BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	1389 of 2023
Date of complaint:	06.04.2023
Date of decision:	22.08.2024

Sandhya John Sarai
R/o: - G 1405, Corona Optus Apartment, Sector-37C,
Gurugram, Haryana - 122001. **Complainant**

Versus

Vatika Ltd.
Office address: Vatika Triangle, 4th Floor, Sushant Lok Phase I, Block A, MG Road, Gurugram – 122002. **Respondent no.1**

Trishul Industries
Office address: Vatika Triangle, 7th Floor, Sushant Lok-I, Block A, MG Road, Gurugram – 122002. **Respondent no.2**

CORAM:

Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Shri Tarun Biswas (Advocate) Complainant
Ms Ankur Berry (Advocate) Respondent no.1
None Respondent no.2

ORDER

1. The present complaint has been filed by the complainant/allottee 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount 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 tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	INXT City Centre, Sector 83, Gurugram
2.	Nature of project	Commercial Complex
3.	Project Area	10.72 Acres
4.	DTCP license	122 of 2008 dated 14.06.2008 Valid upto 13.06.2016
5.	Name of the Licensee	Trishul Industries
6.	RERA registered/ not registered and validity status	**Not Registered**
7.	Unit no.	Floor-3rd, Block – A (page no. 43 of complaint)
8.	Unit admeasuring	500 sq. ft. (super area)
9.	Date of execution of builder buyer agreement	20.02.2012 (page 41 of complaint)
10.	Possession clause	**Not Available**
11.	Assured return clause	***10.*** *"**(V).** The Developer expects to lease out the said Commercial Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.65 per sq. ft. super area per month for the first term (of whatever period). It on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.65 per sq. ft. super area per month, then the Developer shalt pay to the Buyer a one-time compensation calculated at the rate of @120 per sq. ft. super area for every one rupee drop in the tease rental below Rs.65 per sq. ft. super area per month. This provision shall not*

		apply in case of second and subsequent leases/ lease terms of the said Commercial Unit. ***(vi)*** *However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs.65 per sq. ft. super area, then, the Buyer shall pay to the Developer additional basic sale consideration calculated at Rs.60 per sq. ft super area of the said Commercial Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.65 rupees per sq. ft."*
12.	Due date of delivery of possession	**20.02.2015** ***"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018*** Hon'ble Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that* ***when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*** In view of the above-mentioned reasoning, the date of the execution of agreement dated 20.02.2012 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 20.02.2015.
13.	Total sale price	Rs.25,00,000/- (as per BBA page 43 of complaint)
14.	Total amount paid by the complainant	Rs.25,64,375/- (as alleged by the complainant page 18 of complaint) (a copy of cheque is annexed at page no. 40 of complaint)
15.	Assured return paid by the respondent	Rs.25,82,387/- (as per creditors ledger page 32 of reply and also confirmed by the counsel for

		the complainant during the proceedings dated 18.01.2024)
16.	Letter by respondent with regard to completion of construction	26.03.2018 (page no. 37 of reply)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

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

i. That the complainant is a peaceful and law-abiding citizen of India. The complainant works from and stays at the address mentioned above.

ii. That the complainant lives at the address given in the present complaint. The subject matter real estate project is "INXT City Centre" which is being developed as a commercial project by the respondent promoter herein. The respondent no.1 is the company Vatika Ltd having its registered address as mentioned above. The respondent no.2 is the land-owning entity and the confirming party in the BBA. Respondent no.1 is also the entity in whose name the license no. 122 of 2008 was issued by Director of Town and Country Planning Haryana for the purposes of the said project in question. The respondent no.1 herein is the principle & controlling partner of the respondent no.2.

iii. The respondent no.2 has executed agreements assigning development rights, right to advertise, sell, convey units in the said project in favour of respondent no.1 and respondent no.1 is the developer. The complainant decided to purchase a property in Delhi N.C.R in 2011. Thereafter, the complainant met with officials of the respondent no.1, wherein it was represented that the respondent is a very reputed developer who has successfully completed projects in the past and delivered to homebuyers within stipulated time. The respondent no.1 is duly incorporated company under the Companies Act with Roc at Delhi and have eight directors at the

present namely Gautam Bhalla, Anil Bhalla, Brij Kishore Singh, Surendar Singh, Abhishek Paliwal, Vijender Kumar, Ruchi Munjal, Manish Agarwal. The respondent no.1 is engaged in real estate industry. The present status of the company is active as shown in the MCA website.

iv. That the complainant was apprised of the project which is titled as India Next City Centre "INXT City Centre" having total area of 10.718 Acre and is located at Sector 83, Village Shikohpur, Tehsil, Manesar, District Gurugram, Haryana.

v. That, in pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainant considered booking a unit at the said project. It was represented and assured by the respondent that the project including the unit of the respondent would be completed by end of September, 2014. The respondent to seal the deal apprised the complainant about its special offer that it had floated to its prospective and present allottees. That in addition to the above the complainant was also induced under the representations of assured returns scheme. The highlight of the scheme was that if the complainant deposits the full amount towards basic sale consideration of the proposed unit and opts for the leasing arrangement then he will be entitled for assured monthly returns @ Rs.65/- per sq. ft of super area from the date of execution of the builder buyer agreement till the constructions of the said unit is complete. Further, a leasing arrangement was also offered which if opted for, the promoter will remit an assured monthly lease rental computed @ Rs.65/- per sq. ft of super area from the date of completion of the unit till three years.

vi. That the complainant being swayed by the lucrative features along with the aforesaid scheme was lured into making a booking in the project for a sum of Rs.25,64,375/- amount paid through cheque with cheque number 027458

dated 19.03.2012 drawn on Axis bank having Rs.25,64,375/- amount. Thus, the complainant had paid the entire sale consideration towards the unit and was accordingly issued an allotment letter dated 24.03.2012 which stated the date of completion of the project to be 30.09.2014. Respondent no.1 issued a receipt acknowledging the payment of sale consideration.

vii. That a builder buyer agreement dated 20.02.2012 was also executed which included all the details of the project such, terms and condition as agreed between both the parties. The complainant was originally allotted unit number 319C situated on the 3rd floor of Block No. C admeasuring approximately 500 sq. ft. in the project titled 'INXT City Centre' for a total sale consideration of Rs.25,64,375/-.

viii. Under the said builder buyer agreement, the respondent promised, assured, represented, and committed to the complainant that this project would be completed and will be handed over to the buyer within the above-mentioned stipulated period. Further, as per clause 1 of the builder buyer agreement, the respondent assured that the time is of the essence for the purpose of the agreement. Until then, monthly remissions of assured returns would be the unconditional obligation of the respondent no.1.

ix. That the due date of delivery of the project as per the initial agreement between the builder and buyer was 30.09.2014 however, the revised date of completion reflecting on RERA website is 31.01.2020.

x. Thereafter, several efforts from the complainant were made to seek timely updates about the status of the construction work at the site but due to negligence of the respondent, there was no satisfactory response from their end. Despite, the fact that the entire consideration amount was paid to the respondent at the time of signing of builder buyer agreement.

xi. That in between the respondent unilaterally re-allotted the complainant's original allotted unit and allotted new unit in Tower-D Unit No. 137 vide letter dated 04.10.2013.

xii. The respondent no.1 in its scheme of assured returns had remitted a monthly return of Rs.32,500/- since the date of BBA till February, 2018 and lease rental till September, 2018. That in complete breach of the terms of the builder buyer agreement the respondent no.1 commenced pay outs in the name of the lease rentals which were to commence only upon completion of the project in all respects. The respondent no.1 cannot evade his obligation to continue to remit assured returns till the date the project is complete and occupation certificate is granted and only after that the assured lease rental for three years could have begun.

xiii. That post September, 2018 the respondent no. 1 completely stopped remitting any amount to the complainant. That to the best of knowledge of the complainant the license issued to the respondent is also not renewed.

xiv. The respondent had miserably failed not only in the completion of the project but also the respondent in cahoots with each other, unilaterally walked away from the earlier agreed upon clause of assured return scheme/lease agreement and completely washed its hands from its contractual obligation citing new law passed by the Government of India, which was a very important part of the agreement for the buyer by sending an email dated 14.06.2019.

xv. The respondent no.1 vide email dated 14.06.2019 also provided the complainant with an addendum agreement amending the original terms of the builder buyer agreement. The addendum amended the leasing arrangement obligation of the respondent no.1 to leasing assistance only which the complainant was constrained to sign. That one of the relevant clause of the addendum was that the respondent no.1 would clear the arrears of assured

returns upon signing of the addendum however, the respondent no.1 failed to comply with the same and thus the addendum is null and void. The complainant along with hundreds of other innocent homebuyers have become victims of the scam of assured return schemes rolled out by fraudulent builders.

xvi. That the respondent at various instances violated the terms and condition of the builder buyer's agreement by: (i) Not completing the project as per the due date of completion; (ii) Non remission of the promised monthly assured returns since September, 2018; (iii) Unilaterally commencing the term of three years of assured lease rental in contravention of the BBA; (iv) Not obtaining valid OC for the project.

xvii. That after the enactment of the Real Estate Regulatory Authority Act, 2016 the project was registered with Authority and has registration number (Not issued yet) and Project Temp ID is RERA-GRG-97-2018.

xviii. That, it is unambiguously lucid that, no force majeure was involve and the project wasn't completed on time only because of the lacklustre attitude of the respondent to complete the said project. The respondent no.1 refused to honour the initial agreement with the complainant and refused to pay the assured returns and lease rentals of three years both calculated at Rs 65 per square feet super area per month.

xix. That, the respondent is not only guilty of deficiency of services but also for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainant by misguiding them and keeping them in dark about the state of the project.

xx. That the respondent no.1 ought not to be allowed to take undue advantage of Banning of Unregulated Deposits Scheme Act, 2019 as this Hon'ble Authority in Madhushree Khaitan vs M/s Vatika Limited according to the para 47 of judgement of HRERA held that "the money was taken by the

builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment the allottee has a right to approach the authority for a redressal of his grievances by way of filing a complaint.

xxi. That the complainant is therefore constrained to file the present complaint for refund, damages and compensation against the respondents.

C. Relief sought by the complainant:

4. The complainant has clarified the reliefs by filing an application for amendment in relief during the proceedings dated 25.04.2024 and sought the following relief(s) and during proceedings dated 22.08.2024, the counsel for the respondent states that they have no objection to the amendment in relief(s):
   a. The respondent no.1 be directed to issue cancellation of allotted unit in view of the default by respondent no.1 to fulfil obligation on his part.
   b. The respondent no.1 be directed to refund the entire amount of Rs.25,64,375/- paid by the complainant along with interest rate as applicable as per prescribe under the Real Estate (Regulation and Development) Act, 2016.
   c. To pay litigation cost of Rs.50,000/- to the complainant.
   d. Any other relied which the Hon'ble Court may deem fit and proper in the present fact and circumstances in the interest of justice.
5. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent no.1 has contested the complaint by filing reply on the following grounds: -

i. 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, India.

ii. 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 20.02.2012, as shall be evident from the submissions made in the following paras of the present reply.

iii. That the present complaint is not maintainable or tenable in the eyes of law. The complainant has 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. 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".

iv. 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.28,82,387/- till September, 2018. The

complainant has not come with clean hands before this Hon'ble Authority and has suppressed these material facts.

v. 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.

vi. 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 BUDS 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 16.08.2023. 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, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

vii. That in the matter titled Naresh Prasad vs M/s Vatika Ltd. & Anr, in CS No. 338 of 2022, the Ld. Additional Civil Judge (Senior Division), Gurugram vide order dated 19.04.2022 in para 49, 50 & 52 held as follows - "*49. Further, this Court is of the considered view that if any Company wishes to continue with such assured return schemes, then it has to be register itself with the Securities and Exchange Board of India, being part of the collective investment schemes... 52. Further, even in BUDS Act, 2019 the provisions have been provided for redressal of grievance of the depositors' wherein designated Courts have been created, so that the depositors can put up their claims before that designated courts.*"

viii. That further the Rajya Sabha, parliamentary committee on subordinate legislation on 24.03.2021, presented report no.246. That vide the said report, the committee observed upon the objectives of coming up with a special and comprehensive law i.e., to check illicit deposit schemes. The committee also focused on bringing clarity upon the deposit that constitute legitimate business transactions and thus fall within the "normal course of business." The committee further expressed its dismay, on the fact that most of the States/UTs had shown lax and nonchalant attitude in implementation of the crucial legislation. The casual approach of the State/UT in not issuing the notification of the designated courts and their jurisdiction. The report of the parliamentary committee is noteworthy since the importance of Jurisdictional designated court/authorities for implementation of BUDs Act, 2019 and the ambit of definition of "DEPOSIT" would be brought to light only upon institution of proper rule and duly designated/jurisdictional Court to adjudicate upon issues of assured return schemes/collective investment schemes/other similarly founded schemes.

ix. 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. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant is not meant for physical possession and rather is for commercial gain only.

x. That in the matter of *Brhimjeet & Ors* vs. *M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani. Thus, the RERA Act, 2016 cannot deal with issues of assured return and hence the present complaint deserves to be dismissed at the very outset. That further upheld its earlier decision of not entertaining any matter related to assured returns.

xi. That further in the matter of *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (complaint no.58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.

xii. That the complainant has come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain 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. The complainant has instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 20.02.2012 and issued completion of construction letter on 26.03.2018. That for the fair adjudication of grievance as alleged by the complainant, 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.

xiii. It is submitted that the complainant entered into an agreement i.e., BBA dated 20.02.2012 with respondent owing to the name, good will and reputation of the respondent. That it is a matter of record and admitted by the complainant that the respondent duly paid the assured return to the complainant 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 and duly issued letter of completion on 26.03.2018.

xiv. The present complaint of the complainant 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.

xv. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT006000000010822 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.

xvi. 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. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed, since the claim/relief of the complainant for pending assured return is *ipso facto* void.

xvii. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the Complainant deserves to be dismissed with heavy costs.

xviii. The prayer of refund combined with the relief of arrears of assured return would cause the respondent to suffer from double jeopardy and the Hon'ble Authority, in the interest of justice and in terms of law of the land, ought not do it.

xix. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That none of the relief as prayed for by the complainant 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 this Hon'ble Authority. That the present

complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Further during proceedings dated 22.08.2024, the counsel for the complainant submits that no specific relief is being sought against respondent no.2 i.e., M/s Trishul Industries. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Written submission made by the respondent no.1.

8. The respondent no.1 has filed the written submission on 01.08.2024 and the same are taken on record. No additional facts apart from the reply has been stated in the written submission.

F. Jurisdiction of the authority

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

F. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

11. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.

G. Findings on objections raised by the respondent:

G.I. Objection regarding non-payment of assured return due to implementation of BUDS Act.

13. The respondent-promoter raised the contention that the payments of assured return were stopped due to implementation of BUDS Act. All the pleas advanced in this regard are devoid of merits. In the present matter the complainant has amended the relief claimed by filing an application for amendment in relief and is only claiming refund of paid amount and litigation cost. Therefore, the Authority is of the view that the objection raised by the respondent is automatically become ineffective/infructuous. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

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

14. 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.

15. 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 not 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."*

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

H. Findings on the relief sought by the complainant.

H.I. Direct the respondent no.1 to issue cancellation of allotted unit in view of the default by respondent no.1 to fulfil obligation on his part.

H.II. Direct the respondent no.1 to refund the entire amount of Rs.25,64,375/- paid by the complainant along with interest rate as applicable as per prescribe under the Real Estate (Regulation and Development) Act, 2016.

H.III. Any other relied which the Hon'ble Court may deem fit and proper in the present fact and circumstances in the interest of justice.

17. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

18. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

> *"**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.-*
> *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
>
> *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."*
>
> ***(Emphasis supplied)***

19. On consideration of documents available on records and submission made by both the parties. The complainant was allotted a unit at 3rd floor, in block-A, ad-measuring 500 sq. ft. for a total sale consideration of Rs.25,00,000/- against which the complainant-allottee paid an amount of Rs.25,64,375/- vide a builder buyer's agreement executed between the parties on 20.02.2012 and However, there is no possession clause available in BBA and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -:

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when*

there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

20. Accordingly, the due date of possession is calculated as 3 years from the date of execution of buyer's agreement i.e., 20.02.2012. Therefore, the due date of possession comes out to be 20.02.2015. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.,** civil appeal no. 5785 of 2019, decided on 11.01.2021.

   "...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project......."

21. It has come on record that against the sale consideration of Rs.25,00,000/-, the complainant has paid an amount of Rs.25,64,375/- to the respondent no.1. However, the complainant contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors

Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

> *"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
23. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit and she is well within right to seek refund of the paid-up amount.
24. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
25. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee

intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) 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."*

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
27. 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., 22.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
28. The definition of term "interest" as defined under section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. The relevant section is reproduced below: -

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *... (ii) **the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded,** ..*

29. Therefore, The authority hereby directs the promoter to return the amount received by him i.e., Rs.25,64,375/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as

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on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules ibid.

30. The respondent-promoter has paid an amount of Rs.25,82,387/- as an assured return upto September, 2018 to the complainant-allottee. The said amount shall be adjusted/deducted from the payable amount.

H.IV. Direct the respondent to pay litigation cost of Rs.50,000/- to the complainant.

31. The complainants are seeking above mentioned relief w.r.t. legal expenses. 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 section71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the authority

32. 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):

    a. The respondent no.1 is directed to refund the entire amount i.e., Rs.25,64,375/- received by it from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.

b. The amount of assured return of Rs.25,82,387/- already paid w.r.t. unit allotted shall be adjusted/deducted from the payable amount.

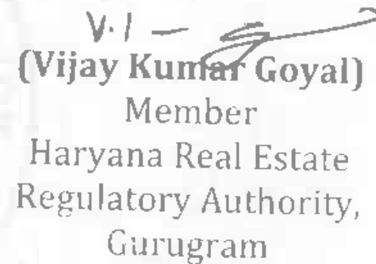
c. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

d. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.

33. Complaint stands disposed of.

34. File be consigned to the registry.

Dated: 22.08.2024



(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM