

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

Complaint no.: 7438 of 2022
Date of filing: 22.12.2022
Order pronounced on: 07.01.2025

Santosh Mago
Ritu Mago
Both RR/o: - H-11/2, DLF Phase-1, Gurugram-
122002

Complainants

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

Respondent

CORAM:
Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:
Shri Varun Kathuria (Advocate)
Shri Ankur Berry (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/allottees 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Allotment letter dated in project vatika trade centre	20.05.2008 [Page 11 of complaint]
7.	Date of builder buyer agreement w.r.t. unit in project vatika trade centre	02.06.2008 [Page 13 of complaint]
	<p>Note: Initially the said allotment was made in favour of Mrs. Santosh Mago & Sangeeta Kapoor. Vide letter dated 05.03.2012 the name of Sangeeta Kapoor was deleted, and the unit was solely transferred in name of Santosh Mago. Further on request of complainant no. 1 the respondent made Ritu Mago (complainant no. 2) as a joint applicant vide letter dated 01.05.2012.</p>	
8.	Addendum agreement dated 28.06.2019	Unexecuted [Page 31 of complaint]



		Note: Unit no. 341, Block D at Vatika INXT City Centre
9.	Unit no. as per the BBA dated 02.06.2008	616A, 6 th floor, tower no. A admeasuring 500 sq. ft. in Vatika Trade Centre [Page 15 of complaint]
10.	New unit no. as per letter dated 26.03.2018	COM-012-Tower-D-3-332, admeasuring 500 sq. ft. in INXT City Centre [Page 30 of complaint]
11.	Completion of construction of block D	26.03.2018 [Page 30 of complaint]
12.	Possession clause as per clause 2 of BBA dated 02.06.2008	<i>Since the unit would be completed and handed over by 1st October 2010, and since the allottee has paid part/full sale consideration on signing of this agreement, the developer hereby undertakes to make a payment by way of committed return during construction period, as under, which the allottee duly accepts.</i> [Page 15 of complaint]
13.	Due date of handing over possession as per BBA dated 02.06.2008	01.10.2010
14.	Assured return/committed return as per clause 2 of BBA	<i>It is hereby specifically clarified that the committed return would be paid by the Developer up to 30.09.2010 or in the event of any delay in completion of the project, up to the date of offer for handing over of completed unit to the Allottee.</i> [Page 16 of complaint]
15.	The committed charges were revised vide letter dated 26.03.2018	<i>The commitment charges shall be revised to ₹62/- per sq. ft. per month from the date of building getting operational. As the building got operational in the last week of feb, 2018, the commitment charges payable against your premises shall be revised to ₹62/- per sq. ft. per month from March 2018.</i>
16.	Total sale consideration as per clause 1 of BBA dated 02.06.2008	Rs. 20,00,000/- [Page 15 of complaint]
17.	Amount paid by the complainant as per	Rs. 20,00,000/- [Page 15 of complaint]



	clause 2 of BBA dated 02.06.2008	
18.	Offer of possession	Not offered
19.	Occupation certificate	Not obtained
19.	Amount of assured return paid by the respondent to the complainant till September 2018	Rs.38,75,000/- [Page 35 of reply]

B. Facts of the complaint.

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

- a. The respondent made false representations and claims of being a big company and a reputed developer and thereby induced the complainants, both of whom are super senior citizens to book/purchase a 500 sq. ft. unit, in its project then known as "Vatika Trade Centre" by showcasing a fancy brochure which depicted that the project will be developed and constructed as state of the art being one of its kind with all modern amenities and facilities. An allotment letter dated 20.05.2008 was issued by the respondent allotting unit no. 616A on the sixth floor of the said project. The said allotment letter specified that the project would be complete by 30.09.2010.
- b. A builder buyer agreement dt. 02.06.2008 was executed between the parties and the entire consideration amount of ₹20,00,000/- was paid upfront at the time of execution of the BBA. It is pertinent to mention here that the builder buyer agreement was a pre-printed booklet drafted by the respondent containing unilateral terms and conditions favouring the respondent and prejudicing the complainants and the complainants were never given the option of changing the same. As per the BBA the respondent was liable to pay monthly returns @ ₹62 per sq. ft. per month till the date of offer of

- handover of possession of the building and for up to 3 years post completion of the building or till the leasing of the unit of the complainants whichever was earlier.
- c. It is pertinent to mention here that the unit was originally purchased in the name of Santosh Mago and Sangeeta Kapoor. Subsequently the name of Sangeeta Kapoor was deleted from the unit and the name of Ritu Mago was added vide letters dated 05.03.2012 and 01.05.2012 respectively.
- d. The booking of the complainants was unilaterally shifted by the respondent to the project "VATIKA INXT CITY CENTRE", located in Sector - 83, Gurgaon, somewhere in 2013 and the complainants were unilaterally allotted unit no. 332 in tower/block D on the third floor which was a different floor from the unit originally booked by the complainants. The respondent falsely claimed completion of the tower where the unit of the complainants was located vide its letter dated 26th March 2018.
- e. The respondent in furtherance of its mala fide intentions and ulterior motives without assigning any reason stopped the payment of the monthly returns to the complainants from October 2018 onwards.
- f. Around June, 2019, the respondent approached the complainants with a proposal to pay their unpaid monthly returns due and payable till June, 2019, if the complainants would sign and execute an addendum as per the terms of which the complainants would lose their right to claim monthly returns post June, 2019 and further would release the respondent from their liability to lease the unit of the complainants at specified rates and consequences



- arising due to the failure thereof. The complainants however, refused to execute the said addendum.
- g. It has come to the knowledge of the complainants that the respondent has not only duped the complainants but several other buyers like them by refusing to pay the monthly returns on one pretext or the other even the project has not received the completion/occupation certificate from the competent authority till date. Buyers have been paid the monthly returns for different periods and have been denied the payment of the same on different grounds. It is pertinent to mention here that the respondent has deducted amount allegedly payable towards property tax for the unit of the complainants even though the same cannot be due or payable as the project/building where the unit of the complainant is located has not received a completion/occupation certificate from the competent authority till date.
- h. The respondent has not even offered the possession of the unit of the complainants to them and has further stopped responding to the communications of the complainants and has also restricted entry into its office for the complainants and other buyers and has failed to apprise the complainants regarding the true and correct status of the project where the unit of the complainants is located and has further refused to pay the monthly assured rent/minimum guaranteed rent to the complainants for reasons undisclosed.
- i. The conduct of the respondent is illegal and arbitrary, and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the

complainants and the conduct of the respondent has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainants and their family members.

C. Relief sought by the complainant:

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

- a. The respondent be directed to pay the amount of assured returns due and payable by it to the complainant(s) for the last 36 months from the date of filing of the complaint till the date of order to be calculated at Rs. 62/- per sq. ft. per month.
- b. The respondent be directed to continue paying the investment returns/monthly returns to the complainant(s) as per the terms of the builder buyers' agreement.
- c. The respondent be directed to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.
- d. The respondent be directed to apprise the complainant(s) of the true and correct status of the project, "Vatika Inxt City Centre" in Sector-83, Gurgaon, and share a copy of the "occupation certificate/completion certificate" if so, issued for the project/tower of the complainant, with the complainant.
- e. The respondent be directed to execute a conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects.
- f. The respondent be directed to refund any amounts illegally collected by it from the complainants for dues of property tax.

- g. The respondent be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreements executed between the parties.
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 has contested the complaint on the following grounds:
- a. That the respondent is a company, registered under the Companies Act, 1956 having its office at Unit No A-002, INXT City Centre ground floor, block A, Sector 83, Vatika India Next, Gurugram - 122012, Haryana INDIA. That for the past two decades the respondent company has been engaged in the business of Real Estate Sector.
 - b. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 02.06.2008, as shall be evident from the submissions made in the following paras of the present reply.
 - c. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon

the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".

- d. That further the explanation for the clause (c) of section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.
- e. Thus, the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid ₹38,75,000/- till September 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.

- f. 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 opposite parties / respondent company has become illegal by the operation of law and the opposite parties / respondent company cannot be made to run a scheme which has become infructuous by law.
- g. That further the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 17.05.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction



to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019.

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

- j. That in the matter of Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd. (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of assured return and hence the present complaint deserves to be dismissed at the very outset.
- k. That further in the matter of Bharam Singh & Ors vs. Venetian LDF Projects LLP (Complaint No. 175 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns. That further in the matter of Jasjit Kaur Grewal vs. M/s MVL Ltd. (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.
- l. That the complainants have come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainants have instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the BBA dated

- 02.06.2008. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- m. It is submitted that the complainants entered into an agreement i.e., BBA dated 02.06.2008 with respondent company owing to the name, good will and reputation of the respondent company. That it is a matter of record and also admitted by the complainants' that the respondent duly paid the assured return to the complainants till September 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction.
- n. The present complaint of the complainants has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to

Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- o. That in matter titled Anoop Kumar Rath Vs M/S ShethInfracore Pvt. Ltd. in appeal no. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the allottee. The ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- p. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. It is pertinent to submit that the complainants were sent the letter dated 29.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence, the complaint deserves to be dismissed.

- q. That, it is evident that the entire case of the complainants' is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainants deserves to be dismissed with heavy costs.
- r. That the various contentions raised by the complainants are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainants are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Copies of all 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 submissions made by the parties.
8. 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:

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

E.I Territorial Jurisdiction:

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent.

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

13. 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.

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

"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"

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

G. Findings on the relief sought by the complainants.

F.I. The respondent be directed to pay the amount of assured returns due and payable by it to the complainant(s) for the last 36 months from the date of filing of the complaint till the date of order to be calculated at Rs. 62/- per sq. ft. per month.

F.II. The respondent be directed to continue paying the investment returns/monthly returns to the complainant(s) as per the terms of the builder buyers' agreement.

F.III. The respondent be directed to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.

16. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Bhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated 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. 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. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. 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. 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. Further, section 2(4)(l) deals with the exception wherein 2(4)(l)(ii) specifically mention that deposit does not include an 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. In the present matter 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 as agreed between the allottee and the builder in terms of buyer's agreement, MoU or addendum executed inter-se parties. 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. 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. The Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(ii) 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.

17. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
18. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in

question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.

19. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 02.06.2008, the construction of the subject unit was to be completed by 01.10.2010. The assured return is payable to the allottees as per clause 2 of the buyer's agreement dated 02.06.2008. The promoter had agreed to pay to the complainants allottee ₹ 31,000/- on monthly basis till 30.09.2010 or in event of delay in completion of the project, up to the date of offer for handing over of completed unit to the allottee. Thereafter vide letter dated 26.03.2018 the respondent revised the commitment charges to ₹62/- per sq. ft. per month from the date of building getting operational. As the building got operational in the last week of February, 2018, the commitment charges payable against your premises shall be revised to ₹62/- per sq. ft. per month from March 2018. 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.

20. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block D is complete wherein the subject unit is located vide letter dated 26.03.2018. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of ₹38,75,000/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed terms i.e., ₹62/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of date of valid offer of possession after obtaining OC from the competent authority.
21. 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 falling which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

F.IV. The respondent be directed to apprise the complainant(s) of the true and correct status of the project, "VATIKA INXT CITY CENTRE" in Sector-83, Gurgaon, and share a copy of the "occupation certificate/completion certificate" if so, issued for the project/tower of the complainant, with the complainant

22. As per section 11(4)(b) of Act of 2016, the respondent/builder is under an obligation to supply a copy of the occupation certificate to the

complainants/allottees. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

"11(4) (b) The promoter shall 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 for 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."

23. Even otherwise, it being a public document, the allottees can have access to the it from the website of DTCP, Haryana.

F.V. The respondent be directed to execute a conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects

24. With respect to the conveyance deed, clause 17(D) 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.

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

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent

authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate"

26. 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 valid 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.

F.VI. The respondent be directed to refund any amounts illegally collected by it from the complainants for dues of property tax.

F.VII. The respondent be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreements executed between the parties

27. The respondent shall not charge anything from the complainants which is not the part of BBA executed between the parties.


G. Directions of the authority

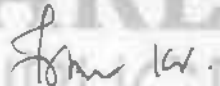
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the amount of assured return at the agreed terms i.e., ₹62/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of date of valid offer of possession after obtaining OC from the competent authority.

- 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.
29. Complaint stands disposed of.
30. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 07.01.2025