directions for investigation (forensic audit) • Litigation cost
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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
AP	Amount paid by the allottee(s)
OC	Occupation certificate
BBA	Builder buyer agreement

4. 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/7485/2022 titled as Yogander Kumar Sharma & Prameshwari Sharma Vs. M/s Vatika Limited* are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainants-allottees.

A. Project and unit related details

5. 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/7485/2022 titled as Yogander Kumar Sharma & Prameshwari Sharma Vs. M/s Vatika Limited

S.no.	Particulars	Details
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1.	Name of the project	High Street at INXT, Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	DTCP license no.	113 of 2008 dated 01.06.2008
	Valid up to	31.05.2018
4.	HRERA registered or not	Registered vide no. 263 of 2017 dated 03.10.2017 for 14918.258 sq. mtrs.
		Valid upto- 02.10.2022
5.	Unit no. as per the Allotment letter	159, 1 st floor (page 60 of complaint)
6.	Unit admeasuring	805 sq. ft. (super area)
7.	Allotment letter dated	20.04.2016 (page 60 of complaint)
8.	Assured return/ committed return as per allotment letter	<p>3. The developer shall remit an assured return of Rs. 86.03/- per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said commercial unit soon.</p> <p>4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be</p>



		<p>to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises @100/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs.100/- per sq.ft. the following would be applicable.</p> <p>a. If the achieved rental is less than Rs.100/- per sq.ft. then you shall be refunded @150/- per sq.ft. (Rupees One Hundred Fifty) for every Rs.1/- by which achieved rental is less than Rs.100/- per sq. ft.</p> <p>b. If the achieved rental is more than 100/- per sq. ft. shall be liable to pay additional sales consideration @ Rs.75/- per sq. ft. for every rupee of additional rental achieved. [Page 61 of the complaint]</p>
5.	Date of builder buyer agreement	N.A.
6.	Due date of possession	Cannot be ascertained
7.	Total sale consideration as per statement of account which starts on 14.04.2016	Rs. 53,35,000/- (page 58 of complaint)
8.	Amount paid by the complainants	Rs.29,68,235/- (page 58 of complaint)
9.	Offer of possession	Not offered
10.	Occupation certificate	Not obtained
11.	Amount of assured return paid by the respondents to	Rs.10,69,974/- [Page 3 of reply]



	the complainants till October 2018	
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B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -
- a. That the complainants, based on the assurances made by the respondents, agreed to purchase a commercial space in the commercial complex project named '**HIGH STREET AT INXT**'/ '**PVR@INXT**' and accordingly submitted an application dated 04.04.2016. The complainants made a payment of Rs.29,11,886/- against a total agreed basic sales price/consideration of Rs.56,35,000/- in terms of the agreed 'Possession linked payment plan' as balance outstanding was payable on offer of possession.
 - b. That the respondents thereafter vide 'Letter Of Allotment' dated 20.04.2016 confirmed the allotment of shop/unit number 159 admeasuring 805 sq. ft. (super area) situated on the first floor in the commercial project- 'High Street at INXT', Sector-83, Gurugram, Haryana. The respondents along with the 'Letter of Allotment' dated 20.04.2016 also enclosed two separate cheques favouring each of the complainants towards payment of Assured Return/commitment charges for the period 04.04.2016 till May 2016 as reflected therein. The respondents continued to pay the 'Assured Return' till October,2018.
 - c. That according to clause 3 of the terms & conditions of the 'Letter of Allotment' dated 20.04.2016, the respondents confirmed & undertook to pay/remit an assured monthly return of Rs.86.03 per sq.ft. till completion of the building. It is further stated in clause 3 that the



project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said commercial unit soon. That the respondents further in terms of clause 4 of the 'Letter of Allotment' obtained authority to lease out the said unit along with other commercial spaces in the commercial complex @ Rs.100/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs.100/- per sq.ft., the following would be applicable i.e, a. If the achieved rental is less than Rs.100/- per sq. ft. then the complainants shall be refunded @ Rs.150/- per Sq.Ft. for every Rs.1/- by which achieved rental is less than Rs.100/- per sq.ft. & b. If the achieved rental is more than Rs.100/- per Sq.Ft. shall be liable to pay additional sales consideration @Rs.75/- per Sq.Ft. for every rupee of additional rental achieved.

- d. That in April, 2018, the respondents sent communication dated 24.04.2018 enclosing therewith two(2) copies of 'Builder Buyer Agreement' in respect of the subject unit requiring signing and execution of the same along with an invoice of even date demanding Rs.23,600/- towards the cost of agreement execution-RERA registration. The said agreement were duly signed by complainants and acknowledged by the respondents on 07.05.2018 along with payment of Rs.23,600/- vide cheque no. 602205 dated 06.05.2018 under covering letter dated 08.05.2018 which was acknowledged by the respondents on 08.05.2018.
- e. That in July,2018 the respondents again sent communication dated 17.07.2018 enclosing therewith two(2) copies of revised 'builder buyer

agreement' in respect of the subject unit requiring signing and execution of the same with one undated enclosure citing change in the rules & regulations of real estate industry. The same were duly signed & executed by the complainants and sent back under covering letter dated 04.08.2018 further it was also acknowledged by the respondents on 06.08.2018.

- f. That it is clearly & unequivocally evident from clause-3 of the terms & conditions of the 'Letter of Allotment dated 20.04.2016' that the respondents were and are under obligation to pay the 'assured return' till completion of the building and 'rental return' in terms of clause-4 after the completion of building.
- g. That the complainants have remained in constant touch all along with the respondents w.r.t, release/payment of outstanding 'Assured Return' as well as status & progress of construction but their response & assurance has always remained misleading & fraudulent without any intention to fulfill.
- h. That the respondents & its promoters have unjustly enriched themselves by stopping & denying the payment of the due amounts of 'assured return' to the complainants from November, 2018 and undue advantage taken by the respondents of the complainant's situation. The principle of natural justice and equity strictly demands that the outstanding payment of 'assured return' w.e.f, November,2018 having accumulated to the tune of Rs.33,93,415/- till November,2022 is paid by the respondents forthwith with appropriate rate of interest in terms of the RERA rules & regulations and further payments of 'assured return' continue to be paid on monthly basis regularly & strictly in

terms of the 'Letter Of Allotment dated 20.04.2016'. The 'Letter of Allotment' dated 20.04.2016 clearly establishes the buyer-promoter relationship, and payment of 'assured return' arises out of the same relationship, therefore this hon'ble authority has absolute jurisdiction to deal with the issue of 'Assured Return' between the same parties in accordance with the provisions of section 11(4)(a) of the Act which provides that the promoter would be responsible for all the obligations under the Act as per the agreement till the execution of transfer instrument in favour of the allottees.

- i. That the respondents have obtained the signatures of the complainants on several one-sided standard pre-printed documents containing totally unjust, unfair, arbitrary & illegal clauses & the complainants had no option but to sign the same. The respondents should not be allowed to misuse the same to the disadvantage/detriment of the complainants.
- j. That the complainants had 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 respondents and in order to allure the complainants. However, the respondent have failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.
- k. That the complainants feel cheated at the hands of the respondents. The respondents have grossly been deficient in service and their acts tantamount to cheating, fraud, breach of trust, unfair trade practice and gross breach of the terms and conditions of the 'Letter of Allotment' as well as violation & contravention of various provisions of the Real Estate (Regulation and Development) Act, 2016 & relevant rules.

Therefore, the present complainants are forced to file present complaint before this hon'ble authority under section 31 of the Act of 2016 read with rule 28 of the rules of 2017 to seek redressal of the grievances against the respondent company.

C. Relief sought by the complainants:

7. The complainants have sought following relief(s)
 - a. Direct the respondents to pay outstanding assured return from November 2018 till today along with interest to the complainants.
 - b. To pay assured return on monthly basis further till completion of project/offer of possession after obtaining OC & other necessary clearance.
 - c. To register 'builder buyer agreement' & to complete the project in strict conformity with original plan without making any changes of any nature in same.
 - d. To handover physical possession of the subject unit after physical demarcation as lockable unit.
 - e. To execute and register conveyance deed of booked unit in favour of complainants after completing construction and obtaining occupation certificate & other necessary clearances.
 - f. To pass order/directions for investigation (forensic audit).
 - g. Litigation cost.
 - h. Any other relief which this hon'ble authority deems fit and proper.
8. On the date of hearing, the authority explained to the respondents /promoters 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 respondents

9. The respondents contested the complaint on the following grounds:
- a. That it is an admitted fact that by no stretch of imagination it can be concluded that the complainants herein are "allottees/consumers", they are simply the investors who approached the respondents for investment opportunities and for steady committed returns and rental income. That the complainants being investors in the project has no locus standi to file the present complaint.
 - b. That in the year 2016, complainants learned about the commercial project launched by the respondents under the name and title 'Vatika High Street at INXT' situated at Sector-83, Shikohpur, Gurugram, Haryana ("**project**") and repeatedly visited the office of the respondents to know the details of the said project.
 - c. That the complainants, vide an application form dated 04.04.2016 applied to the respondents for provisional allotment of the unit. Pursuant thereto, unit bearing no 159,1st Floor, admeasuring 805 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 20.04.2016. The complainants consciously and wilfully opted for assured return payment plan for remittance of sale consideration for the unit in question and further represented to the respondents that they shall remit every instalment on time as per the payment schedule. Thereafter, considering the future speculative gains, the complainants, from April, 2016, at their own will started making the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same. That it is submitted that at the time of booking of the said unit, the complainants were made clear



- that the said allotment is tentative subject to the approval of concerned competent authorities.
- d. That the allegations levelled by the complainants are totally baseless and that the sale consideration of the said unit was Rs. 56,35,000/- exclusive of registration, stamp charges and other charges extensive and independent enquiries with regard to the project.
- e. That it is submitted that as per clause 2 of the allotment letter, the complainants were supposed to execute the buyer's agreement within the stipulated time but on the contrary, the complainants have failed to execute the same till date. It is noteworthy to mention that the respondents had approached the complainants on number of occasions in order to execute the said agreement but the same was delayed on one pretext or the other. It is submitted that the respondents even forwarded the copies of the buyer's agreement vide letters dated 24.04.2018 and 17.07.2018 but no heed was given to the legitimate requests of the respondents. It is denied that the respondents have sent any undated enclosure citing change in rules and regulations of real estate industry. And it is also denied that the complainants have submitted the executed agreement back to the respondents.
- f. It is submitted that the complainants themselves have defaulted in execution of the said agreement and through this complaint cannot take the benefit of their own wrongs. That the respondents were always willing and has complied with all its obligations.
- g. That the application form and the allotment letter executed between the parties was in the form of an "investment agreement". That the complainants had approached the respondents as investors looking for



certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainants along with the other commercial space unit on lease and does not have "possession clauses", for physical possession. Hence, the embargo of the real estate regulatory authority, in totality, does not exist. That it is also most humbly submitted that the present complaint is not maintainable and the complainants herein have no locus standi. The complainants merely seek to earn profits.

- h. It is relevant to note that as per clause 5 of the allotment letter dated 20.04.2016, *the allottee authorizes the developer to lease out the said unit, which is part of the commercial complex and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex.* The developer shall lease the unit along with the premises @Rs 100/- per sq. ft. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this hon'ble authority.
- i. That the said unit was to be leased out along with other commercial spaces in the said project. Moreover, the complainants have mutually agreed and acknowledged that upon completion of the said unit, the same shall be leased out. As stated herein above, it is clear that the allotment letter stipulated the provision of lease and admittedly contained a lease clause. It is submitted that the complainants were well aware of the fact that the said unit was subject to be leased out post completion and the same was evident from the clauses of the allotment letter.

- j. That inspite after paying the committed returns as per agreed terms, the respondents were committed to complete the construction of the project but the same was subject to various obstacles in midway of the completion of the project which were beyond the control of the respondents.
- k. That it is humbly submitted before the Hon'ble Authority that the respondents were always prompt in making the payment of assured returns as agreed under the agreement. It is not out of the place to mention that the respondents herein had been paying the committed return every month to the complainants without any delay since 04.04.2016 till October 2018. It is to note that as on 30.10.2018, the complainants herein had already received an amount of **Rs.10,69,974/-** as assured return as agreed by the respondents under the aforesaid agreement. However, post October 2018, the respondents could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same.
- l. That the complainants are praying for the relief of "assured returns" which is beyond the jurisdiction that this Ld. Authority. That from the bare perusal of the Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement.
- m. That the issue pertaining to the assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court wherein, the Hon'ble High Court in the matter of '**Vatika Limited Vs. Union of India and Anr.**' in **CWP No. 26740 of 2022**, had issued notice



to the respondent parties and had also restrained the competent authorities from taking any coercive actions against the respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.

- n. That the respondents cannot pay "assured returns" to the complainants by any stretch of imagination in the view of the prevailing legal position. 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. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (*hereinafter referred to as "the BUDS Act"*) was 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. That being a law-abiding company, by no stretch of imagination, the respondents could have continued to make the payments of the said assured returns in violation of the BUDS Act. The complainants cannot, under the garb of said the agreement, seek enforcement or specific performance of an investment return scheme before this hon'ble tribunal, which is specifically barred and banned under section 3 of the BUDS, Act, hence the present complaint deems dismissal.
- o. That the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondents and, in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions the respondents was entitled for extension of time period for completion. And, in case the construction of

the said commercial unit was delayed due to such 'Force Majeure' conditions the respondents were entitled for extension of time period for completion. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondents, owing to the passing of orders by the statutory authorities.

- p. It is further submitted that the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case. The main purpose of the present complaint is to harass the respondents by engaging and igniting frivolous issues with ulterior motives to pressurize the respondents.
- q. That the complainants further harped that the respondents have failed to offer timely possession of the said unit. It is pertinent to note that said allotment was in the form of an investment, the same does not stipulate about the possession. It is further submitted that the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case. Thus, the present complaint is without any basis and no cause of action have arisen till date in favour of the complainants.
- r. That it is submitted that the respondents never represented the complainants that the said unit would be physically handed over to the complainants. That as per clauses of the application form and the allotment letter, it was clearly agreed between the parties that the unit shall be deemed to have been legally possessed by the complainants. Moreover, the complainants have duly accepted that the respondents have the leasing rights over the said property. It is further submitted that none of the relief as prayed for by the complainants 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 the authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

11. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

12. 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



13. 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.

14. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents

F.I Objection regarding maintainability of complaint on account of complainants being investor

15. The respondents took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainants are buyers, and they have paid a considerable amount to the respondents-promoters towards purchase of unit 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" in relation to 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;"

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the letter of allotment executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) 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 a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

17. The respondent have raised an objection that 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.

18. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated that "*...there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification.*"

Thus, in view of the above, the authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainants

G.I Assured return

19. The complainants are seeking unpaid assured returns on monthly basis as per addendum to the agreement at the rates mentioned therein. It is pleaded that the respondents have 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 respondents 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 respondents in *CR/7485/2022 titled as Yogander Kumar Sharma 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 respondents is not sustainable in view of the aforesaid reasoning and case cited above.

20. 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.

21. 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.
22. It is not disputed that the respondents are a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
23. On consideration of documents available on record and submissions made by the complainants and the respondents, the authority is satisfied that the respondents are in contravention of the provisions of the Act. The subject unit was allotted to the complainants vide allotment letter dated 20.04.2016. The assured return is payable to the complainants-allottees in terms of clause 3 of the said allotment letter which states that "*The developer shall remit an assured return of Rs. 86.03/- per sq. ft. till completion of the building.*". Clause 4 of the said letter of allotment, further provides that it is the obligation of the respondents promoters to lease the premises. In

the present case, the respondents has paid an amount of Rs.10,69,974/- to the complainants towards assured return till October 2018 and has stopped paying it thereafter 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 exempted as per section 2(4)(iii) of the above-mentioned Act.

24. In the present complaint, admittedly, OC/CC in respect of the project in question 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 respondents promoters for the said project. Thus, the liability of the respondent to pay assured return as per the terms of the allotment is still continuing. Therefore, considering the facts of the present case, the respondents are directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 86.03/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., **November 2018 till the date of completion of the building.**
25. The respondents are directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

F.II To register 'builder buyer agreement' & to complete the project in strict conformity with original plan without making any changes of any nature in same

26. With respect of the aforesaid relief, the authority observes that the respondent have sent a letter dated 24.04.2018 to the complainants for execution of builder buyer's agreement. In respect of the same, the complainants have placed on record a letter dated 07.05.2018, whereby they have stated that they are giving two signed copies to the respondents. It is also pertinent to note here that the said letter dated 07.05.2018 also bears the acknowledgment signature of the official of the respondents company along with the stamp of the respondents company. Subsequently, the respondents had again sent a letter dated 17.07.2018 to the complainants for execution of the builder buyer agreement stating that '*As you would acknowledge and confirm that there are constant development in the rules and regulations in the Real Estate industry we need to adhere to guidelines being set for the benefit of both parties entering into the agreement.*' It is matter of record that vide letter dated 04.08.2018, the complainants have again sent the signed copies to the respondent and the said letter also bears sign along with stamp of the respondents company.
27. Keeping in mind the aforesaid documents, it is observed that there is laxity on the part of the respondents to execute the builder buyer agreement. As per provisions of section 13(1) of the Act of 2016, the promoter cannot accept a sum of more than ten percent of the cost of the apartment, plot, or



building as the case may be from a person at the time of the execution of the agreement to sell. Section 13(1) of the Act of 2016 is reproduced as under:

"13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

28. Thus, the respondents are directed to execute the builder buyer agreement as per provisions of the Act of 2016 and model builder buyer agreement within a period of 2 months from the date of this order.

F. III To handover physical possession of the subject unit after physical demarcation as lockable unit.

29. The authority observes that in the present case, the complainants have failed to point out any relevant clause in the application form and terms of letter of allotment whereby the respondents were liable to handover the physical possession of the subject unit to the complainants. Moreover, clause 4 of the said letter of allotment further provides that it is the obligation of the respondents promoters to lease the premises. Thus, in view of the aforesaid discussion and terms of the allotment letter, no direction for handover of physical possession can be given at this stage.

F. III Conveyance deed

30. With respect to the conveyance deed, 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."

31. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondents promoters till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondents promoters 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 respondents shall execute the conveyance deed of the allotted unit within 3 months from the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

F.IV Litigation cost

32. The complainants are also seeking relief of litigation cost. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming



compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are at liberty to approach the adjudicating officer seeking compensation.

H. Directions of the authority

33. 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 respondents are directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 86.03/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., **November 2018 till the date of completion of the building.**
 - ii. The respondents are directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
 - iii. The respondents are directed to execute the builder buyer agreement as per provisions of the Act of 2016 and model builder buyer agreement within a period of 2 months from the date of this order.

- iv. The respondents shall execute the conveyance deed of the allotted unit within the 3 months from the from the valid 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 respondents shall not charge anything from the complainants which is not the part of the builder buyer agreement.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
36. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.04.2024