

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

Complaint no.	5923 of 2022
Date of filing complaint	06.02.2024
First date of hearing	27.03.2024
Date of decision	23.04.2025

1. Mr. Saurabh Prakash
2. Mr. Om Prakash Gupta
Both Resident of: D-79, Doctors Residence,
Mayom Hospital, D Block, South City-I,
Gurugram-122007

Complainants

Versus

M/s Vatika Limited
Regd. office: Flat no. 621A, 6th Floor, Devika
Towers, 6, Nehru Place, New Delhi – 110019
Corporate office: Vatika Triangle, Block A,
Sushant Lok, Gurgaon-1220022

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Rawat and Mr. Mohit Gondi
(Advocates)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 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

- 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 Trade Centre", Gurugram (Now, "Vatika INXT City Centre", Sector-83, Gurugram)
2.	Nature of the project	Commercial
3.	Registered/ registered	not Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
4.	License no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Unit no.	1211, 12th floor (page 26 of complaint)
6.	Unit admeasuring	500 sq. ft. (Super Area) (page 26 of complaint)
7.	Date of buyer agreement	13.02.2010 (page 23 of complaint)
8.	Addendum to the agreement	13.02.2010 (page 41 of complaint)
9.	Total sale consideration	Rs.27,50,000/- (as per BBA page 59 of complaint)
10.	Amount paid by the complainant	Rs.27,50,000/- (as per BBA page 59 of complaint)
11.	Assured return clause	<i>"The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated offered for possession you will be paid an additional return of Rs.13/- per sq. ft. Therefore, the return payable to you shall be as follows:</i>



		<p><i>This addendum forms an integral part of the builder buyer agreement dated 16.06.2010.</i></p> <p>a) Till offer of possession Rs.78/- per sq. ft.</p> <p>b) After completion of the building Rs.65/- per sq. ft.</p> <p><i>You would be paid an assured return w.e.f. 16.06.2010 on a monthly basis before the 15th of each calendar month.</i></p> <p><i>The obligation of the developer shall be to lease the premises of which your flat 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:</i></p> <p>1) If the rental is less than Rs.65/- per sq. ft., then you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which the achieved rental is less than Rs.65/- per sq. ft.</p> <p>2) If the achieved rental is higher than Rs.65/- per sq. ft., then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of the increased rentals."</p> <p>(Addendum to BBA at page 41 of complaint)</p>
12.	Assured return paid by the complainant till October, 2018	Rs.32,63,000/- (as alleged by respondent page 03 of reply)
13.	E-mails sent by the respondent to complainant regarding stoppage of assured returns	31.10.2018, 30.11.2018, 28.12.2018 (Page 9, 10, 12 and 13 of reply, respectively)
14.	E-mail sent by respondent to complainant regarding reconciliation of accounts of the complainant	June 2019 (Page 15 of written submissions filed by respondent on 01.08.2024)
15.	Legal notice issued by complainant for payment of assured return	24.01.2022 (page 44 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions by filing the present complaint as well as written submissions dated 04.03.2025:
- a) That in 2010, the respondent issued an advertisement announcing office spaces and thereby invited applications from prospective buyers for purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.
 - b) That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainants purchased a unit in the project @Rs.3500/- per sq. ft. for the total sale consideration of Rs.17,50,000/- towards a super area measuring 500 sq. ft. exclusive of service tax payable by the complainants and the same was acknowledged by the respondent.
 - c) That the respondent subsequently transferred/endorsed the property in favour of the complainant vide builder buyer agreement dated 13.02.2010. The respondent executed a builder buyer agreement dated 13.02.2010 in favour of the complainant for an appropriate consideration. The total sale consideration was paid according to demands raised by the respondent.
 - d) That the respondent despite having made multiple tall representations to the complainant, chose not to act and fulfil the promises and have given cold shoulder to the grievances raised by the allottee.
 - e) That as per terms of the said agreement dated 13.02.2010, the respondent had agreed to pay a return on investment a sum of Rs. 78/- per sq. ft. per month on super area of 500 sq. ft. till the completion of the building and Rs. 65/- per sq. ft. of the super area after completion of the building w.e.f. 13.02.2010 on monthly basis before the 15th of each calendar month.
 - f) That the respondents initially released the payment of return on investment which was not within the specified timeline as agreed upon to make

payment on monthly interval on 15th day of the following month, but after that the respondent stopped making payment from last one year till 20.08.2022 and still unpaid without giving any reason and failed to give possession of office space till date.

- g) That the respondent was supposed to handover the possession within 3 years from the date of signing the buyer's agreement. The respondent failed to pay the said amount and did not pay any heed to repeated requests of the complainants. The complainants issued a legal notice dated 24.01.2022 regarding the same but no effort towards the same were made.
- h) That the complainants being the aggrieved person are filing the present complaint under Section 31 with the Authority for violation/ contravention of provisions of this Act. As per Section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to pay pending assured return and interest thereon on the total amount paid by the complainant.
 - II. Restrain the respondent from raising fresh demand for payment under any head, as the petitioner had made the full payment.
 - III. Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness.
 - IV. Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed and to get conveyance deed in favour of the complainant.
 - V. Direct the respondent to provide the exact layout plan of the said unit.
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 06.06.2023 and written submissions dated 01.08.2024:
- a) That the complainants are investors who approached the respondent for investment opportunities and steady committed returns and rental income. The complainants being investors in the project has no locus standi to file the present complaint.
 - b) That in the year 2010, the complainants learned about the commercial project launched by the respondent under the name and title "Vatika Trade Centre" and repeatedly visited office of the respondent to know the details of the said project. The complainants booked a unit for an amount of Rs.17,50,000/- on free will and consent, without any demur whatsoever.
 - c) That the respondent vide allotment letter dated 13.02.2010 allotted a unit bearing no. 1211, 12th floor, tentatively admeasuring 500 sq. ft. in the said project. Thereafter, a builder buyer agreement dated 13.02.2010 was executed between the parties.
 - d) That an addendum to buyer's agreement dated 13.02.2010 was executed between the complainants and the respondent wherein the complainants were made aware of the fact that the obligation of the respondent shall be to lease the said premises for which the complainants will be given committed returns as agreed and the said position was duly accepted by the complainants without any protest.
 - e) That the complainants are trying to mislead the authority by concealing facts which are detrimental to this complaint. The agreement executed between the parties on 13.02.2010 was in the form of an investment agreement. The complainants approached the respondent as investors looking for certain investment opportunities. Thus, the allotment of the said unit contained lease clause which empowers the developer to put a unit of the

complainants along with commercial space unit on lease and does not have possession clause for physical possession. Hence, the embargo of real estate regulatory authority, in totality, does not exist.

- f) That the respondent was always prompt in payment of assured returns as agreed in the agreement. The respondent had been paying the committed return every month to the complainants without any delay. On 30.10.2018, the complainants had already received an amount of Rs.32,63,000/- as assured return as agreed by the respondent under the said agreement. However, post October 2018 the respondent could not pay the agreed assured returns due to change in legal position and illegality of making the payment of the same.
- g) 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 deposit schemes were banned. The respondent company having taken no registration from SEBI board cannot run, operate, and continue an assured return scheme. Further, the enactment of BUDS read with 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 definition of 'Deposit.'
- h) That the development of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, etc. such as direction of Hon'ble National Green Tribunal, Environment Pollution Control Authority, Haryana State Pollution Control Board, Commissioner Municipal Corporation Gurugram, Hon'ble Supreme Court, Covid-19

pandemic, etc. which caused a delay of approximately 1.4 years in completion of the project. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This also led to further extension of time period in construction of the project and all such factors may be taken into consideration for the calculation of the period of the construction of the project.

- i) That the respondent, issued communications to all its allottees of project "INXT City Centre" from company email id noreply@salesforce.com and noreply@vaticagroup.com, regarding committed returns/assured returns suspension vide email dated 31.10.2018. The respondent issued second communication to all allottees, through email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (BUDS Act) and other statutory changes which led to stoppage of all return based/assured / committed return based sale and respondent's proposal to reconcile all accounts as of July, 2019. The respondent issued third email to all allottees on 28.12.2018 regarding stoppage of the assured rentals and reconciliation of all dues by June, 2019, issued communication regarding addendum agreement containing revised clauses excluding assured return /committed return clause alternatively giving option to allottees to shift to another project.
- a) That the respondent on 14.06.2019, issued update to all allottees regarding reconciliation of accounts as of 30th June 2019 and issuance of Addendum-Agreement for revising the clause of assured return and finally stopping the future returns. The allottees who chose to cancel the allotment were also provided required document emails and were refunded investments. Thus, the respondent admittedly paid assured returns from the date of execution of BBA till September, 2018 and at the time of stoppage of assured return in



September 2018, the respondent timely provided detailed communication to all allottees in the Project, however the Complainant chose to sit till the filing of this complaint and now cannot be allowed the relief as prayed.

- b) That the complainant contends that respondent promised to pay assured returns as per addendum signed along with BBA, however after September 2018, the respondent stopped the payments and no further payments have been made and seeking relief of payment of assured returns from October 2018 onwards. Admittedly the respondent paid the assured return each month in terms of the agreement till Sept 2018.
- c) The issue regarding jurisdiction over complaint pertaining to the assured return is pending before various Courts and Tribunals. One of such matters pertaining to the question of law *"whether the authorities or tribunal can grant the relief of assured return after the commencement of BUDS Act"* is pending before the Hon'ble Punjab and Haryana High Court. In the bunch of petitions tagged with the matter of 'Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022, the Hon'ble High Court at Punjab & Haryana has restrained the respondents therein from taking any coercive steps in criminal cases registered against respondent herein, for seeking recovery of assured return till next date of hearing and the same has now been listed for 17.07.2024.
- d) That the Act 2016 provides for three kinds of remedies available to the complainant in the case of any dispute arisen between a Builder and Buyer with respect to the development of the project. Such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. 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 to allottee, if any, however, nowhere

in said provision the Ld. Authority has been empowered with jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns.

- e) That the true nature of the relief sought is kind of specific performance of the Assured Returns Commitment. It is respectfully submitted that the relief of specific performance flows from the Specific Relief Act, 1963 and no part of the Real Estate (Regulation and Development) Act, 2016 clothes this Ld. Authority to exercise powers under Specific Relief Act, 1963. Thus, this 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 Performance Act, 1963.
- f) With regard to issue of physical possession, the agreed BBA between the complainant and respondent shows that unit allotted to the complainant was not intended to be handed over to the complainant since it was a part of bigger floor plate and to be leased out to third parties together with such similar other units in that floor. The complainant was well aware of the fact, that the commercial unit in question was deemed to be leased out upon completion and same was evidently mentioned and agreed by complainant in the agreement. The relevant clause regarding leasing is mentioned below for ready reference:

"... That on completion of the project, the Developer undertakes to put the Said Unit on lease and to effectuate the same the Allottee hereby authorizes the Developer (and agrees, of deemed expedient, to execute any other necessary document in future in this regard in favor of the Developer) to negotiate and finalize leasing agreement with any suitable tenants. The Allottee expressly authorizes the Developer to enter into agreement with any suitable tenants. The Allottee expressly authorizes the Developer to enter into any agreement with any third party for leasing of the Said Unit and to appear before the HUDA or any other competent authority of Assurances and to lodge the lease deed as aforesaid registration and to pay stamp duty and registration charges on account of the Allottee, in respect to the lease if payable..."

Therefore, it is clear that the said allotment of the said commercial unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with other commercial space unit on lease and does not have "Possession Clauses", for physical possession.

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 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 an investor.

12. The respondent took a stand that the complainant is an investor and not a consumer and therefore, she is not entitled to 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 a buyer, and he had 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;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter, it is crystal clear that the

complainant is an allottee as the subject unit was allotted to him 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 is not entitled to protection of this Act also stands rejected.

F.II Objections regarding force majeure.

14. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay pending assured return and interest thereon on the total amount paid by the complainant.

G.II Restrain the respondent from raising fresh demand for payment under any head, as the petitioner had made the full payment.

15. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the addendum to the 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 (*Brhimjeet & 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)(I)(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.

16. 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.
17. 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 complainant-allottees in terms of the builder buyer agreement read with addendum to the said agreement.
18. 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 13.02.2010. The assured return is payable to the allottees as per addendum to the buyer's agreement dated 13.02.2010. The promoter had agreed to pay to the complainant-allottees

Rs.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.65/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building 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.

19. In the present complaint, 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 ₹32,63,000/- to the complainants as assured return till October 2018. Therefore, considering the facts of the present case, the respondent is obligated to pay the amount of assured return at the agreed rate i.e., @ Rs.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.65/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier.
20. 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 Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness.

21. The respondent is directed to offer the possession of the unit/space to the complainants in terms of the buyer's agreement executed between the parties on 13.02.2010.

G.IV Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed and to get conveyance deed in favour of the complainant.

22. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

23. Further, 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."

24. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter from the competent authority till date. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the

unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of issuance of occupation certificate with respect to project in which unit of the complainants is situated.

G.V Direct the respondent to provide the exact layout plan of the said unit.

25. As per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is obligated to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

H. Directions issued by the Authority:

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., Rs.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.65/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier.
- II. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

- III. The respondent is directed to offer the possession of the unit/space to the complainants in terms of the buyer's agreement executed between the parties on 13.02.2010.
- IV. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. 4031 of 2019 titled as "Varun Gupta V. Emaar MGF Land Limited" decided on 12.08.2021.
- V. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of issuance of occupation certificate with respect to project in which unit of the complainants is situated.
- VI. The respondent is directed to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.
- VII. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- VIII. 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.
27. Complaint stands disposed of.
28. File be consigned to the Registry.

Dated: 23.04.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram