

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 07.01.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7338/2022	Pooja Punhani V/s Vatika Limited.	Sh. Harshit Goyal Sh. Ankur Berry
2.	CR/7339/2022	Terloch Singh Punhani V/s Vatika Limited	Sh. Harshit Goyal Sh. Ankur Berry

CORAM:	
Shri. Arun Kumar	Chairperson
Shri. Vijay Kumar Goyal	Member
Shri. Ashok Sangwan	Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA INXT CITY CENTER' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
- The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.	
Assured return clause <i>The broad terms of assured return are as under</i>	<p>A) Assured monthly commitment of Rs. 133.35/- sq. ft. payable till completion of the project.</p> <p>B) Post completion of the project an amount equivalent to Rs. 120/- sq. ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said Unit for up to 36 months or till the said unit is put on lease whichever is earlier.</p>	
OC: Not obtained Offer of possession: Not offered		
Comp no.	CR/7338/2022	CR/7339/2022
Application dated	08.09.2015 [pg. 33 of reply]	27.07.2015 [pg. 16 of complaint]
Acknowledgement letter	04.11.2015 [pg. 18 of complaint]	06.10.2015 [pg.17 of complaint]
Date of BBA	Not executed	Not executed
Unit no. and area	P-388 admeasuring 500 sq. ft. [pg. 18 of complaint]	P-364 admeasuring 500 sq. ft. [pg. 17 of complaint]
Due date of possession	Cannot be ascertained	Cannot be ascertained

Total consideration amount paid	sale and	TC: ₹ 34,38,600/- AP: ₹ 34,38,600/-	TC: ₹ 34,38,600/- AP: ₹ 34,38,600/-
Assured return paid		₹24,12,843/- till October 2018	₹ 25,63,376/- till October 2018
<ol style="list-style-type: none"> 1. Direct the respondent to pay pending monthly assured return. 2. Direct the respondent to pay DPC from due date of possession till actual physical possession. 3. Direct the respondent to execute the conveyance deed of the booked unit in favour of complainant. 4. To impose the penalty upon the respondent company for non-registration of real estate project in question vatika towers with authority. 			
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>TC: Total consideration</p> <p>AP: Amount paid by the allottee(s)</p>			

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7338/2022** titled as **Pooja Punhani V/s Vatika Limited.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.
 - A. **Unit and project related details**
6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/7338/2022 titled as Pooja Punhani V/s
Vatika Limited.**

S. No.	Particulars	Details
1.	Name of the project	Vatika Tower, Golf Course Road, Gurugram, Haryana
2.	Acknowledgement letter	04.11.2015 [Page 18 of complaint]
3.	Date of builder buyer agreement	Not executed
4.	Unit no. and size	Priority no. P-388 admeasuring 500 sq. ft. (super area) [Page 18 of complaint]
5.	Assured return clause as per letter dated 04.11.2015	<i>The broad terms of assured return are as under</i> C) Assured monthly commitment of Rs. 133.35/- sq. ft. payable till completion of the project. D) Post completion of the project an amount equivalent to Rs. 120/-sq. ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said Unit for upto 36 months or till the said unit is put on lease whichever is earlier..... (Note: Not legible) Page 18 of complaint
6.	Possession clause	N.A
7.	Due date of possession	Cannot be ascertained
8.	Total sale consideration	Rs. 34,38,600/- (Page 33 of reply)

9.	Total amount paid by the complainant	Rs.34,38,600/- (As alleged by the complainant at page 10 of complaint)
10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered
12.	Amount of assured return paid by the respondent to the complainant till October 2018	Rs.24,12,843/- [Page 39 of reply]

B. Facts of the complaint

7. The complainant has submitted as under:

- a. That the complainant is innocent allottee of the real estate project Vatika Towers situated at Golf Course Road, Gurugram developed by respondent company.
- b. That the respondent company is a real estate development company and is engaged in development of multiple real estate projects across Gurugram.
- c. The complainant submitted Application Form dated 05.09.2015 with respondent company for booking of a unit at commercial real estate namely Vatika Towers situated on golf course road, Gurugram.
- d. The respondent company issued Allotment Letter dated 04.11.2015 in favour of complainant confirming allotment of Unit No P-388 measuring 500 sq ft in real estate project namely Vatika Towers situated on golf course road, Gurugram.
- e. As per clause (a) of the Allotment Letter dated 04.11.2015, the respondent company was liable to pay assured return amount of Rs

- 133.33/- per sq ft per month to the complainant from the date of issuance of Allotment Letter till the date of completion of construction of booked unit. The respondent company had failed to pay the promised assured monthly commitment from the month of August 2018 till date.
- f. As per clause (b) of the Allotment Letter dated 06.10.2015, the respondent company was also liable to pay assured return amount of Rs 120/- per sq ft per month to the complainant from the date of completion of construction of booked unit till 36 months or till the booked unit is put to lease whichever is earlier.
- g. The respondent was also liable to deliver possession of the booked unit within a period of 3 years from the date of issue of allotment letter. Therefore, the due date of delivery of possession was 04.11.2018. The respondent has failed to offer lawful and legal possession of the booked unit along with Occupation Certificate till date.
- h. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the Builder Buyer Agreement duly executed between both the present parties.
- i. Therefore, the present complainant is forced to file present complaint before this Hon'ble authority under Section 31 of Real Estate Regulation and Development Act, 2016 read with Rule 28 of

Haryana Real Estate (Regulation and Development) Rules,2017 to seek redressal of the grievances against the respondent company.

C. Relief sought by the complainant:

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

- a. Direct the respondent to pay pending monthly assured return of ₹133.33/- per sq. ft. accrued from the month of August 2018 along with interest to the complainant.
- b. Direct the respondent to pay DPC from due date of possession till valid offer of possession along with OC.
- c. Direct the respondent to execute the conveyance deed of the booked unit in favour of complainant.
- d. To impose the penalty upon the respondent company for non-registration of real estate project in question vatika towers with authority

9. 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.

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

- a. That in the year 2015, the complainant, learned about the commercial project launched by the respondent under the name and title 'Vatika Towers' (now, Vatika INTX City Centre) and repeatedly visited the office of the respondent to know the details of the said project.

- b. That after having an interest in the commercial project being developed by the respondent, the original allottee vide an application form dated 05.09.2015 tentatively allotted a unit tentatively admeasuring 500 sq. ft. for an amount of ₹ 34,38,600/- on free will and consent, without any demur whatsoever. Thereafter, considering the future speculative gains, the original allottee, in October 2015, at her own will made the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same.
- c. That thereafter, the complainant was allotted a priority no. P-388 in the said project. It is pertinent to mention that complainant was aware of terms and conditions under the aforesaid allotment and only upon being satisfied with each and every term, agreed to execute the same with free will and consent.
- d. That the Complainant was fully aware of the fact that the execution of the Buyer's Agreement is the essence of the said allotment. It is submitted that the Respondent approached the Complainant in order to get the Buyer's Agreement executed but the same was delayed at the end of the Complainant for one or the other reason.
- e. That the unit of the Complainant was tentative and subject to change, as was categorically agreed between the Parties in terms of the Application form. It is further submitted that the sale of the said unit is subject to force majeure conditions and the said clause has been duly accepted by the Complainant without any demur or protest. That as per clause 19 of the Application form, The Intending Allottee agrees that the sale of the premises is subject to force majeure clause

which inter alia include delay on account of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or if non delivery of possession as a result of any notice order, rule or notification of the government and/or any other public or competent authority or for any other reason beyond the control of the Company and in any of the aforesaid events the Company shall be entitled to a reasonable extension of time for delivery of possession of the said premises. That the construction of the said project got delayed due to the reasons beyond the control of the Respondent.

- f. That at this stage, it is categorical to highlight that the complainants are trying to mislead this Hon'ble court by concealing facts which are detrimental to this complaint at hand. That the application form executed between the parties on 05.09.2015 was in the form of an "investment application". That the complainants had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainants along with the other commercial space unit on lease and does not have "possession clauses", for physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist. That it is also most humbly submitted that the present complaint is not maintainable and the complainants

herein has no locus standi. The complainants merely seek to earn profits.

- g. That in any case whatsoever, the aspect of leasing of the unit and the investment of the Complainant cannot be dealt with by this Hon'ble Authority. Regardless, at the utmost bonafide, the Hon'ble Authority is most humbly appraised by the fact that the Respondent had been rightly obliging with the payments of committed returns to be made by it. That it is submitted that the Respondent vide its letter dated 04.11.2015 has acknowledged the receipt of the application form and further it was clearly apprised to the Complainant that the Respondent shall put on lease the said premises which clears the air that the Complainant is not an allottee but an investor who has booked the said unit in order to earn rental income at the behest of the Respondent. That the copy of the letter dated 04.11.2015 issued by the Respondent is already annexed with the complaint.
- h. That it is humbly submitted before the Hon'ble Authority that the Respondent was always prompt in making the payment of assured returns as agreed at the time of booking of the said unit. It is not out of the place to mention that the Respondent herein had been paying the committed return of Rs. 66,665/- for every month to the Complainant without any delay since October 2015 till October 2018 (i.e., for 36 months). It is to note that as on 18.10.2018, the Complainant herein had already received an amount of Rs. 24,12,843/- as assured return as agreed by the Respondent as per the aforesaid allotment. However, post October, 2018, the Respondent could not pay the agreed Assured Returns due to change

in the legal position and the illegality of making the payment of the same.

- i. That it is humbly submitted before the Hon'ble Authority that the respondent was always prompt in making the payment of assured returns as agreed under the agreement. It is not out of the place to mention that the respondent herein had been paying the committed return of ₹ 66,665/- per month to the complainant without any delay since October 2015 till October 2018. It is to note that as on 18.10.2018, the complainant herein had already received an amount of ₹ 24,12,843/- as assured return as agreed by the respondent as per the aforementioned allotment. However, post October, 2018, the respondent could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same.
- j. That the Complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee.

That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".

- k. That the non-payment of assured return post October, 2018 as alleged by the Complainant in her complaint is bad in law. It is pertinent to mention herein that the payment of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act]. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme". Thus. The Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme".
- l. It is imperative to mention that the issue pertaining to the assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court. Wherein, the Hon'ble High Court in the matter of 'Vatika Limited vs Union of India and Anr' in CWP No. 26740 of 2022, had issued notice to the Respondent Parties and had also restrained the competent authorities from taking any coercive actions against the Respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.

- m. That it is also apropos to bring into the knowledge of the Ld. Authority that an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is
- n. already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favour of the allottee.
- o. That moreover, very recently, on 03.02.2023, the Ld. Tribunal had taken cognizance of the above-mentioned case before the Hon'ble High Court and had deferred itself from hearing the arguments and adjourned the matter in light of the same pending before the High Court.
- p. That the Complainant cannot, under the garb of said the allotment, seek enforcement or specific performance of an Investment Return Scheme before this Hon'ble Authority, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal. Reliance in this regard is placed on the order dated 19.04.2022 passed by the Ld. District Court Guru gram in the matter titled as Naresh Prasad vs. M/s. Vatika Ltd. and Anr. (CIS NO. 338 of 2022).
- q. That it is specifically mentioned under Rule 2(1)(C) what is included in the meaning of deposits along with other transactions which does not constitute deposits. Under sub rule (1)(c)(xii)(b) of Rule 2 of the Deposit Rules, an amount shall not be termed as deposit if received in advance, accounted for in any manner whatsoever, in connection

with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of the agreement or the arrangement.

- r. However, explanation to Rule 2 (1) (c) clearly states that any amount received by the Company as instalment or otherwise, from a person with promise or offer to give returns, in cash or kind shall be treated as a deposit. Therefore, it immediately requires compliance with the rules of MCA and relevant provisions of the Companies Act to take prior approval before accepting such deposits failing which punitive actions will follow.
- s. That as per sub rule (1)(c)(xii)(b) of Rule 2 of the Deposit Rules, no advance shall be termed as deposit which is received and adjusted as consideration for an immovable property under an agreement. However, explanation of Rule 2(1) (c) specifically states that is the advance/instalment received with a promise to give returns shall be termed as Deposit and the Depositor will be under obligation to comply with **H**as given under Column III of first schedule of the BUDS Act. In case of non-compliance of norms of MCA as per first schedule, the same shall be termed as unregulated deposit schemes.
- t. That column III of first schedule of the BUDS Act defines the various kind of deposit along with their regulators under column I. If any deposit as per Schedule I of BUDS Act fall under regulated deposits then company is not in violation of the BUDS Act. However, if deposit is not in compliance with the procedure laid down under the Companies Act, the Company would be not only in violation of the

provisions of the Companies Act but also under the BUDS Act and therefore will be exposed to penal actions under Section 76A of the Companies Act and deposit being unregulated will also fall foul and liable to be tried under penal provision of the BUDS.

- ii. Therefore, if Depositor accepts any deposit, it immediately required to take prior approval from the Regulator as mentioned under Schedule I of the BUDS Act. And therefore, for the present matter, the Regulator shall be Ministry of Corporate Affairs as provided under last entry of Schedule I. Therefore, if the Respondent continues paying the Assured Returns which is deposit as per the relevant provisions of the Companies Act and BUDS Act, the same will be contravention of the provisions of the Acts and the Respondent will be exposed to the penal provisions thereunder.
- v. In the present case, if the relief of specific performance was sought before a civil court, which alone has the jurisdiction to grant relief in accordance with the Specific Relief Act, 1963, it would have been compulsory to plead and prove readiness and willingness and other statutory preconditions for the grant of specific relief, and the above admission would have been fatal to the grant of specific relief. In such circumstances, entertaining this kind of a complaint for specific performance under the Act, 2016 is nothing but permitting the Complainant to do indirectly, what he could not do directly, and the same ought to be nipped in the bud by the authority. Therefore, the Ld. Authority not being a civil court could not assert to itself the jurisdiction to grant specific performance of the "assured returns" which is a relief under the Specific Relief Act, 1963

- w. That it is pertinent to note herein, that nowhere in the said provision the Ld. Authority has been vested with jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns. Therefore, the complaint is filed with grave illegalities and the same is liable to be dismissed at the very outset and the complainants directed to file pursue their complaint before the civil court for any dispute arises from the agreement pertaining to assured returns.
- x. Also, the construction of the said project was hindered by the circumstances beyond the control of the respondent. And in case the construction is delayed due to such "force majeure" conditions the respondent was entitled for extension of time period for completion. The force majeure conditions such as: NGT orders in the year 2015 restraining the diesel vehicles more than 10 years to ply on roads of NCR & Delhi, NGT orders in year 2016 restraining the stone crushers to operate, NGT orders in November prohibiting construction work for a period of 1 week and thereafter lockdown imposed by the government due to outbreak of COVID-19 caused hinderance in carrying out smooth construction activities at the project site.
11. 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 those undisputed documents and submissions made by the parties.
12. Written submissions filed by the complainant and respondent are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

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

Section 11(4) (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) *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

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

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

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

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

“allottee” and there cannot be a party having a status of “investor”. Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II. Objection regarding delay due to force majeure circumstances.

19. The respondent in its reply has contended that force majeure conditions such as: NGT orders in the year 2015 restraining the diesel vehicles more than 10 years to ply on roads of NCR & Delhi, NGT orders in year 2016 restraining the stone crushers to operate, NGT orders in November prohibiting construction work for a period of 1 week and thereafter lockdown imposed by the government due to outbreak of COVID-19 caused hinderance in carrying out smooth construction activities at the project site.
20. The events such as Hon’ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Further, all the orders referred to by the respondent are after the lapse of the due date of possession as agreed between the parties and one cannot be allowed to take advantage of his own wrong.
21. Accordingly, the respondent is obligated to deliver the possession of the unit within the time agreed between the parties regardless of unforeseen events or stay orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

F.III. Pendency of petition before Hon’ble Punjab and Haryana High Court regarding assured return

22. 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.

23. 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)/alloftee(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"

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

G. Findings on the relief sought by the complainant.

G.I. Assured return.

25. The complainants are seeking unpaid assured returns on monthly basis as per the acknowledgement letter at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said acknowledgement letter. 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 has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(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.
26. 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.

27. 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.
28. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the acknowledgement letter dated 04.11.2015.

G.II. Delayed possession charges

29. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

“Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give
possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to
withdraw from the project, he shall be paid, by the
promoter, interest for every month of delay, till the
handing over of the possession, at such rate as may be
prescribed”

30. Since there is no possession clause in the allotment or application form and the complainants have made the full payment with respect to the subject unit accordingly the due date of possession is calculated 3 years from the date of acknowledgement i.e., 04.11.2015 as held in *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*. Therefore, the due date of possession comes out to be i.e., 04.11.2018.
31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under.

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

For the purpose of proviso to section 12; section 18; and
sub-sections (4) and (7) of section 19, the “interest at the
rate prescribed” shall be the State Bank of India highest
marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal
cost of lending rate (MCLR) is not in use, it shall be

replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

32. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
33. 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 possession of the subject unit was to be delivered within stipulated time i.e., 04.11.2018.
34. 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?
35. 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 acknowledgement letter dated 04.11.2015. The assured return in this case is payable as per "acknowledgement letter" the promoter had agreed to pay to the complainants allottee Rs.133.33/- per sq. ft. on monthly basis till completion of the building and Rs.120/- per sq. ft. on monthly basis after the completion of the building up to 36 months or till the said unit is put on lease, whichever is earlier. 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 as Rs. 66,665/- per month whereas the delayed possession charges are payable approximately Rs. 31,807/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable for the first 3 years after the date of completion of the project or till the date of said unit/space is put on lease, whichever is earlier. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

36. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
37. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured

return. As per acknowledgement letter dated 04.11.2015, the promoter had agreed to pay to the complainants allottee Rs.133.33/- per sq. ft. on monthly basis till completion of the building and Rs.120/- per sq. ft. on monthly basis after the completion of the building up to 36 months or the said unit is put on lease whichever is earlier. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till October 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

38. Admittedly, the respondent has paid an amount of Rs. 24,12,843/- to the complainants as assured return till October 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 133.33/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October 2018 till the date of completion of the building and thereafter, Rs. 120/- per sq. ft. per month after the completion of the building up to 36 months or the said unit is put on lease whichever is earlier.
39. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.III. Conveyance deed

40. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent 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.
41. 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 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”

42. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, 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. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of

possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

G.IV. To impose the penalty upon the respondent company for non-registration of real estate project in question vatika towers with authority.

43. The planning registration branch of the authority is directed to inquire the matter and take necessary action against the respondent under the provisions of the Act, 2016, if any required.

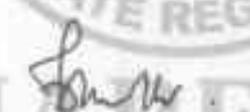
H. Directions of the authority:

44. 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 is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 133.33/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October 2018 till the date of completion of the building and thereafter, Rs. 120/- per sq. ft. per month after the completion of the building till the first 36 months after the completion of the project or till the date the said unit is put on lease, whichever is earlier.
 - b. 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.

- c. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the valid offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.
- d. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- e. 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.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. True certified copies of this order be placed on the case file of each matter.
47. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.01.2025