

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

Order reserved on:	17.05.2024
Order pronounced on:	26.07.2024

Name of the Builder		M/s Vatika Limited	
Project Name		India Next City Centre	
S.n	Complaint No.	Complaint title	Attendance
1.	CR/5050/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry
2.	CR/5047/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry
3.	CR/5015/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry
4.	CR/5048/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry
5.	CR/5051/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry
6.	CR/4999/2023	Deepak Narula and Sujata Narula V/s Vatika Limited	Ms. Sonal Anand Ms. Ankur Berry

CORAM:	
Shri Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of all the 6 complaints titled as above filed before this authority in form CRA 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, India Next City Centre (Commercial Complex) being developed by the same respondent/promoter i.e., Vatika Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and assured return.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: India Next City Centre, Sector-83, Gurugram						
Possession clause: Clause 10						
Subject to the aforesaid(force majeure conditions) and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of the execution of the agreement.						
Note:						
1. License no. - 122 of 2008 dated 14.06.2008 valid up to 13.06.2016 (Expired)						
2. Occupation certificate - Not obtained						
3. Offer of Possession -Not offered						
Sr. no	Complain t no	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer of possession	Total sale Consideration, amount paid by the Complainant	



					(s) and assured return paid by the respondent
1.	CR/5050/2023	2nd floor block E, 500 sq. ft. (pg. 24 of complaint)	15.03.2012 (pg. 22 of complaint)	15.03.2016	TSC: ₹ 20,00,000/- (as per agreement on pg. 24 of complaint) AP: ₹ 20,00,000/- (pg.24 of complaint) AR: ₹ 25,45,484/- (pg. 45 of reply)
2.	CR/5047/2023	2nd floor block E, 500 sq. ft. (pg. 24 of complaint)	16.04.2012 (pg. 22 of complaint)	16.04.2016	TSC: ₹ 20,00,000/- [as per agreement on pg. 24 of complaint] AP: ₹ 20,00,000/- (pg.24 of complaint) AR: ₹ 25,45,484/- (pg. 44 of reply)
3.	CR/5015/2023	2nd floor block E, 500 sq. ft.	17.03.2012	17.03.2016	TSC: ₹ 20,00,000/- [as per agreement on pg. 24 of complaint] AP: ₹ 20,00,000/- (pg.24 of complaint) AR:



		(pg. 24 of complaint)	(pg. 22 of complaint)		₹ 25,68,621/- (pg. 44 of reply)
4.	CR/5048/2023	2nd floor block E, 500 sq. ft. (pg. 24 of complaint)	16.04.2012 (pg. 22 of complaint)	16.04.2016	TSC: ₹ 20,00,000/- [as per agreement on pg. 24 of complaint] AP: ₹ 20,00,000/- (pg.24 of complaint) of AR: ₹ 25,68,621/- (pg. 44 of reply)
5.	CR/5051/2023	2nd floor block E, 500 sq. ft. (pg. 24 of complaint)	16.04.2012 (pg. 22 of complaint)	16.04.2016	TSC: ₹ 20,00,000/- [as per agreement on pg. 24 of complaint] AP: ₹ 20,00,000/- (pg.24 of complaint) of AR: ₹ 25,45,484/- (pg. 44 of reply)
6.	CR/4999/2023	2nd floor block E, 500 sq. ft.	16.04.2012	16.04.2016	TSC: ₹ 20,00,000/- [as per agreement on pg. 24 of complaint] AP: ₹ 20,00,000/- (pg.24 of complaint) of AR:

		(pg. 24 of complaint)	(pg. 22 of complaint)		₹ 25,68,621/- (pg. 45 of reply)
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: Abbreviations Full form TSC- Total Sale consideration AP- Amount paid by the allottee(s)</p>					

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of possession, delayed possession charges, execution of sale deed and assured return.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 5050/2023 titled as Deepak Narula and Sujata Narula Vs. M/s Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua possession, delay possession charges, execution of sale deed and assured return.

A. Project and unit related details



7. 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/5050/2023 titled as Deepak Narula and Sujata Narula Vs.
M/s Vatika Limited**

S.no.	Particulars	Details
1.	Name of the project	India Next City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
4.	DTCP license no.	122 of 2008 dated 14.06.2008 valid up to 13.06.2016 (Expired)
5.	Name of licensee	M/s Trishul Industries Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered *Since the project is not registered the registration branch may take the necessary action under the provisions of the Act, 2016
7.	Date of builder buyer agreement	15.03.2012 [pg. 22 of complaint]
8.	Unit no.	2 nd floor block E, 500 sq. ft. (page 24 of complaint)
9.	Possession clause	<u>10. The developer contemplates to complete the construction of the said commercial unit within 48 months of the execution of the agreement.</u>
10.	Due date of possession	15.03.2016
11.	Sale Consideration	₹ 20,00,000/- [as per agreement on pg. 24 of complaint]

12.	Paid up amount as per BBA	₹ 20,00,000/- [pg.24 of complaint]
13.	Completion of construction	26.03.2018 (page 63 of reply)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	assured return paid till	September 2018 "as per clause 12 of the agreement return is to be paid from the date of execution of agreement till completion of construction of the said building"
17.	Assured return paid	₹ 25,45,484/- (as per page 45 of reply)

B. Facts of the complaint

- a. That sometime in 2012, the respondent through their officials and representatives approached the complainants and offered to sell commercial units in the project, further on which they promised "guaranteed and assured return" on the money paid by them upon them making a full consideration. It was assured that the respondent shall allot commercial units to them in the project, immediately upon payment and pursuant to that, they shall pay monthly assured return to the complainants. The assured return was agreed to be paid at the rate of Rs. 65/Sq. feet of area allotted. It was agreed as per terms that the monthly assured return shall be paid to them till the time the units are ready for possession and subsequently, for 3 years from the date of completion of the project and the receipt of completion certificate/occupation certificate for the project.
- b. The complainants made a payment of Rs.20,00,000/- to the respondent towards the sale considerations of the said unit as

per the asking of the respondent. The builder buyer agreement dated 15.03.2012, vide which, they were allotted unit bearing No(s) 208E respectively, in the project, having a super area of 500 Sq. Ft. Therefore, as per the agreed terms, a sum of Rs. 32,500/- was payable by the respondent to the complainants, every month for their unit. The respondent arbitrarily stopped the payment to the complainants from 01.10.2018, despite the fact that they were bound by the terms of the above-mentioned builder buyer agreements which (are still) in full force and thus, the respondent is duty bound to pay the assured return on a monthly basis till the time the project is completed, handover made and the OC/CC received and subsequently, till the period of 3 years thereafter.

- c. Thereafter, having no other option, the complainants through their counsel sent a legal notice dated 28.08.2019 to the respondent. However, despite duly receiving the legal notice the respondent did not pay any heed towards the same and did not reply and did not pay the due amount. It is pertinent to add that a letter was issued by the respondent making out falsely that the project is completed in 2018 in order to escape their liabilities, however, the letter turned out to be false and untrue. The project is still incomplete and the CC/OC not received even as on date.

C. Relief sought by the complainants:

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

- a. Direct the respondent to handover the actual, physical, vacant possession of the subject commercial unit.
 - b. Direct the respondent to execute the sale deed of the above said unit in favour of the complainants.
 - c. Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.
 - d. Direct the respondent to make payment on account of the assured returns along with interest @18% on delay.
9. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty. सत्यमेव जयते

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.
- a. 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". Thus, the simultaneous



reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal. Thus the 'assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs. 25,45,484/- till October 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.

- b. 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 20.03.2024. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming

within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

- c. That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That the Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter as any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- d. That it is also relevant to mention here that the commercial unit of the complainants were 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 complainants. Hence, the commercial space booked by the complainants' is not meant for physical possession.

- e. That it is pertinent to note that the respondent has always been devoted towards its customer and have over the years kept all its allottees updated regarding the amendments in law, judgments passed by the Hon'ble High Courts and the status of development activities in and around the project. It is highly pertinent to note that vide email dated 31.10.2018, the respondent sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investor of assured return-based projects. The email communication of 29.02.2016 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project. Further the respondent intimated to all its allottees that in view of the legal changes and formation of new laws the amendment to BBA vide addendum would be shared with all the allottees to safeguard their interest. That on 28.12.2018 all the allottees in the project were sent email regarding stoppage of assured rentals and option was given that the allottee could chose to shift to another project registered for getting committed returns benefit, that the complainants chose to sit over his right for last 6 years cannot pray for relief of assured return as the relief is time barred.



- f. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others.
- g. That the respondent duly paid the assured return to the complainants till October 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction and sent letter of completion of construction dated 26.03.2018.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act of 2016 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 the objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances.

16. The respondent- promoter alleged that grace period be allowed on account of force majeure conditions. The respondents-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather



conditions in Gurugram and COVID but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 15.03.2012 and as per terms and conditions of the said agreement due date of handing over of possession comes out to be 15.03.2016. The events such as delay in construction and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous where as there is a delay of more than two years even after due date of handing over of possession and there is nothing on record that the respondent has even made an application for grant of occupation certificate. 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. Findings on the relief sought by the complainant:

G.I Direct the respondent to handover the actual, physical, vacant possession of the subject commercial unit.

G.II Direct the respondent to pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.

17. In the present complaint, the complainant intends to continue with the project and is seeking 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
(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."

18. The apartment buyer's agreement was executed between the parties. As per clause 10 of the agreement, the possession was to be handed over within a period of forty-eight months from the date of execution of agreement. The clause 10 of the buyer's agreement is reproduced below:

Possession

*10. Subject to the aforesaid(force majeure conditions) and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of the execution of the agreement.
(Emphasis supplied)*

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in



the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1)

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or 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.

21. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR)

as on date i.e., 26.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) 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;

(ii) 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;"

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of forty-eight months from the date of execution of agreement i.e., till 15.03.2016.
24. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly,

the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession i.e., 15.03.2016 till valid offer of possession plus two months at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

25. Since as per averments made by respondent the subject unit was not intended to be handed over but to be put on leased out to 3rd party. Hence no direction w.r.t. handover of possession can be given.

G.III Direct the respondent to execute the sale deed of the above said unit in favour of the complainants.

26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
27. Since the occupation certificate of the building has not been obtained. The respondent is directed to get the conveyance deed executed within a period of three months from receipt of occupation certificate.

G.IV. Direct the respondent to make payment on account of the assured returns along with interest @18% on delay.

28. In the present matter the complainant purchased a unit on 2nd floor block e 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 through that agreement was promised by the respondent to pay assured return w.e.f. from execution of agreement i.e., 15.03.2012 till completion of the building. The respondent paid an amount of ₹25,45,484/- till 01.09.2018. The complainant is here before the authority seeking assured returns as promised in the agreement. 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.
29. While elaborating upon the said issue it would be correct to throw 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 48 months from the date of the execution of the agreement i.e., till 15.03.2016. 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.

30. 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 relief 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. The counsel for the respondent stated that it had sent a communication to the complainant apprising them that due to the implications and amendments in the Act, they have suspended paying assured return, further a communication was sent on 30.11.2018 which is at page 50 of the reply that the respondent shall not be able to further pay assured return. Further a communication was sent in December 2018 which is at page 53 of the reply regarding the discontinuation of assured return. However, the counsel for the complainant stated that they had sent a legal notice on 28.08.2019 which is C2 at page 44 demanding assured committed return. The complainant kept mum for four years and if at all his rightful interest/assured return was not being paid by the respondent he should have knocked the doors of the court and law during those four years which he didn't. Thereafter on 02.11.2023, he filed the said complaint seeking the relief of delayed possession charges and assured return. Hence now after a



gap of more than four years allottees claim of seeking relief of assured return cannot be entertained/deliberated as assured return is not covered under any of the provisions of RERA and is also not a statutory right of allottee although delayed possession charges is a statutory right as per proviso of section 18 of the Act, 2016.

31. Although section 11(4)(a) obligates promoter to fulfil all obligations as per agreement for sale, but the conditions terms given in the agreement for sale/BBA which are unethical or beyond the principle of natural justice and which have no place in the model agreement format prescribed in the rules of HRERA and rather the terms which are violative of/contradictory to the terms given in model agreement, prescribed in rules of HRERA can not be entertained because cause of action has arisen after the coming into force the act of 2016 and publication of rules by HRERA.
32. When section 11(4)(a) talks about agreement for sale, certainly it talks about prescribed agreement for sale as per rules of each state and not otherwise.
33. The Haryana Real Estate (Regulation and development) rules 2017 has already prescribed format of agreement for sale which is annexure A and in which there is no clause of assured return. It has been clearly mentioned in section 89 of the Act of 2016 that RERA has an overriding effect in case of any inconsistency. Hence definition of agreement to sell as given in section 4(3) of the Sale of Goods Act, 1930 shall be overruled by provision of section 2(c) of



the Act of 2016 and further to that detailed in rule 8 of Haryana Real Estate (Regulation and development) rules 2017.

34. It has been observed that 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) order dated 29.09.2022*” 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 of 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. Moreover, the issue of assured return is merely a contractual obligation which the respondent was obligated to perform but is



not a violation of any provisions of the Act of 2016. Accordingly, the authority observed that the present relief w.r.t AR sought 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 of 2016 nor in the RERA rules, 2017. The allottee can seek this relief in the competent court/commercial court, matter of assured return being a commercial dispute.

36. 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 his grievance.

H. Directions of the Authority

37. Hence, the authority hereby passes this order and issue 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):

- a. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession 15.03.2016 till valid offer of possession plus two months at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. Since the occupation certificate of the building has not been obtained. The respondent is directed to get the conveyance deed executed within a period of three months from receipt of occupation certificate.
- c. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- d. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



HARERA
GURUGRAM

Complaint no. 5050 of 2023
& 5 others

- f. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
40. File be consigned to registry.



Sanjeev
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024

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