

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM****Date of Decision:** 26.07.2024

NAME OF THE BUILDER		VATIKA LIMITED	
PROJECT NAME		"VATIKA TOWERS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4104/2023	Rohit Pandit and Radha Bhakuni V/S Vatika Limited	Shri Rajan Gupta Advocate and Ms. Ankur Berry Advocate
2.	CR/4103/2023	Amrit Lal Uppal and Sonika Uppal V/S Vatika Limited	Shri Rajan Gupta Advocate and Ms. Ankur Berry Advocate
3.	CR/4106/2023	Zeil Koppelen Technologies Pvt. Ltd. V/S Vatika Limited	Shri Rajan Gupta Advocate and Ms. Ankur Berry Advocate

**CORAM:**

Shri Sanjeev Kumar Arora

**Member****ORDER**

1. This order shall dispose of three complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
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, "Vatika Tower " being developed by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.

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		Vatika Limited at " Vatika Tower " situated at Golf Course Road , Gurugram.		
<b>Occupation Certificate :- Not Obtained</b>				
<b>Complaint No. &amp; Case Title</b>	CR/4104/2023 Rohit Pandit and Radha Bhakuni V/S Vatika Limited	CR/4103/2023 Amrit Lal Uppal and Sonika Uppal V/S Vatika Limited	CR/4106/2023 Zeil Koppelen Technologies Pvt. Ltd. V/S Vatika Limited	
<b>Reply status</b>	15.12.2023	15.12.2023	15.12.2023	
<b>Unit no.</b>	P-443 [ As per page no. 16 of the complaint]	P442 [ As per page no. 22 of the complaint]	P455 [ As per page no. 15 of the complaint]	
<b>Area admeasuring</b>	750 sq. ft. (Super Area) [As per page no. 16 of the complaint]	750 sq. ft. (Super Area) [ As per page no. 22 of the complaint]	500 sq. ft. (Super Area) [As per page no. 15 of the complaint]	
<b>Application Form</b>	09.12.2015 (Page 14 of complaint)	08.12.2015 (Page 14 of complaint)	30.12.2015 (Page 13 of complaint)	
<b>Date of apartment buyer's agreement</b>	Not Executed	Not Executed	Not Executed	
<b>Due date of handing over of possession</b>	Cannot be ascertained	Cannot be ascertained	Cannot be ascertained	
<b>Assured Return Clause</b>	a-₹133.33/-till completion. B ₹120/- per sq. ft. super area per	a-₹133.33/- till completion. b ₹120/- per sq. ft. super area per month	a-₹133.33/- till completion. b ₹120/- per sq. ft. super area per month	

	<i>month post completion up to 36 months or lease whichever is earlier.</i> [pg. 23 of complaint]	<i>post completion up to 36 months or lease whichever is earlier.</i> [pg. 22 of complaint]	<i>post completion up to 36 months or lease whichever is earlier.</i> [pg. 22 of complaint]
<b>Offer of possession</b>	Not offered	Not offered	Not offered
<b>Assured return paid till</b>	10.10.2018 (As stated by the complaint at page 5 of complaint)	10.10.2018 (As stated by the complaint at page 5 of complaint)	10.10.2018 [As per page no. 30 of the complaint]
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	TSC: Rs.51,65,325/- (As per application dated 09.12.2015 at page no. 16 of the complaint) AP: Rs.51,65,325/- (As per application dated 09.12.2015 at page no. 16 of the complaint)	TSC: Rs.51,65,325/- (As per application dated 08.12.2015 at page no. 16 of the complaint) AP: Rs.51,65,325/- (As per application dated 08.12.2015 at page no. 16 of the complaint)	TSC: Rs.34,43,550/- (As per application dated 30.12.2015 at page no. 15 of the complaint) AP: Rs.34,43,550/- (As per sum of cheques issued at page 20121 of complaint)
<p><b>The complainants in the above complaint(s) have sought the following reliefs:</b></p> <ol style="list-style-type: none"> <li>1. Direct the respondent to pay assured return from 10.10.2018 till completion of construction along with interest @ 24% per annum from the date of payment due till realization.</li> <li>2. Direct the respondent to comply with the terms of the agreement entered between the parties.</li> <li>3. Direct the respondent to pay litigation expenses of Rs. 1,00,000/- to the complainants.</li> </ol> <p><b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b></p> <p><b>Abbreviation Full form</b>                      TSC Total Sale consideration                      AP Amount paid by the allottee(s)</p>			

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
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/4104/2023 titled as Rohit Pandit and Radha Bhakuni VS Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Unit and project related details**

7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	Vatika Tower at Golf Course Road, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	DTCP license no.	12 of 2014 dated 10.06.2014 valid up to 09.12.2019
4.	Name of licensee	Perfect Buildwell Pvt. Ltd. and 1 other
5.	RERA Registered/ not registered	Not Registered
6.	Application Form	09.12.2015 [pg. 16 of complaint]
7.	Date of builder buyer agreement	Not executed
8.	Unit no.	P-443, measuring 750 sq. ft. [pg. 16 of complaint]
9.	Possession clause	NA
10.	Due date of possession	Cannot be ascertained
11.	Assured return clause	a ₹133.33/- till completion.



		<i>b</i> <i>₹120/- per sq. ft. super area per month post completion up to 36 months or lease whichever is earlier.</i> [pg. 23 of complaint]
12.	Total Sale Consideration as per application dated 09.12.2015	₹ 51,65,325/- [pg. 16 of complaint]
13.	Paid up amount as per application dated 09.12.2015	₹ 51,65,325/- [pg. 16 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Assured return paid till	10.10.2018

### B. Facts of the complaints:

8. The complainant has made the following submissions in the complaint:

- I. That the respondent company had launched a project known as "Vatika Tower" Tower-C, situated at Golf Course Road Gurugram in the year 2015.
- II. That it was assured to the complainants that if the complainants pay 100% down payment in that case respondent will pay assured/guaranteed returns on monthly basis to the complainants. Officials of respondent also made comparison with various other investments such as fixed deposits, mutual funds etc and assured the complainants that investment in their project is more beneficial and complainants will receive better returns. They further assured the complainants to get three years guaranteed lease rent after completion of project too besides assured return till completion of construction.
- III. That having being induced by the officials of respondent company, the complainants applied for allotment of shop/commercial space in the above-mentioned project under down payment/assured return plan vide application dated 09.12.2015. Accordingly one unit bearing no. P-443,

measuring 750 Sq.ft. at vatika Towers, Tower-C, Gurugram was allotted to the complainants by respondent company at a basic price of Rs. 6,600/-per sq. ft. The complainants to avail the benefit of down payment/assured return plan made down payment of Rs. 51,65,325/- along with application form for allotment of said unit as 100% full and final consideration.

- IV. That respondent also vide letter dated 04.01.2016 send an acknowledgement of receipt of application form and accordingly allocated said unit on following terms of assured return:
- A. Assured monthly commitment of Rs. 133.33/- Per sq. ft. payable till completion of the project.
  - B. Post completion of project an amount equivalent to Rs. 120/- per sq. ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said unit, for 36 months or till the said unit is put on lease, whichever is earlier.
- V. That for the period between 06.01.2016 to 10.10.2018, the complainants received assured return as promised by the respondent company at the rate Rs. 133.33/- per sq. ft. But to the shock and surprise of the complainants the respondent stopped making any further payments after 10.10.2018. The complainants thereafter made several visits to the respondent office and asked them to fulfil their promises but respondent did not give any answer till date.
- VI. That more than seven years have been passed but still the project is not ready nor has any builder buyer agreement has been entered between the parties as promised by the respondent company in their application form.

VII. That above act on the part of respondent company shows that their intention was from the very beginning is to cheat the complainants and other investors.

VIII. That till date complainants are moving from pillar to post but of no use, hence came before the Hon'ble Authority to direct the respondents to give assured return as per the terms of the contract to the complainants along with prescribed rate of interest from the date of payment till realization.

**C. Relief sought by the complainant:**

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

- i. Direct the respondent to pay assured return from 10.10.2018 till completion of construction along with interest @ 24% per annum from the date of payment due till realization.
- ii. Direct the respondent to comply with the terms of the agreement entered between the parties.
- iii. Direct the respondent to pay litigation expenses of Rs. 1,00,000/- to the complainants.

10. 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.

**D. Reply by the respondent:**

11. The respondent has contested the complaint on the following grounds:

- a. That the present complaint has been filed against the affordable group housing project namely, Zara Aavaas which comprises of 19 towers/residential blocks on 5 acre
- b. That the respondent is a company, registered under the Companies Act, 1956 having its office at Unit No A-002, INXT City Centre Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram – 122012, Haryana. That

for the past two decades the respondent company has been engaged in the business of Real Estate Sector.

c. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, and continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".

- **Banning of Unregulated Deposit Schemes Act, 2019**

That Section 2 (4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the *Explanation* to the Section 2(4) further expands the definition of the "Deposit" in respect of Company, to have same meaning as defined within the Companies Act, 2013

- **Companies Act, 2013**



The Companies Act, 2013 in Section 2 (31) defines “Deposit” as “deposit includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India”. The Legislature while defining the term “deposit” intentionally used the term *prescribed* so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014

• **Companies (Acceptance of Deposits) Rules,2014**

Section 2(1)(c) defines the term “deposit” to includes any receipt of money by way of deposit or loan or in any other form, by a company, except any amount received from the following: -

- a. Central Government or a State Government,
- b. amount received from foreign Governments, foreign or international banks
- c. any amount received as a loan or facility from any banking company,
- d. any amount received as a loan or financial assistance

- e. any amount received against issue of commercial paper, or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
  - f. any amount received by a company from any other company;
  - g. any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities
  - h. any amount received from a director of the company;
  - i. any amount raised by the issue of bonds or debentures
  - j. any amount received from an employee in the nature of non-interest bearing security deposit;
  - k. any non-interest bearing amount received or held in trust; any amount received in the course of, or for the purposes of, the business of the company, any amount brought in by the promoters of the company; any amount accepted by a Nidhi company.
- d. That further the Explanation for the Clause (c) of Section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever,

shall be treated as a 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.

e. That further the Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme".

The First Schedule of the Banning of Unregulated Deposit Schemes Act, 2019 prescribed limited Regulator who can publish Regulated Deposit Schemes, the same being only,

- i. the Securities and Exchange Board of India,
- ii. the Reserve Bank of India,
- iii. the Insurance Regulatory and Development Authority of India,
- iv. the State Government or Union territory Government,
- v. the National Housing Bank,
- vi. the Pension Fund Regulatory and Development Authority,
- vii. the Employees' Provident Fund Organisation,
- viii. the Central Registrar, Multi-State Co-operative Societies
- ix. the Ministry of Corporate Affairs Government of India

f. That 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.

g. That it is submitted that the Complainants had invested in the project way back in 2015. That further vide Cheque No. 985432 dated 06.01.2016 and Cheque No. 985423 dated 06.01.2016 the complainants were returned all

their investments way back in 2016. That it is to be noted since the complainants already received its return on investments in 2016, thus no buyer's agreement was executed nor any unit allotted to the complainants.

- h. That as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the assured return scheme of the opposite parties / respondent company has become illegal by the operation of law and the opposite parties / respondent company cannot be made to run a scheme which has become infructuous by law.
- i. That the issue pertaining to the *relief of assured return* is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '*Vatika Limited vs. Union of India and Anr.*' in *CWP No. 26740 of 2022*, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the respondent herein, for seeking recovery against deposits till next date of hearing.
- j. That the Hon'ble Appellate Tribunal, while considering an Appeal bearing no. **647 of 2021**, titled as '*Vatika Limited vs. Vinod Agarwal*', has deferred the same as the jurisdiction of the Hon'ble Tribunal in the matters pertaining to Assured Returns is under challenge before the Hon'ble High Court.



- k. The Hon'ble UP-REAT while adjudicating an appeal titled as "**Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)**" has held that the issue of Assured Return does not fall within the ambit of the Act of 2016 and dismissed the appeal filed by the Appellant/Allottee.
- l. That the complainants have filed the complaint claiming payment of assured returns, etc. The Hon'ble Authority ought to consider that the buyer agreement was never executed between the parties and the unit no as claimed by the complainant is only a priority no and not a unit no. Further the complainant fails to provide any documentation through which it can prove itself to be the allottee or any promise of assured return.
- m. The respondent, issued communications to all its allottees of the project from company email id [noreply@salesforce.com](mailto:noreply@salesforce.com) and [noreply@vatikagroup.com](mailto:noreply@vatikagroup.com), regarding committed returns/assured returns suspension vide email dated 31.10.2018. The respondent issued second communication to all allottees, through email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all return based/assured / committed return based sale and respondent's proposal to reconcile all accounts as of July, 2019. The respondent issued third email to all allottees on 28.12.2018 regarding stoppage of assured rentals and reconciliation of all dues by June, 2019, and issued communication regarding Addendum Agreement containing revised clauses excluding assured return / committed return clause alternatively giving option to allottees to shift to another project
- n. Written submissions have been filed by the respondent. The same have been taken on record and perused further.

12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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

**Section 11.....**

*(4) The promoter shall-*

*(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 complainant at a later stage.

**F. Findings on the relief sought by the complainants:**

**F.I Direct the respondent to pay assured return from 10.10.2018 till completion of construction along with interest @ 24% per annum from the date of payment due till realization.**

**F.II Direct the respondent to comply with the terms of the agreement entered between the parties.**

15. In the present matter vide an application form dated 09.12.2015 a priority number P-443 and building tower V has been mentioned for a total sale consideration of ₹51,65,325/-.Vide letter dated 04.01.2016 of terms and conditions of the assured returns the respondent promised to pay assured return of Rs. 133.33/- per sq. ft. payable till completion of the project and Rs. 120/- per sq. ft. super area per month post completion upto 36 months or lease whichever is earlier. As per the facts of the complainant the respondent has paid assured return till 10.10.2018. The complainant is here before the authority seeking assured returns as promised. 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. Since no particular unit is allotted and no allotment letter or BBA is held on record.

16. 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 reiterates 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.
17. As far as assured return is concerned it cannot be mistook as compensation/penalty for the delay in possession as it was being paid much before the default has occurred. The concept of 'Assured Return' has no place in the Real Estate (Regulation and Development) Act of 2016. Further, as per section 18 the allottee is only entitled for interest on paid up amount for every month of delay. This case does not fall within the ambit of provisions of section 18 of the Act, 2016. Moreover, the respondent promoter stopped paying the assured return after coming into force of BUDS Act, 2019 with a prior intimation of the same through a combine email dated 31.10.2018 to all its allottees. The respondent through the said mail requested the complainant-allottee for executing an addendum agreement between the parties for deletion of the said clause of assured return. Thereafter the complainant neither approached the respondent w.r.t. the said issue nor made any communication vide mail, also no legal recourse was followed by the complainant to recover the assured return amount if the complainant was not agreed with the above said mail by the respondent for stopping assured return after coming into force of BUDS Act, 2019. Rather in the year, 2023 filed the said complaint seeking the relief of assured return.
18. 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 cannot be entertained because cause of action has arisen after the coming into force the act of 2016 and publication of rules by HRERA.

19. 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.
20. Also, the Uttar Pradesh Real Estate Appellate Tribunal (UPREAT) while adjudicating an appeal has held vide order dated 29.09.2022 titled as "Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)" 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....”*

21. Further, the Hon’ble National Company Law Tribunal, Chandigarh Bench, Chandigarh also held in the case titled as Ravi Luthra & 12 Ors. Vs. Vatika Ltd. (CP(IB) No. 663/Chd/Hry/2019) vide order dated 07.06.2024 that the applicants claiming assured returns are not “allottees” and rather “speculative Investors” and therefore, not “Financial Creditors”. The relevant extract of order is reproduced herein for ready reference:

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

*20. In view of the above, we conclude that Applicants herein claiming assured returns are not “allottees” and rather “Speculative investors” and therefore, not “Financial Creditors”.*

*Hence, we have no other option but to dismiss the Application”*

22. Moreover, the issue of assured return is merely a contractual obligation which the respondent was obligated to perform but in absence of violation of any provisions of the Act, 2016 thereof. Accordingly, the authority observed that the present compliant filed by the complainant is not maintainable for two fold reasons. Firstly, the complainant has failed to prove as to what provisions of this Act, or rules & regulations made thereunder has been violated by the respondent herein. Secondly, the issue of assured return on the basis of which the present complaint has been filed


by the complainant is not in the nature of the delay possession charges as covered under section 18 of the Act, 2016. The assured return was being paid by the respondent to the complainant allottee much before the due date of possession which clearly shows the complainant has invested his money to get return on monthly basis which is merely a commercial transaction between them. Moreover, the assured return is neither defined in the Act, 2016 nor in the rules, 2017. It appears that complainant is here before the authority for adjudication of his commercial contract with the respondent which is not covered under any provisions of the RERA Act, 2016 and even the complainant could not prove him as an allottee during entire proceedings.

23. 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.
24. As far as F.II. is concerned, the said relief is infructuous as no agreement was ever executed between the parties.


**F.III Direct the respondent to pay litigation expenses of Rs. 1,00,000/- to the complainants.**

25. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the 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.

26. In light of the above mentioned findings of the authority, all the reliefs are denied in toto since it could not be established or proved during entire proceedings or submissions by complainant that he is an allottee therefore, the present complaints stand dismissed accordingly.
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
28. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
29. Files be consigned to registry.

  
**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 26.07.2024**

  
**(Sanjeev Kumar Arora)**  
**Member**

**HARERA**  
GURUGRAM