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HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1016 of 2023
Date of filing:	15.05.2023
Date of first hearing:	02.08.2023
Date of decision:	21.03.2024

Gypsa Shrivastav, D/o Sh. K.P. Shrivastav,
R/o House no. 1401, Sector-46,
Gurugram, Haryana-122001

....COMPLAINANT

VERSUS

Vatika Limited.
Vatika Triangle, 4th Floor, Sushant Lok,
Phase-I, Block-A, M.G Road,
Gurugram-122012

....RESPONDENT

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Nishant Jain, Counsel for the complainant through VC.
Ms. Vertika H. Singh, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint was filed on 15.05.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	C-643
5	Unit area	875 sq. ft.
6.	Date of allotment	02.09.2014

7.	Date of builder buyer agreement	10.09.2014
8.	Due date of offer of possession	Not available.
9.	Possession clause	Not available.
10.	Total sale consideration	₹ 39,37,500/-
11.	Amount paid by complainant	₹ 40,86,338/-
12.	Offer of possession	No offer was given.
13.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Complainant booked a commercial unit bearing no. 643, measuring 875 sq. ft. on 6th floor, Tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by the respondent at agreed sale consideration of ₹ 39,37,500/- on 12.08.2014 by paying Rs 1,50,000/-. Allotment of the unit was made on 02.09.2014, copy of allotment letter is annexed as Annexure A-4 to the complaint.

4. That a builder buyer agreement was executed between the parties on 10.09.2014 and vide clause 15 of said agreement, the respondent was liable to pay Rs 71.5 per sq. ft. super area per month as assured return to complainant from the date of execution of the agreement till the construction of booked unit is complete. Complainant has made an payment of Rs 40,86,338/- till 11.08.2018 and accordingly, respondent paid the assured

returns in consonance with terms of buyer's agreement till February, 2018 @71.50/- per sq.ft.. However, respondent out of its own fancies without completing the construction of the said unit, started making payment of the assured return @65/- per sq. ft. from March, 2018 to August, 2018. Thereafter, respondent without any update stopped making the due payment of assured returns to the complainant.

5. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent and had made several requests to the respondent to pay the admitted assured return and get the conveyance deed executed in favour of the complainant, however, the respondent was never able to give any satisfactory response to the complainant regarding the payment of assured returns and was never definite about the delivery of the possession. It is to mention herein that the construction of the said unit is still not complete. Respondent has not obtained the occupation certificate from the concerned department till date.

6. That the complainant is entitled to get the amount of assured return with interest, in addition the complainant is entitled for delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under Section 18 & 19 (4) of Act. Feeling aggrieved, present complaint has been filed by the complainant before this



Authority for seeking possession with delayed interest and assured return @₹71.50/- per sq. ft. on super area.

C. RELIEFS SOUGHT

7. Complainant in his complaint has sought following reliefs:
- a. Direct the respondents to pay assured returns @₹71.50/- per sq. ft. to be calculated w.e.f September,2018 till actual handover of possession of the said unit after respondent has obtained Occupation Certificate from the competent authority.
 - b. Direct the respondent to pay the balance amount of Rs 6.50 per sq. ft from March,2018 to August,2018.
 - c. Direct the respondent to pay delayed possession charges to the complainant on the amount of Rs 40,86,338/- at the prescribed rate under Rule 15 of HRERA Rules,2017.
 - d. Direct the respondent to execute conveyance deed of the said unit in favour of complainant.
 - e. Direct the respondent to pay cost of litigation, i.e. Rs 1,00,000/-.
 - f. Any other relief which is deemed fit and just by this Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 15.11.2023 pleading therein:



8. That in so far the project 'Vatika Mindscape' is concerned, it is apposite to state here that it consists of total 4 towers, i.e., Tower-A, B, C and D. The construction of tower-C is already complete and the building got operational in the last week of February, 2018. Same was communicated to complainant vide an email dated 30.11.2018.

9. That respondent has paid each and every penny of assured returns amounting to Rs 30,64,095/- till September, 2018. However, assured returns cannot be further paid to the complainant due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainant.


10. That the construction of Tower-C was complete in February, 2018 hence the assured returns were revised to the rate of Rs 65/- per sq.ft. from March, 2018. An email communication dated 30.11.2018 was sent to allottees for confirming that the project is ready and available for leasing. In the said mail, issue regarding stoppage of assured returns and reconciliation of all accounts as of July, 2019 were communicated with all the allottees of the



concerned project. Respondent further intimated the 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. Copy of email is annexed as Annexure R-7 to reply.

11. Further, Hon'ble High Court of Punjab and Haryana, Chandigarh in CWP no. 26740 of 2022 titled "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 next date of hearing. Said matter is listed before the Hon'ble High Court for 17.05.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

12. Respondent has further taken a plea that complainant is a speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of



provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held by Hon'ble Apex Court in the case titled as "Bharti Knitting vs DHL".

13. That the commercial unit of the complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental monthly income. Furthermore, as per the agreement, said commercial space shall be deemed to be legally possessed by the complainant. Since, the said unit was never meant for possession of the complainant, hence the question of delay possession charges does not arise at all. The complainant cannot raise a grievance pertaining to an issue which was never a part of understanding between the parties vide the builder buyer agreement.

14. That complainant never visited the office of respondent for execution of conveyance deed. It is to mention herein that it is the duty of the buyer to deposit the stamp duty for execution of Conveyance Deed. However, in the present case, complainant never came forward for execution of conveyance deed and has not deposited the stamp duty with the statutory authority for the same.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. Learned counsel for complainant has submitted that possession of the booked unit has not been offered till date. Occupation certificate has not been issued by the competent authority with respect to tower in question, i.e., tower C. Vide email dated 30.11.2018 respondent duly apprised the complainant that the project is ready and available for leasing. But without handing over a legal/valid possession to allottee and transfer of title in favour of complainant, how can respondent or any other party proceed for leasing out the unit. Facts of the case clearly depicts that respondent is at fault by not honouring terms of buyer's agreement in providing assured returns as well as in not handing over of possession of unit till date. Further, he stated that writ petition referred by respondent in its reply does not have application/effect on this case as there is no bar created upon RERA Authority to not to proceed with assured returns cases. He requested that reliefs sought be awarded in favor of complainant.

16. Learned counsel for respondent argued that as the complainant is an investor in the project of respondent, relation of complainant and respondent is based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainant was to receive monthly



assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income to complainant. As a matter of fact, the complainant was paid assured returns till September, 2018. It is only after the enactment of BUDS Act, 2019, the scheme of assured returns became infructuous. In the present case, no date for handing over of possession has been defined in the buyer's agreement and it is because of the fact that the complainant has invested for monetary gains- assured returns so there is no loss being caused to complainant even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainant since September, 2018. Therefore, complainant is not aggrieved of any default on part of respondent. She further stated that the conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, learned counsel for respondent verbally argued that question of assured return is already pending before the Hon'ble Punjab & Haryana High Court, Chandigarh in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" which is now listed for hearing on 17.07.2024. This complaint is also connected with the matter pending before Hon'ble High Court as issue of monthly assured returns is involved in it.



Further, she stated that respondent-company is not shying away its obligation to get conveyance deed registered in favour of complainant. Fact remains that complainant never approached respondent for getting conveyance deed executed till date.

F. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to possession of the booked unit along with delay interest and registration of conveyance deed?
- ii. Whether complainant is entitled to claim pending assured returns @ Rs 71.50 per sq. ft. to be calculated w.e.f. September,2018 till actual handover of possession of booked unit duly supported with Occupation Certificate and to claim pending balance amount of assured returns of Rs 6.50/- per sq. ft. from March,2018 to August,2018?

G. OBSERVATIONS OF THE AUTHORITY:

17. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- i. The respondent has taken a stand that the complainant is a speculative buyer who has invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not

entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

ii. In view of the above-mentioned definition of “allottee” as well as upon careful perusal of allotment letter dated 02.09.2014 and builder buyer agreement dated 10.09.2014, it is clear that complainant is an “allottee” as unit bearing no. C-643 in the real estate project “Vatika Mindscape”, Faridabad was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there

cannot be any party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

iii. On merits, complainant in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide allotment letter dated 02.09.2014 for sale consideration of Rs 39,37,500/-. Against said sale consideration, payment of Rs 1,50,000/- was made on 07.08.2014 and Rs 39,36,338/- was made on 11.08.2014 by the complainant. Thereafter, builder buyer agreement was executed between the parties on 10.09.2014. However, no clause has been incorporated by respondent in said agreement towards timeline for handing over of possession of allotted unit.

iv. Authority observes that the builder buyer agreement has been executed between the parties. But in absence of specific clause of



deemed date of possession in allotment letter as well as builder buyer agreement, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainants. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Real Estate Appellate Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was allotted vide allotment letter dated 02.09.2014 by the respondent and builder buyer agreement was executed on 10.09.2014. Accordingly, taking a period of 3 years from the date of agreement, i.e, 10.09.2014 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 10.09.2017. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

v. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of the unit till date as no date was ever specified for handing over possession of unit in allotment letter as well as buyer agreement. Complainant has duly accepted such type of allotment letter and buyer



agreement for the reason that complainant has invested her money for monetary gains which in this case is assured returns. Said returns were duly paid to complainants till September,2018 and was stopped thereafter due to enactment of BUDS Act,2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainant in one-go. Assured returns were paid till September,2018 but stopped thereafter due to enactment of BUDS Act,2019. Complainant has filed the complaint in year 2023 for seeking possession and assured returns i.e. after 4 years of non-payment of assured returns. Complainant herein is aggrieved of arbitrary acts of respondent, i.e. not handing over the possession. Every allottee has presumption that any date for handing over of possession will be specified in builder buyer agreement but in this case respondent has not incorporated any specific clause for handing over of possession in the builder buyer agreement and rather accepted money only on the



basis of assured return scheme. Complainant who has already paid about whole of total sale consideration got stuck with respondent without any date of handing over of possession w.r.t. unit booked. If we look at the intent of allottee-complainant, she has chosen to invest in a tangible property-showroom space not any open share market where there is no definite/precise mode of transaction to be carried out. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under ambit of RERA Act,2016. Investment in commercial property does not imply that complainant-allottee never ever wanted to own that property by perfecting the title in his name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit. Respondent even today in a manner has clearly highlighted that possession of unit cannot be given to complainant as there is no clause of possession, on the other hand, refund of paid amount with interest also cannot be awarded to complainant as unit was only meant for monetary gains-assured returns and there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault of respondent. Hence, the complainant is not allowed to be proceeded further in any direction. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent



cannot take the benefit of his wrong (by not delivery possession of unit till date). By virtue of Section 18 of RERA Act, 2016, the respondent is obligated to either refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement/any other date specified therein and in case, where complainant intend to continue with the project then to pay interest for the delay caused in delivery of possession of unit till a valid offer is made to complainant. So, the contention of respondent that unit was never meant for possession and no loss of any kind is caused to complainant due non-handing over of possession does not hold any merit.

vi. Respondent in its reply has referred to Civil Writ Petition no. 26740 of 2022 titled as Vatika Ltd vs Union of India & Anr. which is pending for 17.07.2024 before Hon'ble High Court of Punjab and Haryana, Chandigarh. Vide order dated 22.11.2023 passed in aforesaid Writ Petition, Hon'ble High Court has observed 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. Relevant part of the order is reproduced below for reference:-



“Main case(s) File of CWP-20667-2023 has not been received from the Registry.

Reply filed on behalf of respondent No.2 in CWP-26740-2022 is taken on record. A copy of which already stands supplied to counsel opposite.

Learned proxy counsel appearing on behalf of the petitioner(s) prays for some time as arguing counsel is in some personal difficulty. Learned counsel for the respondent(s) contend that even though the order passed by this court on 22.11.2022 was qualified, however, the courts i.e. the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred. It is also pointed out that the investigating agency are also not conducting investigation under the garb of the aforesaid order. Learned counsel for the respondent(s) have been confronted with the abovesaid order and it is pointed out 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.

List on 20.03.2024.

Interim order to continue till the next date of hearing. A photocopy of this order be placed on the file of other connected matters”.

vii. It is observed by the Authority that the facts of the case and submissions made by both the parties are identical to the facts and circumstances of already disposed of bunch of complaints with lead complaint case no. 343 of 2021 titled as “Tanya Mahajan Versus



Vatika Ltd.”. Therefore, considering the submissions made by learned counsel for complainant, Authority decides to dispose of present complaints in the same manner/terms in which complaint no. 343 of 2021 titled as “Tanya Mahajan V/s Vatika Ltd.” was decided by the Authority vide orders dated 03.02.2022. Relevant part of order dated 03.02.2022 passed in complaint no. 343 of 2021 is reproduced herein below:

“7. Authority has gone through all facts and circumstances of these matters. It has gone through written statement as well as oral arguments put-forth by both sides. It observes and orders as follows:

- i. Claim of the complainants is that they are allottees of the project as is clearly establish from nature of the project and the nature of the builder-buyer agreement executed between complainants and respondent company. Respondent company has failed to keep its promises of paying assured returns and also have not completed the project and offered possession after obtaining Occupation certificate.*
- ii. The case of the respondents is that the Complainants are not allottees, they are mere depositors. Assured returns had been paid to the Complainants s up to December, 2018, but after promulgation of BUDS ordinance on 21.02.2019 and coming into force of the BUDS Act on 31.07.2019, the respondents are prohibited from paying assured returns to Complainants s. Further, the agreement executed between parties is only a lease agreement. Respondents have been paying due returns to the Complainants s, but had stopped payments after coming into force the BUDS Act as law has prohibited them from making payments of assured returns to the Complainants.*
- iii. Authority would first of all refer to nature of the agreement executed between both the parties. Clause-A, B & C of opening recitals of the agreement provides that respondents-company is owner in possession of 8.793 acres land in revenue estate of Sarai Khawaja, Tehsil and District*

Faridabad, Sector-27, Faridabad. M/s Vatika I.T. Parks Pvt. Ltd. i.e. respondent no.2 had obtained licence No. 1133 of 2006 from Director, Town & Country Planning Department, Haryana, for constructing upon the said land an IT park. Clause-C of the opening recital states that Director, Town & Country Planning Department, has already approved demarcation/ zoning plans and building plans of the said IT park vide their memo No. 16150 and 1315 dated 20.06.2007 and dated 08.04.2008. It further states that said IT park has been named as "Vatika Mindscapes".

- iv. Clause D, E, F & G repeatedly refers to Complainants s as buyers and to respondents as developers. Clause E clearly stipulates that Complainants /buyer have approached the developer for purchase of units of approximately 500 sq. ft. super area on 4th floor of the building block-C of the project.
- v. A cursory reading of the opening recital A to H leaves no doubts that respondents are builder-promoters of the project 'Vatika Mindscapes'. They have properly obtained licence from State Government. They have got their building plans etc. duly approved. They have properly negotiated for sale of specified and identified units to the Complainants s.
- This by itself leaves no doubt that the respondents are developers and Complainants s are buyers and a proper builder-buyer relationship exists between both the parties and any dispute relating to the agreement between them is preferable to this Authority only. Jurisdiction of the Authority, therefore, for dealing with this dispute is undisputable and objections raised by respondents to the jurisdiction of the Authority are without any basis.
- vi. In Clause-1 (a) of the agreement, unit allotted to the Complainants is properly identified. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, Complainants s herein chose the option of down payments. An option of deferred payment was also available but Complainants did not opt for the same.
- vii. Clause-4, particularly clause 4.4, specifies the area deliverable to Complainants s, including covered area of the

unit as well as pro-rata share of common areas of the entire building. Definition of the common area has also been specified in the agreement.

viii. Reading of the remaining clauses of the agreement there is no doubt that this was a proper builder-buyer agreement as per prevailing market practice.

ix. Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, Complainants chose to make down payments and in return claim monthly assured returns. As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, Complainants allottees would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.

8. Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and Complainants because Complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering possession to Complainants. Complainants therefore are entitled to relief sought i.e., possession of the unit along with payment of overdue assured returns as per provisions of the agreement.

9. Respondents have taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondents' argument is that since the Complainants are not allottees, they are depositors, therefore, they fall within the prohibitions provided in the BUDS Act.



10. Respondents have cited provisions of Sub Section 4 of Section 2 of the BUDS Act in which definition of deposits has been given. Opening line of the definition of the deposit reads ...

“... an amount of money received by way of an advance or loan or in any other form by any deposit taker with a promise to return whether of a specified period or otherwise either in cash or any kind or any specified service.....”

Authority observes that none of the conditions listed in the aforesaid definition of “deposits” are fulfilled in the captioned complaints. The money paid by the Complainants cannot be called advance or loan. It was very much a consideration for purchase of specified and identified apartments/ units in the duly licenced real estate project of the respondents. Further, definition deposit stipulates an essential condition that the deposit has taken with ‘a promise to return after a specific period’. This condition is also not fulfilled in the present case. Provisions of the agreement do not at all provide for return of the money paid by the Complainants. It only provides for delivery of a pre-identified constructed unit in the lawfully licenced project of the respondents. The arguments of the respondents, therefore, are summarily rejected because consideration amount paid by Complainants by no stretch of imagination can be categorised as deposits of finance for return in the form of investment bonus, profit or in any other form.

11. Respondents are desperately trying to deny legitimate rights of the Complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.

12. The Authority observes that respondents have still not obtained occupation certificate. Real estate project can be said to be complete only upon receipt of occupation certificate or part completion certificate. Having not received the Occupation certificate, project is still on going. The respondents have got this project registered with the Authority vide Registration No. 196 of 2017 dated 15.09.2017. The Complainants are therefore, entitled to lawful possession of the unit after obtaining occupation certificate thereof by the respondents. Till such time as a lawful offer of possession is made, Complainants are entitled to get agreed monthly

assured returns @ ₹71.50/- per sq. ft. Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e., MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case. Admittedly, monthly assured returns @ ₹71.50 per sq. ft. which amounts to ₹35,750/- per month is payable. This amount had been paid up to December, 2018. Accordingly, monthly returns @ ₹35,750/- will be paid for the entire period from January 2019 till February 2022 i.e. the month of passing of this order. This amount works out to ₹15,63,803/-. It is also ordered that non-calculated monthly interest will be paid regularly by the respondents till lawful offer of possession is made to the Complainants."

18. It is an admitted fact that occupation certificate has not been issued for tower/block C, hence the respondent has failed to offer possession of booked unit after completion of construction. Therefore, it is established that the respondent is in contravention of section 11(4) (a) of the Act and accordingly, the complainant is entitled for delayed interest along with the offer of possession. With respect to rate of interest and quantum of monthly assured returns, it is pertinent to mention here that in the present case, a specific agreement/provision exists between parties for payment of monthly assured returns @ ₹71.50/- per sq. ft. per month. Fact remains that the respondent has been abiding by said clause till September, 2018. Now by filing of present complaint, complainant has specifically sought relief for



payment for assured return as agreed between both parties in terms of specific agreement/provisions. Therefore, the Authority orders as follows.

19. Admittedly, monthly assured returns @₹71.50/- per sq. ft. (@₹71.50/- * 875 sq. ft.) which amounts to ₹62,562.50/- per month is payable. This amount had been paid up to February, 2018. With effect from March,2018, respondent had paid assured return of Rs 56,875/- calculated at rate of Rs 65/- per sq. ft. stating that construction of Tower-C has been completed and unit is available for leasing whereas fact remains that no valid offer of possession duly supported with occupation certificate has not been made to complainant. Moreover, occupation certificate has not been received by the respondent for the tower in question till date. So, respondent shall pay the remaining amount of assured returns, i.e. Rs 6.50 per sq.ft. (@Rs 6.50*875 sq.ft.=Rs 5687.5/-) with interest for the period ranging from March,2018 to September,2018. Thereafter, monthly assured returns @₹62,562.5/- will be paid along with interest for the entire period from October 2018 till March,2024. Accordingly, the amount has been calculated as per the details given in the table below:-

Sr. no.	At rate of	Time Period	Rate of interest	Total Amount.
1.	Rs 6.50/- per sq ft. (Area is 875 sq ft) =Rs 5,687.5/-	March,2018 to September,2018	10.85%	41,252.39/-
2.	Rs 71.50/- per sq. ft (Area is 875 sq ft) =Rs 62,562.5/-	October,2018 to March,2024	10.85%	53,79,819.76/-

It is pertinent to mention here that complainant in relief clause has sought monthly assured returns w.e.f September,2018 whereas Respondent in its reply has attached a calculation sheet wherein monthly assured return amounting to Rs 56,875/- calculated at rate of Rs 65 per sq. ft. has already been paid to complainant. Complainant in his file has not attached any proof depicting that assured returns of September,2018 has not been paid. So, assured returns are now payable w.e.f October,2018 as calculated above in this paragraph.

20. The complainant is seeking cost of litigation. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the litigation charges.

H. DIRECTIONS OF THE AUTHORITY:

21. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to hand over the legal and valid possession of the unit to the complainant after obtaining occupation certificate from the competent Authority. Respondent is further directed to get conveyance deed executed in favor of complainant within 90 days of valid offer of possession being made to complainant.
- ii. Till such time as a legal and valid offer of possession is made, complainant is entitled to get agreed monthly assured returns @ ₹71.50/- per sq. ft. per month on super area (₹71.50/- * 875 sq. ft.) which amounts to ₹62,562.5/- per month. Accordingly, monthly assured return of ₹62,562.5/- be paid to the complainant along with interest for the entire period from October, 2018 till March,2024. This amount works out to ₹53,79,819.76/-. Respondent is directed to make payment of remaining assured return for the period ranging from March,2018 to September,2018 which works out to Rs 41,252.39/-.


iii. It is also ordered that non-calculated monthly assured returns will be paid regularly by the respondent till lawful offer of possession is made to the complainant.

22. Complaint is **Disposed of**. File be consigned to the record room after uploading of order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR .GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]