

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

**Date of decision: 24.09.2024**

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7623/2022	Shashi Aggarwal and Payal Rakyan and Chavi Aggarwal V/S Vatika Limited	Shri. Kanish Bangia, Advocate And Ms. Ankur Berry, Advocate
2.	CR/7624/2022	Chavi Aggarwal and Rishab Chaudhry V/S Vatika Limited	Shri. Kanish Bangia, Advocate And Ms. Ankur Berry, Advocate
3.	CR/7625/2022	Vijay Kumar and Kanika Aggarwal V/S Vatika Limited	Shri. Kanish Bangia, Advocate And Ms. Ankur Berry, Advocate
4.	CR/7626/2022	Payal Rakyan and Vivek Rakyan V/s M/s Vatika Limited	Shri. Kanish Bangia, Advocate And Ms. Ankur Berry, Advocate

**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

**Chairman**

**Member**

**ORDER**

1. This order shall dispose of all the 4 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read



with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "INXT City Centre" being developed by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
<b>Assured return clause</b>	The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional



return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 16.06.2011

A. Till Completion of the building : Rs. 71.50/- per sq. ft.

B. After Completion of the building : Rs. 65/- per sq. ft.

**OC: Not obtained**

**Offer : Not offered**

Comp no.	CR/7623/20 22	CR/7624/20 22	CR/7625/20 22	CR/7626/20 22
Date of BBA	16.06.2011 (Page 34 of complaint)	16.06.2011 (Page 32 of complaint)	19.05.2011 (Page 31 of complaint)	16.06.2011 (Page 26 of complaint)
Unit changed date	25.04.2013 (Page no. 59 of complaint)	25.04.2013 (Page no. 52 of complaint)	28.12.2011 (Page no. 67 of complaint)	25.04.2013 (Page no. 48 of complaint)
Unit no. and area	615, 6 <sup>th</sup> floor, block- F, 500 sq. ft. (Page 59 of complaint)	613, 6 <sup>th</sup> floor, block- F, 500 sq. ft. (Page 52 of complaint)	609, 6 <sup>th</sup> floor, block- F, 500 sq. ft. (Page 61 of complaint)	611, 6 <sup>th</sup> floor, block- F, 500 sq. ft. (Page 48 of complaint)
Due date of possession	16.06.2014 [as per BBA clause 2]	16.06.2014 [as per BBA clause 2]	19.05.2014 [as per BBA clause 2]	16.06.2014 [as per BBA clause 2]
Total sale consideration and amount	TC- 24,37,500/- (BBA at 37 of complaint) AP- 25,25,860 /-	TC- 24,37,500/- (Page 35 of complaint) AP- 25,25,860/-	TC- 24,37,500/- (Page 34 of complaint) AP- 25,25,860/-	TC- 24,37,500/- (Page 28 of complaint) AP- 25,25,860/-



nt paid	(As per annexure R2 of reply)	(As per annexure R2 of reply)	(As per annexure R2 of reply)	(As per annexure R2 of reply)
Assured return paid	₹30,90,750/- [Page 2 & 8 of reply]  Assured Return paid till September 2018	₹30,90,750/- [Page 2 & 8 of reply]  Assured Return paid till September 2018	₹31,26,500/- [Page 2 & 8 of reply]  Assured Return paid till September 2018	₹30,90,750/- [Page 2 & 8 of reply]  Assured Return paid till September 2018
<ol style="list-style-type: none"><li>1. Possession</li><li>2. Direct the respondent to pay DPC from due date of possession till actual physical possession</li><li>3. Direct the respondent to pay pending monthly assured return</li><li>4. Direct the respondent to not create any third party rights.</li><li>5. Compensation &amp; Litigation Charges</li><li>6. Direct the respondent not to charge anything which is not part of payment plan</li></ol>				
<p><b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b></p> <p>TC: Total consideration AP: Amount paid by the allottee(s)</p>				

4. It has been decided to treat the aforesaid 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.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/7623/2022 titled as Shashi Aggarwal & Ors. V/s M/s Vatika Limited are** being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.



**A. Project and unit related details**

6. 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/7623/2022 titled as Shashi Aggarwal &Ors. V/s M/s Vatika Limited***

<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008 [as per data available at DTCP website]
	Valid up to	13.06.2016
	Licensee name	M/s Trishul Industries
5.	HRERA registered or not	Not registered
6.	Allotment letter dated	16.06.2011 [Page 62 of complaint]
7.	Date of builder buyer agreement	16.06.2011 [Page 34 of complaint]



8.	Addendum to BBA dated 16.06.2011 executed on	Undated [Page 61 of complaint]
9.	Unit no. as per the BBA dated 16.06.2011	282 A, 2 <sup>nd</sup> floor, tower no. A, in Vatika Trade Centre Admeasuring 500 sq. ft. [Page 37 of complaint]
10.	Relocation of commercial project Vatika Trade Centre to INXT City Centre vide letter dated	17.08.2011 [Page 51 of complaint]
11.	Shifting of unit vide letter dated	25.04.2013 [Page 59 of complaint]
12.	New unit no. as per letter dated 25.04.2013	615, 6th floor, block F, Admeasuring 500 sq. ft. in INXT City Centre [Page 59 of complaint]
13.	<b>Possession clause as per clause 2 of BBA dated 16.06.2011</b>	<i>The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of as per Annexure-A (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue</i>



		<p>to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</p> <p>[Page 37 of complaint]</p>
14.	Due date of handing over possession as per BBA dated 16.06.2011	16.06.2014
15.	Assured return/ committed return as per addendum of BBA	<p style="text-align: center;"><b>ANNEXURE A</b> <b>ADDENDUM TO THE AGREEMENT DATED 16.06.2011</b></p> <p>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 16.06.2011</p> <p>A. Till Completion of the building: Rs. 71.50/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>[Page 61 of complaint]</p>
17.	Total sale consideration as per clause 1 of BBA dated 16.06.2011	Rs. 24,37,500/- [Page 37 of complaint]
18.	Amount paid by the complainant	Rs. 25,25,860/- [As per annexure R2 of reply]
19.	Offer of possession	Not offered



20.	Occupation certificate	Not obtained
21.	Amount of assured return paid by the respondent to the complainant till September 2018	Rs.30,90,750/- [Page 8 of reply]

**B. Facts of the complaint**

7. The complainants have made the following submissions in the complaint: -
- a. That respondent company issued allotment letter dated 16.06.2011 in favour of complainant. The builder buyer agreement was duly executed between the allottees and the respondent on 16.06.2011 in respect of booked unit no 282 A, 2<sup>nd</sup> floor, tower A later changed to unit no. 615, 6th floor, block F, admeasuring 500 sq. ft. in INXT City Centre in real estate project namely INXT City Centre. The addendum to the builder buyer agreement was also executed between complainant and respondent company and was attached as Annexure A of the builder buyer agreement.
  - b. That as per clause 2 of builder buyer agreement and preamble paragraph of addendum to the agreement, the respondent company was liable to pay assured return amount of Rs. 71.50/- per sq. ft. per month from the date of execution of builder buyer agreement till the date of offer of possession. The respondent





- company has failed to pay any assured return amount since September 2018 till date to the complainant.
- c. As per clause 32.2 of builder buyer agreement and preamble paragraph of addendum to the agreement, the respondent was also liable to pay assured return amount of Rs. 65/- per sq. ft. per month from the date of offer of possession till first 36 months from date of completion or till the date the said unit is put on lease, whichever is earlier.
- d. As per clause 2 of the builder buyer agreement dated 16.06.2011, the respondent company was liable to deliver possession of the booked unit within a period of 3 years from the date of execution of the agreement. Therefore, the due date of delivery of possession is 16.06.2014. The respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date. The respondent company after a delay of six years, also issued illegal and unlawful letter dated 27.03.2018 claiming completion of construction of Block F. However, the respondent company has failed to obtain occupation certificate in respect of Block F where the booked unit is situated till date.
- e. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent and in order to allure the complainant. However, the respondent has failed to abide all the



obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.

- f. Therefore, the present complainant is forced to file present complaint before this hon'ble authority under section 31 of the Real Estate Regulation and Development Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.

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

8. The complainant has sought following relief(s)
- a. Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.
  - b. Direct the respondent to pay delayed possession charges from due date of delivery of possession of 26.05.2013 till date of offer of possession along with occupation certificate of booked unit.
  - c. Direct the respondent to pay pending monthly assured return of Rs. 71.50/- per sq. ft. (Rs. 35,750/- per month) accrued from the Month of September 2018 along with interest to the complainants.
  - d. Direct the respondent not to create any third-party rights.
  - e. Direct the respondent to pay compensation for mental agony and harassment on account of deficiency in service and litigation charges.
  - f. Direct the respondent not to charge anything which is not part of the payment plan.



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.

**D. Reply by the respondent:**

10. The respondent contested the complaint on the following grounds:

- a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers' agreement dated 16.06.2011.
- b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before the Authority as the reliefs being claimed by the complainants 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 having not taken registration from SEBI Board cannot run, operate, 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".

- c. 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. 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. 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.



- d. That Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" as '*means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule*'. 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. 30,90,750/- till September, 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
- e. 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 respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.



- f. 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 17.05.2023. 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, this Hon'ble authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019.
- g. That it is also relevant to mention here that the commercial unit of the complainant was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income as is clear from the absence of clause of possession. 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.
- h. That further in the matter of *Bharam Singh & Ors vs. Venetian LDF Projects LLP* (Complaint No. 175 of 2018) and *Jasjit Kaur Grewal*

vs. *M/s MVL Ltd.* (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has ~~taken~~ upheld its earlier decision of not entertaining any matter related to assured returns.

- i. That the complaint has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The COVID pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. For the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- j. That the complainants entered into an agreement i.e., BBA dated 16.06.2011 with respondent owing to the name, good will and reputation of the respondent company. That it is a matter of record and admitted by the complainant that the respondent duly paid the assured return to the complainants till September, 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.

- k. That the present complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while section 11 to section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.
- l. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the



spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.

- m. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. The complainants were sent the letter dated 27.03.2018 informing of completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence, the complaint deserves to be dismissed.
- n. That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the complaint filed by the complainants deserves to be dismissed with heavy costs. It is further submitted that none of the relief as prayed for by the complainants is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.



11. Written submissions filed by the parties in each case are taken on record and considered by the authority while deliberating upon the relief sought by the complainants.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

15. 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.*

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

**F. Findings on the objections raised by the respondent**

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

17. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the

definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

19. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and 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 State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.



20. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is ~~no~~ stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

*"... 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."*

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

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

**G.I Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.**

22. In the present matter, as per BBA dated 16.06.2011 the respondent was obligated to complete the construction of the said unit within 3 years from the date of BBA i.e., by 16.06.2014. Although as per clause



32 of the agreement executed inter-se the parties, the respondent was not obligated to handover the physical possession of the subject unit instead undertook to put the said unit on lease up on completion of the said project. The relevant clause is reproduced herein below for the ready reference:

*"That on completion of the project, the Developer undertakes to put the Said Unit on lease and to effectuate the same the Allottee hereby authorizes the Developer (and agrees, if deemed expedient, to execute any other necessary document in future in this regard in favor of the Developer) to negotiate and finalize leasing arrangement with any suitable tenants. The Allottee expressly authorizes the Developer to enter into any agreement with any third party for leasing of the Said Unit and to appear before the HUDA or any other competent authority of Assurances and to lodge the lease deed as aforesaid for registration and to pay stamp duty and registration charges on account of the Allottee, in respect of the lease if payable."*

23. The authority hereby directs the respondent to offer the constructive possession of the unit after obtaining OC from the competent authority and then it may put the said unit on lease.

**G.II. Direct the respondent to pay delayed possession charges from due date of delivery of possession of 26.05.2013 till date of offer of possession along with occupation certificate of booked unit.**

**G.III. Direct the respondent to pay pending monthly assured return of Rs. 71.50/- per sq. ft. (Rs. 35,750/- per month) accrued from the Month of September 2018 along with interest to the complainants.**

24. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the addendum to the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was



paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. The authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.*** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

25. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered



within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)* as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

26. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
27. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants





besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.

28. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and 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***  
***18(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."***

29. A builder buyer agreement dated 16.06.2011 was executed between the parties. The due date is calculated as per clause 2 of BBA i.e., 3 years from the date of execution of this agreement. Therefore, the possession was to be handed over by 16.06.2014. The relevant clause is reproduced below:

***"The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs. As per Annexure 'A' (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex, the***



*Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession."*

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides 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 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]***

*For 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."*

31. 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., 24.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
32. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 16.06.2011,



the possession of the subject unit was to be delivered within stipulated time i.e., 16.06.2014.

33. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
34. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per "Annexure A – Addendum to the agreement". The rate at which assured return has been committed by the promoter is Rs. 71.50/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. The relevant clause is reproduced below for ready reference:

*"The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:*

*This addendum forms an integral part of builder buyer Agreement dated 16.06.2011*

*A. Till Completion of the building : Rs. 71.50/- per sq. ft.*

*B. After Completion of the building : Rs. 65/- per sq. ft."*

35. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs. 35,750/- per month whereas the delayed possession charges are payable approximately Rs. 23,364/- per month. By way of assured



return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

36. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
37. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of BBA dated 16.06.2011, the promoter had agreed to pay to the complainants allottee Rs.71.50/- per sq. ft. on monthly basis till completion of the building and Rs.65/-



per sq. ft. on monthly basis after the completion of the building. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

38. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block F is complete wherein the subject unit is located vide letter dated 27.03.2018. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of Rs.30,90,750/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., **@ Rs. 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease.**

39. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

**G.IV. Direct the respondent to not create any third-party rights on the unit in question.**

40. The respondent in the present matter has not yet cancelled the subject unit and the complainant has sought the directions of the authority for handing over the possession of the unit. Since the authority has already directed the respondent to handover the possession of the unit therefore in view of the same the said relief stands dismissed.

**G.V. Direct the respondent to pay compensation for mental agony and harassment on account of deficiency in service and litigation charges**

41. The complainants are also seeking relief w.r.t. litigation expenses & 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. Therefore, the complainants may



approach the adjudicating officer for seeking the relief of litigation expenses.

42. In the present case, the authority (Shri. Arun Kumar, Hon'ble Chairperson, Shri. Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 30.04.2024, the same was fixed for pronouncement of order on 06.08.2024. However, the said order was not pronounced on 06.08.2024 and was further adjourned for orders on 24.09.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora got retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.

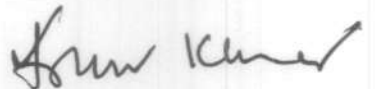
#### **H. Directions of the authority**

43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
- The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease.



- ii. The respondent is directed to handover possession of the unit on obtaining the occupation certificate to the complainant, as per the Builder Buyer Agreement.
  - iii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
  - iv. The respondent shall not charge anything from the complainants which is not the part of the payment plan/builder buyer agreement.
44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
45. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
46. File be consigned to the registry.

v.l - 5  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 24.09.2024