

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

Complaint no.	957 of 2024
Date of filing complaint	15.03.2024
First date of hearing	29.05.2024
Date of decision	07.05.2025

1. Harjan Singh Cheema
2. Amrita Cheema

Both Residents of: S-114A, II Floor, Uppal South End,
Sector 49, Gurugram

Complainants

Versus

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. Abhijeet Gupta (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the

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 of the project	"Vatika India Next City Centre", Sector-83A, Gurugram
2.	Type of colony	Commercial Space
3.	Registered/ not registered	Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
4.	License no. and validity	122 of 2008 dated 14.06.2008 valid upto 13.06.2016
5.	Finally reallocated unit no.	Unit no. 501, 5 th floor, Block C admeasuring 500 sq. ft. (Page 20 of complaint)
6.	Old Unit no.'s	Unit no. 122, 1 st floor, Block A admeasuring 500 sq. ft. (Allotment letter dated 09.05.2012 at page 39 of complaint and BBA at page 17 of complaint)
7.	Date of execution of buyer's agreement (Old Unit)	24.05.2012 (Page 15 of complaint) * On the same date the unit was endorsed in favour of the complainants- page 38 of BBA)
8.	Letter for re-allocation of unit	15.04.2013 Allotment of New Unit (unilaterally as contended by complainant in para 7 of his pleadings at page 11 of complaint) (Page 40 of complaint)
9.	Assured Returns clause	<u>Clause 12. Assured Return and Leasing Arrangement</u> "Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also



		<p>requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 65 (Rupees Sixty-five only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs. 65 (Rupees Sixty-five) per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter....."</p> <p>(BBA at page 29 of complaint)</p>
10.	Possession clause	<p>Clause 10 – Force Majeure</p> <p>".....Subject to the aforesaid and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the</p>

		<i>developer, the Developer contemplates to complete construction of the said Commercial Unit within 48 months of execution of this Agreement."</i> (Emphasis supplied) (BBA at page 29 of complaint)
11.	Due date of possession	24.05.2016 (Calculated to be 48 months from the date of execution of builder buyer agreement)
12.	Total sale consideration	Rs. 21,00,000/- (BBA at page 17 of complaint)
13.	Paid up amount	Rs. 21,64,890/- (BBA at page 17 of complaint)
14.	Letter of completion of construction sent by respondent to complainant	15.03.2018 (Page 101 of reply)
15.	Assured returns paid by respondent to complainant till June, 2018	Rs.21,12,500/- (As pleaded by respondent at page 13 of reply)
16.	E-mails sent by the respondent to complainant regarding stoppage of assured returns	31.10.2018, 30.11.2018, 28.12.2018 (Page 102, 103 and 106 of reply respectively)
17.	E-mail sent by respondent to complainant regarding reconciliation of accounts of the complainant	14.06.2019 (Page 108 of reply)
18.	Occupation certificate/Completion certificate	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions:

- a) That, pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project, named as "India Next City Centre"- a commercial colony with impeccable facilities having license No. 122 of 2008 from the Director Town and Country Planning, Haryana, Chandigarh. Believing the same to be correct

and true, the complainants considered the purchasing a unit in the project of the respondent.

- b) That the previous allottees namely Komal Kerpel and Kishore Kerpel had paid to the respondent a sum of Rs. 21,64,890/- against a total sale consideration amount on 19.04.2012 towards the said unit.
- c) That thereafter the builder buyer agreement dated 24.05.2012 was executed between both the parties, wherein the respondent explicitly assigned all the rights and benefits of unit bearing no. 122, admeasuring 500 sq. feet on 1st floor, block-A at India Next City Centre, Sector- 83A, Gurugram, Haryana-122001 to the complainants.
- d) That the respondent had stated about the assignment of rights from the former allottees to the complainants vide letter dated 04.03.2013 in which it has been cleared that the request had been acceded and the respondent had made necessary endorsement in the agreement.
- e) That in pursuant to the buyer's agreement along with the assignment letter that has been executed by the respondent, wherein the respondent had explicitly assigned all the rights and benefits of the unit to the complaint. It is further mentioned that allocation of the unit was done to the complainants by the respondent vide allocation letter dated 15.04.2013 in which the respondent had shifted the unit from unit bearing no. 122, ad-measuring 500 sq. feet on 1st floor, block-A to unit bearing no. 501, ad-measuring 500 sq. feet on 5th floor, block-C at India Next City Centre, Sector- 83A, Gurugram, Haryana-122001.
- f) That, in pursuant to the buyer's agreement executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion etc., vide clause 12, the respondent agreed to pay Rs. 65/-. The respondent arbitrarily stopped making the payment of assured return from June 2018.

- g) That the complainants approached the respondent several times for the payment of assured return and executing the conveyance deed in respect of the unit but respondent gave no hope to any of the request of the complainants.
- h) That at the time of booking the unit in the project, the respondent assured the complainants that once the construction work of the project will get complete, the respondent will lease out the units and a lease rental will be paid to the complainants.
- i) That vide clause 6 of the builder buyer agreement, the respondent undertook to execute the conveyance deed of the said unit. However, even after more than 12 years of executing the agreement, the respondent has not completed the construction work of the project and hence couldn't apply for the occupation certificate from the competent authority.
- j) That in June 2023, the complainants received a maintenance invoice amounting to Rs. 7,00,000/- including interest for the unit which has not been constructed. That on 01.02.2024 the complainants received another maintenance invoice from Enviro Integrated facility services private limited of Rs. 8,14,058.25/-. It is pertinent to mention that this demand is perse illegal as neither the unit in question nor the project of the respondent has completed till date. This demand has been raised in connivance with the employees and directors of the respondent builder in order to avoid the liability of paying assured returns to the complainants.
- k) That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants have

suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- I) That the complainants after losing all the hope from the respondent, after being mentally tortured and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to pay outstanding assured monthly return due from June 2018 to the complainants as no completion certificate has been procured till date.
 - II. Direct the respondent to expedite the application procedure for occupancy and completion certificate and accordingly handover actual possession of the unit bearing no. 501 admeasuring 500 sq. ft. on 5th floor of Block C in India Next City Centre, NH-8, Sector-83, Gurugram, along with all the rights, title and interests without any delay or default in terms with the builder buyer agreement dated 24.05.2012.
 - III. Direct the respondent to register the sale deed for the aforementioned unit.
 - IV. The demand of maintenance charges may be set aside by the Authority on account of non-completion of project by the respondent.
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 19.06.2024:
- 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 as well as an incorrect understanding of the terms and conditions of the BBA dated 28.07.2010.

- b) That the complainants herein are merely investors who have booked the commercial unit under assured return scheme to make steady monthly return. The complainants do not come within the definition of allottees and are rather speculative investors, who intend to invest in the commercial unit for commercial gains only.
- c) That on 09.05.2012, the respondent vide allotment letter allotted unit no. 122, admeasuring 500 sq. ft. at 1st floor to the erstwhile complainants. Thereafter, a buyer's agreement dated 24.05.2012 was executed between the erstwhile allottees for a total sale consideration of Rs.21,00,000/- in the project. However, upon knowing the assured return scheme, the erstwhile allottee upon own will paid the entire amount for making steady monthly returns.
- d) That an endorsement was executed by the previous allottees to transfer their rights and benefits under the BBA dated 24.05.2012 to the current complainants. In the BBA, the respondent assured to provide assured returns of Rs.65/- per sq. ft. till the completion of the building and Rs.65/- per sq. ft. after completion of the building for 36 months or till the unit is put on lease, whichever is earlier.
- e) That the respondent vide letter dated 15.04.2013, allocated a new unit no. 501, 5th floor, block C to the complainants admeasuring 500 sq. ft in place of the erstwhile unit.
- f) 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.'

- 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.59,60,500/- till September 2018.
- h) That the complainants are 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 the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took cognizance in respect of the Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana from taking coercive steps in criminal cases registered against company for seeking recovery against deposits till the next date of hearing.
- j) That the respondent promoter has always been devoted towards its customer and have over the years kept all its allottees updated regarding amendments in law, judgments passed by Hon'ble High Courts and status of development activities in and around the project. Vide e-mail 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

the detailed information to all the investors of assured return-based projects. In furtherance to the said email, the respondent sent another e-mail dated 30.11.2018 further detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all the return based/ assured / committed return based sales. The e-mail communication of 29.02.2016 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/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. On 14.06.2019, the respondent issued update to all its allottees regarding reconciliation of the accounts as of 30.06.2019 and issuance of addendum for revising the clause of assured return and finally stopping the future returns. The respondent admittedly paid assured returns till June 2018 and at the time of stoppage of assured return in June 2018, duly communicated about it to all the allottees of the project. Thereafter on 25.02.2020, the respondent issued communication to all its allottees regarding ongoing transaction and possible leasing of block A, B, D, E and F in the project "Vatika INXT City Centre."

- k) That the complainants were sent letter dated 15.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent.
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 complainants being the investors.

12. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are 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 buyer's agreement, it is revealed that the complainants are the buyers, and 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;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are the allottees 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 an "investor". Thus, the contention of the

promoter that the allottees being the investors 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

14. 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.
15. 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 pay outstanding assured monthly return due from June 2018 to the complainants as no completion certificate has been procured till date.

16. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by

taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*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)(I) deals with the exception wherein 2(4)(I)(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.

17. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
18. It is not disputed that the 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.
19. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 24.05.2012. The assured return is payable to the allottees as per clause 12 of the buyer's agreement dated 24.05.2012. 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 May 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.

20. In the present complaint, 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 ₹21,64,890/- to the complainants as assured return till May 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.
21. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing, which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.II Direct the respondent to expedite the application procedure for occupancy and completion certificate and accordingly handover actual possession of the unit bearing no. 501 admeasuring 500 sq. ft. on 5th floor of Block C in India Next City Centre, NH-8, Sector-83, Gurugram, along with all the rights, title and interests without any

delay or default in terms with the builder buyer agreement dated 24.05.2012.

22. The respondent is obligated to offer the possession of the unit/space to the complainants in terms of the buyer's agreement dated 24.05.2012, after obtaining occupation/completion certificate from the competent authority.

G.III Direct the respondent to register the sale deed for the aforementioned unit.

23. 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.IV The demand of maintenance charges may be set aside by the Authority on account of non-completion of project by the respondent.

25. The complainants contend that they have received a maintenance invoice amounting to ₹7,00,000/-, inclusive of interest, in respect of a unit which has not yet been constructed. Furthermore, on 01.02.2024, they received an additional maintenance invoice from *Enviro Integrated Facility Services Private Limited* amounting to ₹8,14,058.25/-. The complainants allege that such a demand is per se illegal, as neither the unit in question nor the overall project being developed by the respondent has been completed as on date.
26. On the other hand, during the course of proceedings dated 19.03.2025, the counsel for the respondent stated that the maintenance agency raising the demand had not been impleaded as a party in the matter and the respondent is not demanding any payment on account of maintenance charges from the complainants.
27. Upon consideration, this Authority observes that no demand for maintenance charges has been raised by the respondent in the present matter. The said demand has been issued by *Enviro Integrated Facility Services Private Limited*, which is not a party to these proceedings. However, it is pertinent to note that, as per Section 11(4)(g) of the Haryana Real Estate (Regulation and Development) Act, 2016, the promoter is responsible for paying all outgoings, including maintenance charges, until the physical possession of the real estate project is transferred to the allottee or the association of allottees. Since the respondent has not obtained the occupation certificate for the project, the imposition of maintenance charges is not permissible under the prevailing legal standards.

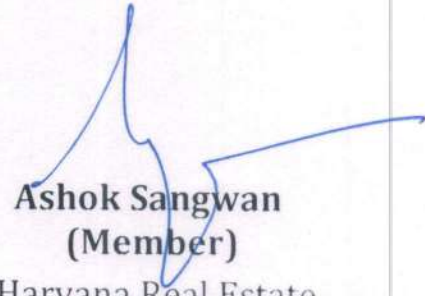
H. Directions issued by the Authority:

28. 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 June 2018 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 dated 24.05.2012, after obtaining occupation/completion certificate from the competent authority.
 - IV. 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 the said project.
 - V. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
29. Complaint stands disposed of.
30. File be consigned to the Registry.

Dated: 07.05.2025


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