

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

Complaint no.	5669 of 2023
Date of filing complaint	13.12.2023
First date of hearing	27.03.2024
Date of decision	22.01.2025

Rajeev Bhushan Ahuja and Madhu Ahuja
Resident of: B-18, LGF, Swasthya Vihar, Vikas Marg,
New Delhi-110092

Complainants

Versus

Vatika Limited
Regd. office: A002, INXT City Centre, Ground Floor,
Block- A, Sector- 83, Vatika India Next, Gurugram-
122012

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Udaibir Singh Kochar and Mr. Tulna Rampal (Advocates)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"Vatika One India Next", Sector 82-A, NH-8, Gurugram
2.	RERA registered/ not registered and validity status	Not Registered
3.	Date of buyer's agreement	Not Executed
4.	Date of booking and Expression of Interest	09.09.2015 (Page 20 of complaint)
5.	Amount paid by the complainants	Rs.22,14,250/- (Copy of cheques at page 28 of complaint and agreed to by respondent in its pleadings at page 5 of reply)
6.	Priority no.	P-264 (Page 16 of complaint)
7.	Unit area admeasuring	500 sq. ft. (Page 23 of complaint)
8.	Due date of Possession	09.09.2018 [Calculated to be three years from date of signing of expression of interest in terms of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018] *Inadvertently recorded as 09.09.2016 in its proceedings dated 25.09.2024.
9.	Assured return clause	"The broad terms of assured return are as under:- a) Assured monthly commitment of Rs 75.83/- per sq. ft. payable till completion of the project. b) Post completion of the project an amount equivalent to Rs. 65/- (Rupees Sixty Five Only) per 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 (Thirty-six) months or till the said unit is put on



		<p>Lease, whichever is earlier. After the said Unit is put on Lease, then payment of the aforesaid committed return will come to an end from the date of execution of Lease deed and the Buyer will start receiving Lease rental in respect of said Commercial Unit from the rent commencement date as per the Lease Deed of the said Unit.</p> <p>c) The obligation of the developer shall be to lease the premises of which your unit is part @ Rs. 65/- per sq.ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq.ft. the following would be applicable.</p> <ol style="list-style-type: none">1. If the achieved rental is less than Rs 65/- per sq.ft then you shall be refunded @ Rs. 133/.. per sq.ft. (Rupees One Hundred and Thirty Three) for every Rs.1/- by which achieved rental is less than 5/- per sq.ft.2. If the achieved rental is above Rs 65/- per sqft then you will be liable to pay additional sale consideration @ Rs 66.50 per sq.ft. (Rupees Sixty Six and Paise Fifty Only) for every rupee of additional rental achieved.3. No rent shall be paid to you for the rent free period as may be agreed with the prospective Lessee."<p>(Page 29 of complaint)</p>
10.	E-mail dated 09.11.2018 sent by respondent to complainants	<p>"Due to legal implications as per change in SEBI Laws, the respondent have suspended all the return-based sales and that they shall not be selling any more product in the same format."</p> <p>(Page 32 of complaint)</p>
11.	E-mail dated 17.06.2023 sent by complainants to respondent (Refund Request by the complainants)	<p>"I am quite worried that I haven't heard about the progress of this project after you abruptly stopped sending us the assured returns without any valid or legal reason in Oct 2018.</p> <p>Can you please update us here on the status of the project, or it has been stalled for good and that we are now entitled to nothing??</p> <p>I would like to receive a full refund of the amount paid by us in case the project is never going to complete. I am not</p>

		<i>interested in relocating to any other unit in any of Vatika's project."</i> (Page 34 of complaint)
12.	E-mail dated 29.07.2023 sent by respondent to complainants	<i>"We are in the process of reconciling your accounts as of 30th June 2019 and the payment disbursement shall follow & be completed within 90 days thereof, in three installments.</i> <i>In line with our discussions and reasons necessitating the change in our committed returns model, as already apprised to you vide our earlier communications, dated 31 Oct-18 & 30 Nov-18, we are open to relocating your booking to a project of ours in the vicinity, on terms and conditions as applicable to that project....."</i> (Page 33 of complaint)
13.	Amount of assured returns paid by the respondent to the complainants	Rs.34,691.92/- (As submitted by complainants in their pleadings at page 7 of complaint)
14.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions vide its complaint dated 13.12.2023, rejoinder dated 25.07.2024 as well as written submissions dated 24.10.2024:
 - a) That in the year 2015, the representative of the respondent approached the complainants and presented a rosy picture of the project in question and assured timely payment of assured return to the complainants. On the basis of the assurances given by the representative of the respondent, on 09.09.2015, the complainants booked a commercial unit measuring 500 sq. ft. (super area) with respect to proposed project One India Next, situated in Sector 82-A, NH-8, Gurugram as per which the development has to be done on the basis of the payment received per sq. basis from the allottee.
 - b) That the complainants filled up Expression of Interest (EOI) and signed the terms attached with it for a commercial unit in proposed project One India Next. Based on the application and payment made by the complainant, the respondent allotted a unit no. 608, block 4, admeasuring 500 sq. ft super

- area in the said project. The complainants had paid the entire sales consideration of Rs.40,00,000/- to the respondent on the date of execution of builder buyer agreement by cheque no. 053152 dated 23.07.2010 drawn on Axis Bank which was duly cleared upon presentation by the respondent.
- c) That the complainants along with 'EOI' made a payment of Rs.22,14,250/- at Rs. 4250/- per sq. ft. of super area as full payment by issuing two cheques bearing cheque no. 637326 drawn on Syndicate Bank dated 09.09.2015 by complainant no.1 and another cheque no. 480761 drawn on State Bank of India dated 09.09.2015 by complainant no. 2.
- d) That vide letter dated 04.11.2015, the complainants were allocated priority no. P-264 for a unit admeasuring 500 sq. ft. The broad terms of the assured returns were as under:-
- a) *Assured monthly commitment of Rs.75.83/- per sq. ft. payable till completion of the project.*
 - b) *Post completion of the project an amount equivalent to Rs.65/- (Rupees Sixty Five only) per 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 (Thirty-six) months or till the said unit is put on Lease, whichever is earlier. After the said Unit is put on Lease, then payment of the aforesaid committed return will come to an end from the date of execution of Lease deed and the Buyer will start receiving Lease rental in respect of said Commercial Unit from the rent commencement date as per the Lease Deed of the said Unit.*
 4. *No Maintenance charges shall be charged to you for the period upto which the property is lease out. Thereafter if the Lease is terminated, then in that case the maintenance charges would be recovered from your good self.*
 5. *Rental Security Deposit and Rental Advance as would be recovered from the incoming lessees shall be paid to you on receipt.*
- e) That no builder buyer agreement was ever executed between the parties, even after 12 months which was the prescribed time for completion of the project as per the terms of EOI dated 09.09.2015 and as such there is no development in the said project. The terms under EOI dated 09.09.2015 are as under:-
- a) *That you will offer me/us allotment of a commercial unit in the proposed Project, within a period of 12 months from the date of this Letter, subject to requisite formalities as shall be stipulated at later stage.*
 - f) *I/We agree that though the Company shall try to make an allotment within period of 12 months or any extension thereof as may be decided by the*

Company, but in case it fails or is unable to do so for any reason whatsoever, no claim of any nature, monetary or otherwise, would be raised by me/us except the amount as mentioned above paid by me/us, which shall be refunded to me/us with 6% simple interest per annum only if the Company decided to refund the said amount to me/us.

- f) That vide letter dated 09.09.2015, the allotment was confirmed by the respondent. Further vide letter dated 04.11.2015, it was clarified by the respondent that the maintenance charges on possession of the unit shall be paid by the incoming lessee directly to the developer and no maintenance charges shall be charged for the period up to which the property is being leased out.
- g) That the complainants were in constant touch with the respondent for executing a builder buyer agreement even after receiving the full amount from the complainants but the respondent kept dilly-dallying the complainants on one pretext or another. Finally, the complainants received an e-mail dated 09.11.2018 from the respondent stating that "due to legal implications as per change in SEBI Laws, the respondent have suspended all return-based sales and that they shall not be selling any more product in the same format." It was further assured that the detailed communique will be sent in November.
- h) That upon constant persuasion by the complainants, the respondent sent an email dated 21.06.2019 stating that the respondent is reconciling the account as of 30.06.2019 and disbursement shall follow, to be completed within 90 days in 3 instalments.
- i) The complainants therefore, wrote an e-mail dated 17.06.2023 for the refund of amount paid by them. The respondent has only threw a bait by issuing the cheque for sum of Rs. 34,691.92/- in the name of complainants that too after 2 months of signing of the EOI and have gone into silence since the last payment of assured return. The respondent has also failed to complete the construction and deliver the possession of the allotted unit till

date. Moreover, no communication regarding the construction was ever been done due to the malafide intent of the respondent.

- j) That as per e-mail dated 09.11.2018 sent by the respondent, it clearly appears that the respondent has even pulled its hands back from giving away the assured monthly return and have no intention to complete the project. The complainants have invested their hard-earned money in booking of unit in the project. However, the respondent till date has not complied with the terms of expression of interest dated 09.09.2015 nor acted in compliance of letter dated 04.11.2015 despite the complainants making the complete payment to the respondent.
- k) That the respondent has not got the project registered under HRERA nor obtained any completion certificate or occupancy certificate for the project in question. The said fact has already been adjudicated by this Hon'ble Authority in many cases against the respondent. At the time of introduction of RERA Act, the project was an ongoing project and it was mandatory for the respondent to get the same registered under the Act. However, the respondent had failed to abide by the same.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- Direct the respondent to refund Rs.22,14,250/- so paid by the complainants along with interest @ 18% per annum.
 - Direct the respondent to pay assured monthly return from August, 2015 @ Rs.75.83/- per sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. after completion of the building along with interest @ 18% per annum.
 - Direct the respondent to pay Rs.3,00,000/- on account of mental agony and harassment.
 - Direct the respondent to pay litigation expenses amounting to Rs.1,00,000/-.
5. On the date of hearing, the authority explained to the respondent-promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 27.03.2024:
- a) That the complainants have got no locus standi or cause of action to file the present complaint, same being based on an erroneous interpretation of the provisions of the Act. The complainants herein are not allottee since no unit till date has been allotted in favour of the complainants. That as per Section 2(d) of the Act of 2016, "*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. However, the records placed on file show no records of any allotment or any BBA being executed.
 - b) That the present complaint is not maintainable or tenable in the eyes of the law as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' or any 'Committed Returns' on the deposit schemes have been banned. The respondent company having taken no registration from the SEBI board cannot run, operate, and continue an assured return scheme. Further, the enactment of BUDS read with the companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being taken within the definition of 'Deposit.'
 - c) That without prejudice to any other rights of the respondent it is submitted that the complainants have paid Rs.22,14,250/- however, except photocopy of some cheques nothing is shown to prove that payments, if any, were paid

for allotment of any unit. The complainants have filed a baseless and vague claim for refund and payment of assured return even though no assured returns or allotment have ever been made by the respondent. Further the claim of right to seek refund is emanating from a transaction in 2015, the complainants cannot be allowed to knock the doors of this Authority in 2023, i.e., after 8 years and the present complaint ought to be dismissed since it suffers from delay and laches.

- d) 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.
- e) That further the Hon'ble High Court of Punjab & Haryana in *CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors."*, took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 20.03.2024. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters

coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

- f) That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter as any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- g) That the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to the operation of law. As a matter of fact, the respondent duly paid an amount of Rs. 22,74,750/- till September 2018.
- h) That the complainant is seeking the relief of assured returns, and this Authority has no jurisdiction to entertain the present complaint as has been decided in the complaint case no. 175 of 2018, titled as "Sh. Bharam Singh and Ors. Vs. Venetian LDF Projects LLP" by the Authority itself.
- i) 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.

- j) That vide email dated 31.10.2018, the respondent sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investors of assured return-based projects. The respondent also sent another e-mail dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 and other statutory changes which led to stoppage of all the return based/assured/committed return based sale. The email communication of 29.02.2016 also confirmed to the allottees that the project was ready and available for leasing. That on 28.12.2018, respondent sent a clarificatory email stating that the assured returns and other committed return would stop altogether and alternatively gave the allottees an option to shift to a project of the respondent in the vicinity, further the allottees who were keep to receive quarterly returns, the respondents have a SEBI registered product which offered quarterly returns with fixed tenure. That the issue regarding stoppage of assured/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project. Further, the respondent intimated to all its allottees that in view of the legal changes and formation of new laws the amendment to BBA vide addendum would be shared with all the allottees to safeguard their interest. Thereafter on 25.02.2020, respondent issued communication to all its allottees regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the project INXT City Centre.
- k) That for the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading evidence as well as cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- l) That the complainant allege that an expression of interest was signed by the complainants in 2015 yet nothing was proceeded further thereon and the complainant fails to show any agreement or allotment for which claim of

assured return and refund is being demanded in the present complaint. The onus is upon the complainants to show that the alleged cause of action arose in 2015 and yet the complainants did not file any such claim. That the inaction of the complainants is a patent acquiescence and the complainants cannot demand recovery after a massive delay of 8 years. The complainants are attempting to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence, the complaint 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the

powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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.

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of the complaint.

14. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainants have admittedly filed the complaint in the year 2023 and the cause of action accrue on 09.09.2016. Therefore, it is submitted that the complaint cannot be filed before the HARERA Gurugram as the same is barred by limitation.
15. On consideration of the documents available on record and submissions made by both the parties, the authority observes that the expression of interest was signed by both the parties on 09.09.2015. As per clause (a) of the said expression of interest, the allotment of a commercial unit was to be offered with in a period of 12 months from the date of this letter. However, there is nothing on record to substantiate the fact that allotment was made in favour of the complainant till date.
16. It is pertinent to mention here that the said project of the allotted unit is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the

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Authority for registration of the said project within a period of three months from the date of commencement of this Act"

17. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
18. Moreover, it is observed that despite passing a benchmark of due date of making an allotment in favour of the complainants on 09.09.2016, till date it has failed to make an allotment in favour of the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon Section 22 of the Limitation Act, 1963, "Continuing breaches and torts" and the relevant portion of the same is reproduced as under for ready reference: -

22. Continuing breaches and torts-

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

19. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint being barred by limitation is hereby rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

20. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the plea advanced in this regard is devoid of merits as the complainants wish to withdraw from the project and are seeking refund of the amount paid against the allotted unit. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

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

21. The respondent has raised an objection that the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing.

22. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated that-

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

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

G. Findings on relief sought by the complainants.

G.I Direct the respondent to refund Rs.22,14,250/- so paid by the complainants along with interest @ 18% per annum.

G.II Direct the respondent to pay assured monthly return from August, 2015 @ Rs.75.83/- per sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. after completion of the building along with interest @ 18% per annum.

23. During the course of last proceedings dated 25.09.2024, the counsel for the complainant submitted that he is restricting its relief to that of refund only along with interest at the prescribed rate. In lieu of the same, relief no. G.I as to assured monthly return becomes redundant and Authority would now only deliberate upon relief no. G.I.

24. The factual matrix of the case reveals that an expression of interest was signed by the parties on 09.09.2015 and a priority no. P-264 for a unit admeasuring 500 sq. ft. was allocated to the complainants. The complainants have paid the entire sale consideration of Rs.22,14,250/- on

the date of signing the said expression of interest. Thereafter an acknowledgement of expression of interest letter dated 04.11.2015 was sent by the respondent to the complainant, which provided for payment of assured returns to the complainants @ Rs.75.83/- per sq. ft. till completion of the project and thereafter, @ Rs.65/- per sq. ft. from the date of completion of construction of said unit for upto 36 months or till the said unit is put on lease, whichever is earlier. However, it is important to note that no builder buyer agreement was entered into between the parties. Therefore, the due date of possession had to be calculated from the date of signing of expression of interest between the parties in view of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.**" Accordingly, the due date of possession comes out to be 09.09.2018. As per the said agreement, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.

25. The complainant states that there were no signs of completion of the project and therefore, vide an e-mail dated 17.06.2023 the complainants intend to withdraw from the project and sought refund of entire amount paid by them under the proviso to Section 18(1) of the Act. Section 18(1) proviso 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,

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act **or for any other reason,**

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act....."

26. Keeping in view the fact that the allottee-complainants wishes to withdraw from the project and seeks refund of the amount received by the promoter in respect of the unit with interest, the matter is covered under Section 18(1) of the Act of 2016. The due date of possession was 09.09.2018 and occupation certificate of the buildings/towers where allotted unit of the complainants is situated is not yet received by the respondent. Accordingly, the respondents are liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.
27. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest as provided under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.
28. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ease uniform practice in all the cases.
29. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in> , the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.
30. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the ✓

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- i. *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- ii. *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. The non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules, 2017, *ibid*.
32. However, since the complainant-allottees are withdrawing from the project of the respondent by seeking relief of refund of entire amount paid by them along with interest at the prescribed rate, whatever financial benefit accrued to the complainants in lieu of the said allotment is to be refunded by the complainants to the respondent. Therefore, the amount of assured returns paid by the respondent to the complainant-allottees shall be adjusted/deducted from the payable amount.
33. The present case was listed for pronouncement of order on 18.12.2024. However, during the course of proceedings the counsel for the respondent submitted that assured return amounting to Rs.11,75,396/- has been paid

to the complainant contrary to the claim that Rs.34,691/- has been paid on that account. In the interest of justice, the Authority directed the respondent to submit a copy of the assured return statement in the registry of the authority so that there is no complication w.r.t execution of the order at a later stage.

34. It is important to note that no document has been placed on record by the respondent substantiating that assured return amounting to Rs.11,75,396/- has been paid to complainant contrary to claim that Rs.34,691/-. However, the counsel for the complainant has filed an affidavit dated 16.01.2025 objecting to the same stating that no assured return has been paid to the complainants since 01.10.2018 as had been admitted by the respondent in reply filed by them.

35. The Authority is of the view that the respondent in para no. 5 of its reply dated 27.03.2024, itself admitted that no assured returns have ever been given by the respondent to the complainants. Also, the respondent has failed to place on record any document to substantiate that an amount of Rs.11,75,396/- has been paid to complainant on account of assured returns. Therefore, the Authority observes that only an amount of Rs.34,691/- as had been admitted by the complainant-allottees in their pleadings shall be adjusted/deducted from the payable amount on account of assured returns.

G.III Direct the respondent to pay Rs.3,00,000/- on account of mental agony and harassment.

G.IV Direct the respondent to pay litigation expenses amounting to Rs.1,00,000/-.

36. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

37. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd.*

V/s State of UP & Ors. has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions issued by the Authority:

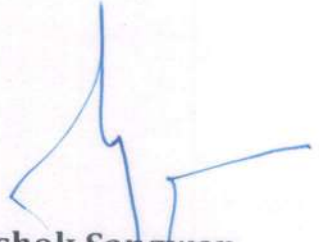
38. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to refund the entire amount paid by the complainants, i.e., Rs. 22,14,250/- along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization. However, the amount of assured return already paid by the respondent to the complainants, i.e., Rs.34,691.92/- w.r.t. unit allotted shall be adjusted/deducted from the payable amount.
- II. 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.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 22.01.2025


Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram