

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

Complaint no.	3636 of 2023
Date of filing complaint	01.09.2023
First date of hearing	06.12.2023
Date of decision	04.09.2024

Bhavkaran Singh

Resident of: B-33, LGF, South Extension, Part-II, New
Delhi-110049

Complainant

Versus

Vatika One on One Private Limited

Regd. office: Flat no. 621A, 6th Floor, Devika Towers, 6,
Nehru Place, New Delhi - 110019

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Gupta (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Vatika One on One", Sector 16, Gurugram
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.12125 acres
4.	DTCP License no. and validity status	License no. 05 of 2015 dated 06.08.2015 valid upto 05.08.2020.
5.	Registered/ not registered	Registration no. 237 of 2017 dated 20.09.2017 valid upto 19.09.2022.
6.	Booking/Application form	17.02.2014 (Annexure A1 at page 26 of the complaint) *Letter dated 30.12.2014 was sent by respondent to complainant promising a commitment of Rs. 75,825/- per month for above mentioned flat (Annexure A5 at page 34 of complaint)
7.	Allotment letter	03.08.2015 (Annexure A2 at page 31 of the complaint)
8.	Date of builder buyer agreement	12.02.2016 (Annexure A6 at page 36 of complaint)
9.	Unit no.	608, 6 th floor, Block 4, admeasuring 500 sq. ft. (Page 38 of complaint)
10.	Provision regarding assured return	Clause 15. Assured Return in full down payment cases "The Developer may, where the Buyer has 100% of the total sale consideration and other charges for the Commercial unit, upon signing of this Agreement pay Rs. 151.65/- (one hundred fifty-one and sixty five paise only) per sq. ft. super area per month by way of assured



		<p>return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme.” (BBA dated 12.02.2016 at page 47 of complaint)</p>
11.	Possession clause	<p>Clause 17 of the BBA “The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.....” (BBA dated 12.02.2016 at page 47 of complaint)</p>
12.	Due date of possession	<p>12.02.2020 (Calculated to be 48 months from the date of execution of builder buyer agreement, i.e., from 12.02.2016)</p>
13.	Basic sale consideration	<p>Rs.48,79,500/- (BBA at page no. 39 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs.53,92,713/- (Fully paid by cheque dated 17.10.2014 and received by respondent on 20.10.2014) (Annexure A3 at page 32 of complaint)</p>
15.	Assured returns paid by respondent to complainant till September, 2018	<p>Rs. 22,74,750/- (Annexure R3 at page 33 of reply)</p>
16.	Occupation Certificate	<p>06.09.2021 (Annexure R2 at page 30 of reply)</p>

B. Facts of the complaint:

3. The complainant has made the following submissions:

- a) That based on various representations and assurances given by the respondent, the complainant booked a unit in the respondent's project "Vatika One on One" on 17.10.2014.
- b) That based on the application and payment made by the complainant, the respondent allotted a unit no. 608, block 4, admeasuring 500 sq. ft super area in the said project. That the complainant had paid the entire sales consideration of Rs.40,00,000/- to the respondent on the date of execution of builder buyer agreement by cheque no. 053152 dated 23.07.2010 drawn on Axis Bank which was duly cleared upon presentation by the respondent.
- c) The complainant paid a total sale consideration of Rs.53,92,713/- on 17.02.2014. The said payment was duly acknowledged by the respondent vide receipt voucher no. 9195403555, dated 20.10.2014.
- d) That the respondent issued a letter dated 30.12.2014, further promising the commitment of Rs. 75,825/- per month for the above mentioned flat and enclosed a cheque bearing No. 807705 dated 07-01-2015 for an amount of Rs.68,242.5/- (that is Rs.75,825 less 10% TDS) drawn on HSBC Bank.
- e) That finally on 12.02.2016, the complainant finally signed the builder buyer agreement with the respondent after a delay of almost two years due to the fault of the respondent. However, the builder buyer agreement categorically promises assured return to the complainant, the relevant clause is as follows:

"...15. ASSURED RETURN IN FULL DOWN PAYMENT CASES

The Developer may, where the Buyer has paid 100% of the total sale consideration and other charges for the Commercial Unit, upon signing of this Agreement pay Rs. 151.65/- (Rupees One Hundred Fifty-One Seventy-Five Paise only) per sq. Ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial



Unit as per its policy, from the date of execution of this agreement till the construction of the Said Commercial Unit is complete.

16.1. The Developer will pay to the Buyer Rs.130/- (Rupees One Hundred and thirty only per sq. Ft. super area of the said unit per month as committed return for up to three years from the date of the completion of construction of the said Building or the said Unit is put on Lease, whichever is earlier. The Buyer will start receiving lease rental in respect of the said Unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental....

...16.5. The Developer expects to lease out the Said Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs. 150/- per sq. Ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.130/- per sq. ft. super area per month, than the Developer shall pay to the Buyer a one time compensation calculated at the rate of @Rs. 133/- (Rupees One hundred and thirty three only) per sq. ft super area for every one rupee drop in the lease rental below Rs.130/- (Rupees One Hundred and thirty only) per sq. Ft. super area per month... "

- f) That the complainant till date has not got the possession of the unit and the assured return payments have also been stopped malafidely since September 2018. Consequently, the total amount of assured return due from the Respondent is Rs.40,94,550/- till 31.03.2023.
- g) That the complainant despite following up multiple times could not get a satisfactory response regarding assured return and the status of the unit. The respondent even changed the contact details and shifted office, to avoid questions. Moreover, instead of paying the promised assured return the respondent has been delaying the handing over of the unit and sending out false and frivolous e-mails to the complainant.
- h) That the Authority in similar case of Mr. Harshvardan Krishnaatray vs M/s Vatika One (Complaint no.617 of 2020), Harshit Nagpal vs M/s Vatika One on One Pvt Ltd. (Complaint no.4371 of 2020) and Anu Mehta vs M/s Vatika One on One Pvt Ltd (Complaint no.2331 of 2021) had granted the relief of assured returns to the complainants.
- i) That the complainant visited the office of the respondent in the month of January 2023, and was informed that the premises have been leased ✓

to the Air India/Tata and is under process of fitting out. The respondent further ensured that the assured rent would commence from March 2023. However, to the utter shock of the complainant, the respondent sent an addendum agreement in which the complainant was to waive of all past dues. The complainant also got to know from some employees of the respondent, that his unit has been changed and allocated to another third party.

j) That the complainant, continued to raise queries on the portal of the respondent and called the office multiple times to get information regarding the status of his unit and the assured return promised to him. However, the respondent merely responded in a mechanical manner on the portal by marking the query as "Resolved". The calls of the complainant went unanswered. Hence, the complainant left with no other alternative is filing the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - i. Direct the respondent to pay a delay interest @18% per annum for not completing and delivering the said unit within the time frame agreed in the builder buyer agreement and allotment letter.
 - ii. Direct the respondent to pay assured return for the pending months since September 2018 which amounts to Rs.40,94,550/-.
 - iii. Direct the respondent not to levy any holding charges on the complainant.
 - iv. Impose penalty on the respondent for contravention of Section 11(4)(a) of the RERA Act, 2016.
 - v. Direct the respondent to execute conveyance deed as per the agreed terms.
5. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 28.02.2024:

- a) That the complainants have got no locus standi or cause of action to file the present complaint, same being based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment letter dated 17.11.2014 and BBA dated 12.02.2016.
- b) That complainant though repeatedly reiterates that the rights as demanded are in terms of the BBA however the complainant is reading the same preferentially. The clause 15, 16 and 17 of the BBA dated 12.02.2016 are to be read simultaneously for the correct interpretation of rights and terms and conditions agreed between the complainant and respondent.
- c) That the present complaint ought to be dismissed since the primary claim of the complainant being DPC and AR even though in terms of the BBA read simultaneously the claims as raised are apparently false, frivolous and an attempt to achieve unjust enrichment. That clause 15 of the BBA defines the terms qua assured returns in full down payment cases being due only till completion of construction. Further clause 16 of the BBA being leasing arrangement, the complainant was aware that the intended purpose of the unit was for leasing, whereby the respondent was to negotiate and finalize the leasing arrangement in respect of the unit whereas clause 17 gives tentative timeline for completion of the project.
- d) That the construction of the project has already been completed and the projection in question has received the occupation certificate on 06.09.2021.
- e) That the present complaint is not maintainable or tenable in the eyes of the law as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' or any 'Committed Returns' on the deposit schemes have been ✓

- banned. The respondent company having taken no registration from the SEBI board cannot run, operate, and continue an assured return scheme. Further, the enactment of BUDS read with the companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being taken within the definition of 'Deposit.'
- 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 20.03.2024. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.
- g) That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question

- regarding its own jurisdiction in assured return matters, adjourned the matter as any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- h) That the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to the operation of law. As a matter of fact, the respondent duly paid an amount of Rs. 22,74,750/- till September 2018.
- i) That the complainant is seeking the relief of assured returns, and this Authority has no jurisdiction to entertain the present complaint as has been decided in the complaint case no. 175 of 2018, titled as "Sh. Bharam Singh and Ors. Vs. Venetian LDF Projects LLP" by the Authority itself.
- j) That after completion of construction the respondent in terms of the agreed terms of the BBA also roped in possible tenant namely M/s Google Connect Services India Pvt. Ltd. And lease deed was signed for the large office space which included the unit of the complainant on 22.06.2020, however the same was illegally terminated by the tenant on 31.12.2021 of which the complainant is well aware.
- k) That in the matter titled as Anoop Kumar Rath versus M/s Sheth Infra-world Pvt. Ltd. In Appeal no. AT00600000010822 vide order dated 30.08.2019, the Maharashtra Appellate Tribunal while adjudicating points 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 the RERA Act, 2016.
7. 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 complainant.

E. Jurisdiction of the authority:

8. 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

9. 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 the entire Gurugram District for all purposes 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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.

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

12. The respondent has raised an objection that 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.
13. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated 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."

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

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay a delay interest @18% per annum for not completing and delivering the said unit within the time frame agreed in the builder buyer agreement and allotment letter.

G.II Direct the respondent to pay assured return for the pending months since September 2018 which amounts to Rs.40,94,550/-.

14. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

I. Assured returns

15. The complainant is seeking unpaid assured returns on monthly basis as per addendum to builder buyer agreement dated 12.02.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum to builder buyer 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*) whereby relief of assured return was declined by the authority. 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 while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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.

16. 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. 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.

17. 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.
18. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottees later. In view of the above, the respondent is liable to pay assured return to the complainant-allottees in terms of the builder buyer agreement dated 12.02.2016.

II. Delay possession charges.

19. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges with respect to the subject unit 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."*

20. The subject unit was allotted to the complainant vide builder buyer agreement dated 12.02.2016. The due date of possession had to be calculated to be 48 months from the date of execution of the builder buyer agreement. Accordingly, the due date of possession comes out to be 12.02.2020. As per the builder buyer agreement, the respondent developer

was under an obligation to further lease out the unit of the complainant post completion.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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. *ibid.* 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."*

22. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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., 28.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*



the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

24. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 12.02.2020.
25. 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?
26. 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. The assured return in this case is payable as per "Builder buyer agreement". The rate at which assured return has been committed by the promoter is Rs.151.65/- per sq. ft. of the super area per month till the completion of the construction of the building which is more than reasonable in the present circumstances. 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 at Rs.75,825/- per month till completion of building whereas the delayed possession charges are payable approximately Rs.49,882.59/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottee is protected even after the completion of the building as the assured returns are payable even after completion of the building. 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 allottee 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.

27. 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.

28. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the builder buyer agreement. As per the builder buyer agreement dated 12.02.2016, the promoter had agreed to pay to the complainant allottee Rs.151.65/- per sq. ft. on monthly basis till completion of the construction 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 assured return was paid by the respondent-promoter till September 2018 at the rate of Rs.151.65/- per sq. ft., but later on after September 2018, 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.

29. In the present complaint, OC/CC for the block in which unit of complainant is situated has been received by the promoter on 06.09.2021. The Authority is of the view that the construction is deemed to be complete on receipt of

occupation certificate from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.151.50/- per sq. ft. per month from the date the payment of assured return has not been made i.e. from October 2018 till the date of completion of construction of the project, i.e., till the date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs. 130/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building or till the date the said unit is put on lease, whichever is earlier. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of annexure 1 of the builder buyer agreement 12.02.2016. Further, the Authority declines to order payment of any amount on account of delayed possession charges as their interest has been protected by granting assured returns till completion of construction of the unit and thereafter also up to 3 years at different rate from date of completion of the said building or the said unit is put on lease, whichever is earlier.

30. 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 complainant and failing which that amount would be payable with interest @ 9% p.a. till the date of actual realization.

G.III Direct the respondent not to levy any holding charges on the complainant.

31. In the case of **Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021**, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the

builder buyer agreement as per law settled by the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

Therefore, the respondent is directed not to levy any holding charges upon the complainant.

G.IV Impose penalty on the respondent for contravention of Section 11(4)(a) of the RERA Act, 2016.

32. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.
33. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also the complainant failed to provide or describe any information related to the above mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

G.V Direct the respondent to execute conveyance deed as per the agreed terms.

34. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession



of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

35. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter from the competent authority on 06.09.2021. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order.

H. Directions issued by the Authority:

36. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. The respondent is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.151.50/- per sq. ft. per month from the date the payment of assured return has not been made i.e. from October 2018 till the date of completion of construction of the project, i.e., till the date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs. 130/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building or till the date the said unit is put on lease, whichever is earlier. Further, in case the unit in question is



leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of annexure 1 of the builder buyer agreement 12.02.2016.

- II. The respondent is directed to pay the above outstanding accrued assured return amount till date along with interest rate of 9.10% per annum within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would become payable with interest @ 9.10% p.a. till the date of actual realization.
 - III. The respondent is directed not to claim holding charges from complainant at any point of time even after being part of the builder buyer agreement as per law settled by the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020.
 - IV. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order.
 - V. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
37. Complaint stands disposed of.
38. File be consigned to the Registry.

Dated: 28.08.2024

Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram