

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

**Date of decision: - 28.03.2025**

NAME OF THE BUILDER		Vatika One On One Private Limited	
PROJECT NAME		Vatika One on One, Sector 16, Gurugram Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/8141/2022	Sobha Bhala VS. 1. Vatika One On One Private Limited 2. Vatika Limited	Adv. Varun Kathuria (Complainant) Adv. Ankur Berry (Respondent)
2.	CR/8142/2022	Chander Bhala VS 1. Vatika One On One Private Limited 2. Vatika Limited	Adv. Varun Kathuria (Complainant) Adv. Ankur Berry (Respondent)
3.	CR/8144/2022	Chander Bhala VS 1. Vatika One On One Private Limited 2. Vatika Limited	Adv. Varun Kathuria (Complainant) Adv. Ankur Berry (Respondent)

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**ORDER**

- The order shall dispose off all the three complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, Vatika One On One Private Limited Sector 16, Gurugram being developed by the same respondent- promoter i.e. Vatika One On One Private Limited The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are

also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to pay assured return as per the terms of the builder buyers agreement, seeking pending assured return along with interest.

- The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

Vatika One On One Sector-16							
<b>Possession Clause 17:</b> <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments....."</i>							
<b>Clause 15. Assured Return</b> <i>"The Developer may, where the Buyer has 100% of the total sale consideration and other charges for the Commercial unit, upon signing of this Agreement pay Rs. 151.65/- (one hundred fifty-one and sixty five paise only) per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme."</i>							
Occupation certificate received on 06.09.2021							
Sr. No.	Complaint No./Title /Date of filing/ Reply status	Unit /shop no. and area	Date of execution of builder buyer's agreement	Due date of possession	Assured return paid till date in Rs.	Total sale consideration in (Rs.)	Paid-up amount in Rs.
1	CR/8141/2022  DOP:- 19.01.2023 RR:- 19.10.2023	350, 3 <sup>rd</sup> floor, block no. 3 500 sq. ft.	05.11.2016	05.11.2020 [calculated from the date of agreement]	18,90,570/- (from 09.11.2016 till 01.09.2018) - page 3 of reply	39,64,505/- (Page 16 of complaint)	44,77,825/- (Page 3 of complaint)
2	CR/8142/2022  DOP:- 19.01.2023 RR:- 19.10.2023	352, block no. 3	05.11.2016	05.11.2020 [calculated from the date of agreement]	17,90,570/- (from 09.11.2016 till 01.09.2018) - page 4 of reply	39,64,505/- (Page 16 of complaint)	44,77,825/- (Page 8 of complaint)



3.	CR/8144/ 2022  DOF:- 19.01.202 3 RR:- 19.10.202 3	352, block no. 3	05.11.2016	05.11.2020 [calculated from the date of agreement]	17,90,570/- (from 09.11.2016 till 01.09.2018) - page 4 of reply	39,64,505/- (Page 16 of complaint)	44,77,825/- (Page 8 of complaint)
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**Relief sought by the complainant in all cases:-**

1. Assured Return
2. Direct the respondent to pay interest at the prescribed rate on the unpaid assured return calculated from the date of monthly returns became due till the date of actual payment.
3. Direct the respondent to execute the CD

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/8141/2022** titled as **Sobha Bhala VS. Vatika One On One Private Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Unit and project-related details**

4. 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:

**CR/8141/2022 titled as Sobha Bhala VS. Vatika One on One Private Limited**

Sr. No.	Particulars	Details
1.	Name of the project	"Vatika One on One", Sector 16, Gurugram
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.12125 acres
4.	DTCP License no. and validity status	License no. 05 of 2015 dated 06.08.2015 valid upto 05.08.2020.
5.	Registered/ not registered	Registration no. 237 of 2017 dated 20.09.2017 valid upto 19.09.2022.
6.	Allotment letter	17.09.2016

		(Page 10 of complaint)
7.	Date of execution of agreement	05.11.2016 (Page 13 of complaint)
8.	Unit no.	350, 3 <sup>rd</sup> floor, block no. 3 (Page 10 of complaint)
9.	Unit area admeasuring	500sq. ft. (Page 10 of complaint)
10.	Provision regarding assured return	<p><b>Clause 15. Assured Return in full down payment cases</b></p> <p><i>"The Developer may, where the Buyer has 100% of the total sale consideration and other charges for the Commercial unit, upon signing of this Agreement pay Rs. 151.65/- (one hundred fifty-one and sixty-five paise only) per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme."</i></p> <p><b>16.1.</b> The Developer will pay to the buyer Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of construction of the said building or the said unit is put on lease whichever is earlier. (Page 30 of complaint)</p>
11.	Possession clause	<p><b>Clause 17 of the BBA</b></p> <p><i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within</i></p>



		<i>a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments....."</i>
12.	Due date of possession	05.11.2020 (Calculated to be 48 months from the date of execution of builder buyer agreement, i.e., from 05.11.2016)
13.	Basic sale consideration	Rs. 39,64,505/- (Page 16 of complaint)
14.	Amount paid by the complainant	Rs. 44,77,825/- (As stated by the complainant on page 3 of complaint)
15.	Amount of Assured return paid by the respondent to the complainant till date	Rs. 18,90,570/- (from 09.11.2016 till 01.09.2018) page 3 of reply
16.	Occupation certificate	06.09.2021

#### B. Facts of the complaint:

5. The complainant has made the following submissions:

- The Respondent no. 2 made false representations and claims of being a big Company and a reputed developer and thereby induced the Complainant to book/purchase a 500 sq. ft. unit in its project known as "Vatika One on One" located at Sector 16, Gurgaon, 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

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modern amenities and facilities. The complainant paid the full consideration amount of Rs. 44,77,825/- upfront to the Respondent no. 1 and was allotted Unit no. 350 on the third floor in Block - 3 of the project having 500 sq. ft. super area vide letter dated 17.09.2016. The booking of the unit was done at the office of the respondent no. 2 only and the complainant was informed that the respondent no. 1 is a company of the respondent no. 2 only and the respondent no. 2 will be responsible for the obligations pertaining to the entire project.

- b) As per the allotment letter the Respondent no. 2 was liable to pay assured monthly returns @ Rs. 151.65/- per sq. ft. per month till completion of construction post which it was liable to pay @ Rs. 130/- per sq. ft. per month to the Complainant for upto 3 years post completion or till the unit is put on lease, whichever was earlier. The said letter also contained terms specifying the amounts to be paid by the complainant or the respondent no. 2 if the unit is put on lease at a higher or lower rate than Rs. 130/- per sq. ft. respectively.
- c) That the builder buyers agreement dated 05.11.2016 was executed between the respondents and the complainant which elaborated upon the terms mentioned in the allotment letter. All terms pertaining to payment of assured returns and leasing of the unit were elaborated in Clause 15 and 16 of the BBA and payment plan was mentioned in Annexure - 1 of the BBA.
- d) The respondent in furtherance of its mala fide intentions and ulterior motives stopped the payment of the monthly returns to the complainant from October, 2018, onwards claiming modification of existing laws which was false and baseless. Despite of repeated requests, the same have not been paid till date. The Respondents around June, 2019, asked the Complainant to visit their office and

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execute an addendum as per which they will forego their claims of assured returns post June, 2019, but the Complainant refused for the same.

- e) That the respondents have not only duped the complainant but several other unsuspecting buyers by refusing to pay the monthly returns on one pretext or the other and the complainants are not even sure about the status of completion of the said project till date. It is a matter of record that no recent laws have been enacted which prevent the payment of monthly assured returns as claimed by the respondent as other developers are marketing project with assured return payments and are also paying the returns even today.
- f) The conduct of the respondents is illegal and arbitrary and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondents are clearly in breach of its contractual obligations and of causing financial loss to the complainants and the conduct of the respondents has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainant. The respondents are jointly and severally liable for the reliefs claimed by the complainant.

**C. Relief sought by the complainant:**

- 6. The complainant has sought the following relief(s):
  - i. Direct the respondent to pay the amount of assured returns due and payable by it to the complainant(s) from December, 2019, till date of order, to be calculated at Rs. 151.65/- per sq. ft. per month till issuance of Occupation Certificate/Completion certificate by the competent authority and thereafter, as per the terms of the agreement executed between the parties.

- ii. The respondents be directed to continue paying the investment returns/monthly returns to the complainant(s) as per the terms of the builder buyers agreement.
  - iii. Direct the respondent to execute conveyance deed as per the agreed terms.
7. 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.**

8. The respondent contested the complaint on the following grounds vide its reply:
- a) That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law, and is filed without a cause of action, hence is liable to be rejected on this ground alone.
  - b) That the Complainant has approached the Authority with unclean hands. That the claims of the Complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Authority with unclean hands and suppressing material facts. That the Complainant are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
  - c) That the Complainant has gravely erred in filing the present Complaint and misconstrued the Provisions of the RERA Act. That it is an admitted fact that by no stretch of imagination it can be concluded that the Complainant herein is an "Allottee/Consumer". That the Complainant is simply an investor who approached the Respondent for investment opportunities and for steady committed Returns and Rental Income. That the Complainant being an investor in the Project has no locus standi to file the present Complaint.



- d) That in the year 2016, the Complainant learned about the commercial project launched by the Respondent under the name and title 'Vatika-One On One' ("Project") and repeatedly visited the office of the Respondent to know the details of the said project. That the Complainant approached the Respondent and expressed interest in booking of an apartment in the commercial colony developed by Respondent situated in Sector 16, Urban Estate Gurgaon, Haryana. Prior to the booking, the Complainant conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question.
- e) That thereafter the original allottees, vide an application form dated 08.09.2016 applied to the Respondent for provisional allotment of the unit. Thereafter, an allotment letter was issued in favour of the original allottees and a unit admeasuring 500 sq. ft. bearing no.350, 3<sup>rd</sup> Floor, Block-3, admeasuring 500 sq. ft. (tentative area) was allotted vide allocation letter dated 17.09.2016. That an allotment letter so issued in favour of the original allottees confirmed the allotment of the said unit along with monthly assured returns.
- f) Thereafter, a Buyer's Agreement dated 05.11.2016 was executed between the Complainant and the Respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the

Agreement which continue to be binding upon the parties thereto with full force and effect.

- g) That in any case whatsoever, the aspect of leasing of the unit and the investment of the Complainant cannot be dealt with by this Authority. Regardless, at the utmost *bonafide*, the Hon'ble Authority is most humbly appraised by the fact that the Respondent had been rightly obliging with the payments of committed returns to be made by it. That it is submitted that the Respondent vide its allotment letter has acknowledged the receipt of the application form and further it was clearly apprised to the Complainant that the Respondent shall put on lease the said premises which clears the air that the Complainant is not an allottee but an investor who has booked the said unit in order to earn rental income at the behest of the Respondent.
- h) That it is humbly submitted before the Hon'ble Authority that the Respondent was always prompt in making the payment of assured returns as agreed under the Agreement. It is not out of place to mention that the Respondent herein had been paying the committed return of Rs.18,90,570/- from 09.11.2016 till 01.09.2018 without any delay. It is to note that as on 01.09.2018, the Complainant herein had already received an amount of Rs.18,90,570/- as assured return as agreed by the Respondent as per the aforesaid allotment. However, post September, 2018, the Respondent could not pay the agreed Assured Returns due to change in the legal position and the illegality of making the payment of the same.
- i) That it is submitted that the Complainant has been duly informed about the suspension of all return-based sales as the Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". That in the



given facts and circumstances, it is most humbly submitted that the Respondent had rightly stopped making the payment, and in any case whatsoever, the present Complaint cannot be entertained by this Authority. In this regard, it is most humbly submitted as under:

Relief of assured return beyond the jurisdiction of this Authority: -

- j) That the Complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".
- k) That the non-payment of assured return post September, 2018 as alleged by the Complainant in his complaint is bad in law. It is pertinent to mention herein that the payment of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act]. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme". Thus,

The Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". In this regard, it is most humbly submitted as under:

- A. Issue regarding Assured Return is pending adjudication before the Hon'ble Punjab and Haryana High Court and Hon'ble Haryana Real Estate Appellate Tribunal.
- i. It is imperative to mention that the issue pertaining to the assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court. Wherein, the Hon'ble High Court in the matter of *'Vatika Limited vs Union of India and Anr.'* in **CWP No. 26740 of 2022**, had issued notice to the Respondent Parties and had also restrained the competent authorities from taking any coercive actions against the Respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.
  - ii. That it is reiterated that the issues so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the Respondent into succumbing to the pressure so created by the Complainant in filing this complaint before this Authority and seeking the reliefs which the Complainant are not entitled to raise before this Authority.
- l) That the Respondent cannot pay "Assured Returns" to the Complainant by any stretch of imagination in the view of the prevailing legal position. That on 21.02.2019, the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- m) It is submitted that as per the Agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances





which were beyond the control of the Respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the Respondent were entitled for extension of time period for completion.

- n) Therefore, there is no default or lapse on the part of the Respondent and there is no equity in favour of the Complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the Respondent. The allegations levelled by the Complainant are totally baseless. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

**9. Written submission made by the complainant on 06.02.2025.**

- a. That the complainant purchased a 500 sq. ft. unit in the project of the respondent then known as Vatika one on one for a total sale consideration amount of Rs. 44,77,825/- which was paid upfront by the complainant to the respondent no. 1 complainant was allotted unit no. 352 on the 3<sup>rd</sup> floor in block-3 of the project having 500 sq. ft. As per the allotment letter the respondent was liable to pay assured return i.e., Rs. 151.665 per sq. ft. per month till the completion of construction post which it was liable to pay @ Rs. 130 per sq. ft. per month to the complainant for upto 3 years post completion or till the unit is put on lease, whichever is earlier.
10. 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:**

11. 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**

12. 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**

13. 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.*

14. 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.

**F. Findings on the objections raised by the respondent:****F.I Objection regarding maintainability of complaint on account of complainant being investor.**

15. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act.



However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

17. 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.

18. 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.

### **F.III Objections regarding force Majeure.**

19. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

### **G. Findings on relief sought by the complainant.**

**G.1 Directed the respondent to clear all dues of assured return with interest.**

20. The complainant in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. It is pleaded that the respondent has not complied with the terms and conditions of the

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agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

21. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017*. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter

and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

22. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement , then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. This project is already registered with the Authority bearing no. 237 of 2017 dated 20.09.2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the **Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the

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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.

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

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

24. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

25. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the

person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as *Nikhil Mehta, Pioneer Urban Land and Infrastructure* which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case *Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)* where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)* as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

26. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.



27. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 05.11.2016, As per clause 17 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 05.11.2020.
28. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement. The rate at which assured return has been committed by the promoter is Rs.151.65/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of the building and Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of the building or the said unit is put on lease whichever is earlier.
29. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of buyer's agreement along with interest on such unpaid assured return. As per buyer's agreement dated 05.11.2016, the promoter had agreed to pay to the complainant-allottee Rs.151.65/- per sq. ft. from the date of execution of this agreement till completion of the building and Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of the building or the said unit is put on lease whichever is earlier. It is matter of record that the amount of assured return was paid by the respondent promoter till September, 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even

after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

30. In the present complaint, OC for the block in which unit of complainant is situated has been received by the promoter on 06.09.2021. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project.
31. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building, i.e., till the date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs. 130/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building i.e., 06.09.2024 in terms of the BBA dated 05.11.2016 since there is no document place o record w.r.t. to lease.
32. The respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

**G.V Direct the respondent to execute conveyance deed as per the agreed terms.**

33. 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."*

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

**H. Directions issued by the Authority:**

35. 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.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building i.e. 06.09.2021 when OC of the unit is received from the competent authority and thereafter, @ Rs.130/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building or till the unit is put on lease whichever is earlier, in terms of the BBA dated 05.11.2016.
- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.

- iii. The respondent-promoter is directed to execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 90 days after obtaining occupation certificate from the competent authority.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- v. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.

36. Complaint as well as applications, if any, stands disposed off accordingly.

37. File be consigned to registry.

Dated: 28.03.2025

  
(Vijay Kumar Goyal)  
(Member)

Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**