

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

Complaint no.: 140 of 2023
Date of complaint: 30.01.2023
Order pronounced on: 22.08.2024

Amit Kumar son of Sh. Vedpal
Resident of: - H. No. 1010, Sector-17B, Gurugram-
122001.

Complainant

Versus

M/s Vatika Limited.
Regd. Office at:- Unit No.-A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next
Gurugram, Gurgaon-122012, Haryana.

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Rishabh Gupta (Advocate)
Ms. Ankur Berry (Advocate)

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details.

2. 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:

S.no.	Particulars	Details
1.	Name of the project	"Vatika Trade Centre", situated at sector-83, Gurugram.
2.	Project area	0.826 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	258 of 2007
5.	RERA Registered	Not Registered
6.	Allotment letter	Not provided
7.	Unit no.	1813, 18th floor, tower A (as per BBA at page 14 of complaint)
8.	Change in Unit no. (Current Unit)	111, Tower-F in Vatika INXT City Centre (as per letter dated 29.07.2021 in additional documents placed on record by the complainant)
9.	Unit area	1000 sq. ft. (super area) (page 12 of the complaint)
10.	Date of builder buyer agreement	08.09.2010 (page 11 of complaint)
11.	Addendum to the agreement (for assured return clause)	08.09.2010 (page 44 of complaint)
12.	Completion clause	2. <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 Rs refer annexure-A (Rupees... ..) per sq. ft. of super area per month by way of</i>

		<i>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.</i>
13.	Assured return clause (as per Addendum to the agreement dated 08.09.2010)	This addendum forms an integral part of the builder buyer agreement dated 08.09.2010 a) <i>Till completion of the building Rs.71.50/-</i> b) <i>After completion of the building Rs.65/- per sq. ft.</i> (page 44 of complaint)
14.	Due date of possession	08.09.2013 (calculated from the execution of builder buyer agreement)
15.	Total sale consideration	Rs.40,00,000/- as per clause 1 of the buyer's agreement (page 14 of complaint)
16.	Amount paid	Rs.40,00,000/- as per clause 2 of the agreement and as per receipts provided by the complainant (page 14 of complaint)
17.	Assured return paid by respondent	Rs.59,60,500/- Till September, 2018. (as alleged in para 1 at page 5 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Legal Notice (For payment of Assured return)	Undated (page 46 of complaint)

B. Facts of the complaint

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

- a. That the complainant is law abiding citizen of India and living in the aforesaid mentioned address.
- b. That the complainant was in dire need of a commercial accommodation at Gurugram which may have good infrastructure and all basic facilities/ amenities for earning livelihood for his family members.
- c. That the respondent had advertised about their project under name and style "Vatika Trade Centre" situated in Sector- 83, Gurugram alleging to be consisting of many advance technologies and amenities/ infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the complainant had shown interest in the said project and agreed to purchase a unit in the said project.
- d. That the builder buyer agreement has been executed between the parties allotting unit no. 1813, located on 18th Floor, Tower- A, admeasuring 1000 sq feet super area. The total sale consideration of the said unit was Rs.40,00,000/- where in the whole consideration has been paid by the complainant. The same is also endorsed in clause 2 sale consideration of builder buyer agreement.
- e. That the as per clause no. 2 at page 4 of the builder buyer agreement, the construction was to be completed of the said complex within three (3) years from the date of execution of this agreement. It has been further agreed and acknowledged by the respondent company to pay the assured return as per Annexure A of the document attached with the builder buyer agreement.
- f. That it has been further been agreed and acknowledged by the respondent company to pay delayed penalty in form of assured return as per Annexure-A stating to be Rs.71.50/- per sq. ft. "till completing of the building" and Rs.65/- per sq. ft. "after completion of the building".

- g. That it has also been further agreed and acknowledged by the respondent company to lease the premises of booked flat is part @65/- per sq. feet. In the eventuality the achieved return being higher or lower than 65/- per sq. feet, then following rates would be applicable -
- a) If the rental is less than Rs.65/- per sq. feet than the complainant shall be refunded @ Rs.117/- per sq. feet for every Rs.1/- by which achieved rental is less than 65/- per sq. feet.
 - b) If the achieved rental is higher than Rs.65/- per sq. feet than 50% of the increased rental shall accrue to you free of any additional sale consideration.
- h. That till date, no possession has been handed over to the complainant and whenever the complainant tried to contact the respondent, the respondent used to give false assurances to the complainant about the completion of the project and revised date of possession.
- i. That the complainant regularly contacted the respondent through telephonically as well as through email to get the final date of possession but the respondent with malafide intention were not giving the positive answer to their request. The complainants sent various emails to the respondent to inform/commit the final date of delivery of possession but the respondent being in a dominant position and being a powerful person, never relied to the request made by the compliant.
- j. That as per clause 2 of the builder buyer agreement and 32.2, The respondent company agreed and acknowledged to pay bonafide lessee at a minimum rental of Rs. 65/- per sq, feet per month less tax deducted at source. In the event of Developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs 65/- per sq. feet per month to the allottee as Minimum Guaranteed Rent for the first 36 months

after the date of completion of the project or till the date the said unit is put on lease whichever is earlier. Thus, considering the contractual terms of the BBA, the respondent company has failed to offer the possession of the unit and has also failed to perform its part of contract as per BBA. The respondent company malafidely, deliberately and illegally, withhold the payment of assured return as Minimum Guarantee rent from October 2018 till date. The respondent company is in arrears of assured return i.e. Minimum Guarantee Rent for last 56 months amounting to Rs. 32,76,000/-.

- k. That the respondent is liable to pay the assured return amount of Rs.32,76,000/- (65000 - 6500 as TDS = 58500/-) (58500 x 56) to the complainant adhering the terms of the Builder Buyer Agreement dated 08.09.2010.
- l. That the respondent has failed to fulfill its obligations as under builder buyer agreement and also has failed to provide any offer of possession of the said unit till now. It is clear cut case of abuse of their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.
- m. That the complainant also served a legal notice through his counsel Sh. O.P. Lohia Advocate, through speed-postdated 10.01.2022, demanding the amount of assured return along with interest but the respondent company, being in a dominant position, has not replied to such legal notice and has also not paid the amount of the assured return as claimed.
- n. That the complainant after exhausting all his patience had lastly contacted to the respondent representative for providing the final revised date of possession of the said flat and to continue to pay the assured return amount as agreed and acknowledged by the respondent company but no

fruitful answer has been replied by the respondent and its officials. Hence, the cause of action firstly arose to the complainant against the respondent for non-performance of its part of contract as per BBA dated 08.09.2010 and still it is continuing one as possession has not been handed over to the complainant till now. Thus, the complainant has legal right to file the present complaint before the Hon'ble Authority.

- o. Thus, the respondent has also committed fraud with the complainant and has robbed them for usurping money and also his dreams as he has taken away a life-long dream of owning a space which shall support him during his remainder period of life. The respondents in the given circumstances, has voluntarily committed breached terms of the BBA executed and have acted arbitrarily for which they should be even prosecuted criminally for cheating, fraud and criminal breach of trust.
- p. That similar complaint no.518 of 2021 titled as "Ms Rohini Dua Versus Vatika One on one Pvt Ltd and complaint no. 617 of 2020 titled as "Harshvardhan Krishanaatray Vs. Vatika Limited where in both the judgments, the Hon'ble Authority has directed to the respondent company to pay the arrears of assured return to the complainant.
- q. That according to section - 11, clause 4 sub clause (b) of the RERA Act, which is fully applicable in the present case, reproduced herein below: -

Section - 11 - Functions and Duties of Promoter :-

The promoter shall -

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both as applicable from the relevant competent authority as per local laws or other laws from the time being in force and to make it available to the allottees individually or to the association of allottees as the case may be.

- r. That according to the relief claimed by the complainant, this Hon'ble Forum only has Jurisdiction to try the present complaint. The complainant

reserves their right to seek compensation towards harassment, mental agony litigation cost as incurred by them, from the promoter for which they shall make separate application before the Adjudicating Officer, if required.

- s. That no other compliant, suit, is pending or decided by any other Court or Forum between the same parties on same cause of action.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- (i) Direct the respondent to pay the assured return amount as per clause 2 of agreement dated 08.09.2010 and annexure-A of addendum agreement dated 08.09.2010.
 - (ii) Direct the respondent to execute and register the conveyance deed in view of section 17 of the Act.
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) (a) 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: -
- a. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed.
 - b. That the complainant has filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
 - c. That the complainant herein has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant has not approached the Ld. authority

with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.

- d. At the outset, it is imperative to bring into the knowledge of the Ld. authority that the complainant herein is merely an investor who has booked two commercial unit(s) along with his wife under assured return scheme to make steady monthly return.
- e. That the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. That the provision of the RERA Act, 2016, was passed with the sole intention of regularization of real estate projects, promoters and for the dispute resolution between builders and buyers.
- f. That the complainant booked the unit with the respondent for investment purposes. The said complainant herein is not an "allottee", as the complainant approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units, which has been admitted by the complainant in the present complaint.
- g. That in the year 2011, the complainant learned about the project launched by the respondent titled as "Vatika Trade Centre" (*herein referred to as 'Erstwhile Project'*) situated at sector-83, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- h. That after having dire interest in the project constructed by the respondent the complainant booked a unit vide application form dated 18.02.2011, under the assured return scheme, on her own judgement and investigation.

It is evident that the complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.

- i. That on 23.02.2011, respondent vide allotment letter allotted a unit bearing no. 334, admeasuring 500 sq. ft. at 3rd floor (*hereinafter referred to as 'Erstwhile Unit'*) to the complainant. Thereafter, on the same day, a builder buyer agreement dated 23.02.2011 was executed between the complainant and the respondent for the erstwhile unit, for a total sale consideration of Rs.25,00,000/- in the erstwhile project. However, upon knowing the assured return scheme, the complainant upon own will paid entire amount of Rs.25,00,000/- for making steady monthly returns.
- j. That an addendum, was also executed between the complainant and the respondent, wherein the respondent assured to provide assured return of Rs.71.50/- per sq. ft., till the completion of the building and Rs.65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier. That an addendum to the builder buyer agreement dated 27.07.2011, was executed between the complainant and the respondent, to avail the benefit of strategically better location and for early completion of the project, wherein the complainant unit was shifted from erstwhile project to "INXT City Centre", situated at NH-8, Sector-83, Gurgaon (*hereinafter referred to as 'Project'*).
- k. Thereafter the respondent vide letter dated 31.07.2013, the respondent herein allocated a new unit to the complainant and allotted a unit bearing no. 743, 7th floor, block 'F' admeasuring 500 sq. ft. (*hereinafter referred to as 'Unit'*) in the "INXT City Centre", situated at NH-8, Sector-83, Gurgaon, in favor of the complainant in place of the erstwhile unit. the respondent herein was committed to complete the construction of the project and

subsequently lease out the same as agreed under the agreement. However, the respondent in due compliance of the terms of the agreement has paid assured return till September, 2018.

- l. That the complainant has always been in advantage of getting assured return as agreed by the respondent. It is an admitted fact that the complainant has received an amount of Rs.32,38,160/- as assured return right from the date of allotment upto September, 2018.
- m. That the respondent had always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project. However, the respondent herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019 and other prevailing laws. In this regard the respondent had sent emails dated 31.10.2018 and 30.11.2018 to its customers and apprised them that the respondent will not be in a position to pay any returns in future due to change in law.
- n. That the respondent had always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project. However, the delay in the payment was bonafide and purely out of the control of the respondent.
- o. That the complainant vide letter dated 15.04.2014, asked the respondent about the deduction of payment in month of Feb, 2014 by the respondent while paying the assured interest on his investment. The respondent vide letter dated 28.04.2014, duly replied to the complainant stating that the deduction was due to the property tax levied by the Haryana Government on each property, including the properties under construction. Therefore, respondent deducted the tax from the payment of assured return. It is

pertinent to mention herein that there was no unlawful deduction by the respondent.

- p. That the present complaint is not maintainable under the law, upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act). The Assured Return/Committed Returns on deposit schemes have been banned under the BUDS Act, making such schemes illegal. Therefore, the relief sought by the complainants falls outside the jurisdiction of the Authority.
- q. 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 Indi". 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 (s) of Section 2(1) states that any amount received by the company, whether in the form of any 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 deposit. Thus, the simultaneous reading of the BUDS Act read with Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

- r. 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 the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs.32,38,161/, till September, 2018. The complainant has not come with clean hands before the authority and have suppressed these material facts.
- s. 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.
- t. 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 22.11.2023. 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

- ii. 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 the 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 simpliciter understanding that 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.
- v. 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 complainants. Hence, the commercial space booked by the complainant is not meant for physical possession and rather is for commercial gain only.

- w. That the complainant has approached the authority with unclean hands, and filed the complaint with the intention of harassment and unjust enrichment. The grievance alleged by the complainant necessitates detailed deliberation and cross-examination, indicating that only the Civil Court has the jurisdiction to deal with cases requiring such extensive evidence for proper and fair adjudication.
- x. That the complainant entered into buyer's agreement dated 23.02.2011 with respondent owing to the name, good will and reputation of the respondent. The respondent duly paid the assured return to the complainant till September, 2018. The buyer's agreement only intended to pay assured returns to the allottees as per agreed rate till construction and thereafter the rate was revised @Rs.65/- per sq. ft. w.e.f. March, 2018 as the construction was completed and the respondent issued a letter dated 27.03.2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. 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 27.03.2018.
- y. That the complainant's complaint is founded on a misinterpretation of the objectives behind the enactment of the RERA Act, 2016. The legislative intent behind the RERA Act, 2016 was to acknowledge the pivotal role of the Real Estate Sector in meeting housing and infrastructure needs, and to address the absence of a regulatory body to standardize and professionalize the sector while addressing concerns of both buyers and promoters. The Act

aims to facilitate a healthy and orderly growth of the industry by balancing the interests of consumers and promoters, as reflected in the delineation of responsibilities in Sections 11 to 18 for promoters/developers and the rights and duties of allottees in Section 19. Therefore, the RERA Act, 2016 was not designed to favor allottees over developers, but to ensure equitable treatment for both parties and prevent either from suffering due to the actions or inactions of the other.

- z. That the complainants' pursuit of pending assured returns is seen as an attempt to capitalize on the real estate sector's slowdown, aimed at harassing the respondent and exerting undue pressure. The complaint lacks a valid basis, as no cause of action has arisen in favour of them against the respondent. The delay in seeking recovery of dues, spanning five years, places the onus on the complainants to demonstrate receipt of assured returns and establish the emergence of a cause of action. The complaint is without merit and should be dismissed.
 - aa. Furthermore, the delay in pursuing the relief, coupled with the characterization of the case as a web of falsehoods and afterthought. The complainants' contentions are fictitious, baseless and intend to mislead the Authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. All other averments made in the complaint were denied in toto.
 8. 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 on the basis of these undisputed documents and written submissions made by the parties.

E. Written submission made by both the parties

9. The complainant has filed the written submission on 16.08.2024 and the respondent has filed the written submission on 01.08.2024 and the same are taken on record. No additional facts apart from the complaint has been stated in the written submission.

F. Jurisdiction of the authority

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

12. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent:

G.1 Objection regarding maintainability of complaint on account of complainant being investor.

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is 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 complainants are buyer's, 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;"

15. 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 complainants, it is crystal clear that the complainants 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.

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

16. 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.

17. 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."

18. 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 Directed the respondent to clear all dues of assured return with interest.

19. The complainant in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. 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 of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act 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. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

20. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed

form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017*. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

21. It is now well settled proposition of law 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 can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Then after coming into force the Act of 2016 w.e.f.

01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. 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. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

22. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

- i. an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

23. 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 redressal of his grievances by way of filing a complaint.
24. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as *Nikhil Mehta, Pioneer Urban Land and Infrastructure* which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case *Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)* where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)*

as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

25. 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 complainant besides initiating penal proceedings. So, the amount paid by the complainant 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.
26. 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 08.09.2010, As per clause 2 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 08.09.2013.
27. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement or an addendum to the buyer's agreement. The assured return in this case is payable as per "Annexure A - Addendum to the agreement dated 08.09.2010". The rate at which assured return has been committed by the promoter is Rs.71.5/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of the building and Rs.65/- per sq. ft. after completion of the building.

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 terms of buyer's agreement and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of buyer's agreement dated 08.09.2010, the promoter had agreed to pay to the complainant-allottee Rs.71.5/- per sq. ft. on monthly basis till completion of the building and Rs.65/- per sq. ft. on monthly basis after completion of the building. The buyer's agreement 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.
29. In the present complaint, the respondent has not obtained the occupation certificate and hence, 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. 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. 71.5/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building and thereafter, @ Rs. 65/- per sq. ft. per month after the completion of the building as per the agreed terms of addendum to the agreement dated 08.09.2010. *(Note: in proceedings*

dated 22.08.2024, the date of addendum to the agreement was inadvertently recorded as 23.02.2011 instead of 08.09.2010).

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 complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

H.II Direct the respondent to execute the conveyance deed of the unit in question in favour of the complainant.

31. The complainant is seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016 and also as per clause (8) of buyer's agreement, the relevant clause of the buyer's agreement is reproduced for ready reference: -

8. Conveyance

"Subject to the approval/ no objection of the appropriate authority the developer shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/ deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances. The conveyance deed shall be in the form and content as approved by the developer's legal advisor and shall be in favour of the allottee. Provided that the conveyance deed shall be executed only upon receipt of full consideration amount of the said unit, stamp duty and registration charges and receipt of other dues as per these presents."

32. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.
33. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of

complainant/allottee within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

"Section 17: Transfer of title.

17(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 or 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."

34. The Authority hereby directs the respondent to execute the conveyance deed in favor of the complainant within 3 months after obtaining the occupation certificate from the competent authorities.

I. Directions of the authority:

35. 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):

- i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.71.5/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building and thereafter, @ Rs.65/- per sq. ft. per month after the completion of the building, as per the agreed terms of addendum to the agreement dated 08.09.2010.
- ii. 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

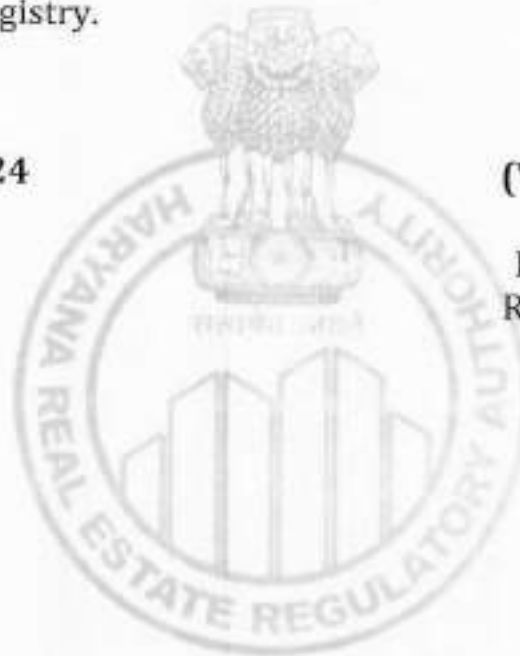
order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.

- iii. The respondent-promoter is directed to execute the registered conveyance deed in favor of the complainant-allottee within 3 months after receipt of occupation certificate from the competent authority.

36. Complaint stands disposed of.

37. File be consigned to registry.

Dated: 22.08.2024



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

HARERA
GURUGRAM