

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

Complaint no.: 2246 of 2023  
Date of filing: 11.05.2023  
Order pronounced on: 11.02.2025

1. Sudarshan Singh Jamwal  
2. Vandana Jamwal

**R/o:** - 72, Vijay Bhawan, Rani Park, Kacchi Chawni  
Jammu Kashmir-180001

**Complainant**

Versus

M/s Vatika Limited

**Regd. Office at:** - 7<sup>th</sup> floor, Vatika Triangle, Sushant  
Lok-1, Block-A, Mehrauli Gurgaon Road, Gurugram-  
122002

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Shri Jasmeet Singh (Advocate)  
Ms. Ankur Berry (Advocate)

Complainant  
Respondent

**ORDER**

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

and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika INXT City Centre" at Sector-83, Gurugram.
2.	Project area	10.718 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	Name of Licensee	Trishul industries
6.	Rera registered/ not registered	<b>Not Registered</b>
7.	Initial unit no.	385A, third floor [Page 46 of complaint]
8.	New unit was unilaterally changed vide allocation letter dated 31.07.2013	105, 1 <sup>st</sup> floor, block C (Page 47 of complaint)
9.	Allocation where unit no. was changed	<b>31.07.2013</b> Changed from unit no. 385 A 3 <sup>rd</sup> floor to unit no. 105 first floor Block C [Page 47 of complaint]
10.	Date of buyer agreement	22.10.2011 [Page 17 of complaint]
11.	Possession clause	Not available in buyer's agreement



12.	Due date of possession	Cannot be ascertained
13.	Assured return clause	<p>12.Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also 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 <b>Rs.65/- per sq. ft. super area</b> of the said Commercial Unit per month by way of <b>assured return</b> to Buyer <b>from the date of execution of this agreement till the completion of construction of the said Building.....</b> It is further agreed that:</p> <p>(i)The developer will pay to the buyer <b>Rs. 65 per sq. ft. super area</b> of the said commercial unit as <b>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.</b> After the said Commercial Unit is put on lease in the above manner, then the 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>[Page 31 of complaint]</p>
14.	Basic Sale Price	Rs.25,35,000/- (page 19 of complaint)
15.	Amount paid by complainant	Rs. 26,00,276/- (as per page 15 and 19 of the complaint)
16.	Assured return paid by Respondent till October, 2018	Rs.29,08,532/- [Page 34 of reply]

17.	Intimation of Competition of construction for Block-C certificate	15.03.2018 [page 49 of complaint]
18.	Intimation of possession	Not offered
19.	Occupation certificate	Not received

**B. Facts of the complaint.**

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

- a. That in 2011, the complainant initiated the discussions for real-estate opportunities in Delhi NCR with a real estate agent for investors clinic, a real-estate consultant based in Delhi NCR shared information for an upcoming real-estate project by M/s Vatika Limited. the promoter/developer of the real estate project namely "INXT CITY CENTRE" in Sector - 83, Gurgaon.
- b. That the Complainant was made to understand that M/s Vatika Limited, the promoter/developer of the real estate project was a credible developer, known for its timely delivery of its past projects. The shop/office space in the project namely "INXT CITY CENTRE" in Sector - 83, Gurgaon was being offered under the 'Assured Return plan' The agreed total price of the shop was a sum of ₹26,00,276/- including taxes.
- c. That the Complainant initiated the booking process on 20.10.2011, by presenting a cheque to M/S Vatika Limited. of sum of ₹26,00,276/- including tax respectively were made to M/S Vatika Limited to fulfil payment requirement of the agreed total consideration of the unit and applicable taxes.
- d. That after the payment made by the complainant builder buyer's agreement was executed between M/S Vatika Limited



(Respondents), through authorized representative Mr. Gautam Bhalla and Sudarshan Singh Jamwal & Vandana Jamwal (complainants) on 22.10.2011, in which unit no.-385A TOWER-A 3RD floor. In the BBA unit no.-385A Tower-A 3RD Floor, Third Floor measuring 500 sq. ft. in "INXT CITY CENTRE" the commercial project of the company situated in Sector -83, NH -8, @ RS. 5070/- per Sq. Ft. of the entire super area i.e., ₹26,00,276/- including Service tax for the "OFFICE SPACE" with the assured return plan @ Rs.65/- (clause 12 sub clause (i) page no. 15) per sq. ft. i.e., ₹32,500/- per month of super area (500 sq. ft.) of the premises was decided in Gurgaon on total price of ₹26,00,276/-.

- e. That it is pertinent to mention here that the unit no.-385A Tower-A 3RD Floor was allotted in the allotment letter and in the BBA, it was unilaterally changed to unit no. C-105, 1ST Floor without informing the complainant. This change was shocking for the complainant as he had booked unit no.-385A TOWER-A 3RD Floor after making her choice based on the layout plan showed to her at the time of booking.
- f. That assured return amounting ₹32,500/- pm after deducting TDS @10% was paid by the developer to the buyer till 07/06/2018, thereafter the payment was stopped by the developer. When contacted to know the reason for stopping further payment, there was no response from the respondents' side.
- g. That several emails were sent by the complainant to the respondent regarding assured return of unit no. COM-012-TOWER-



C-1-105 till 2021 but the respondent didn't reply to even a single mail of the complainant.

- h. That the complainant continuously requested for updates in 2018-2021 regarding assured return but received no response that the intention of the respondent and their officers and directors was malafide right from the beginning and has been aimed to cheat the complainant. That currently, the structure of the tower where the complainant has been allotted a unit has only been partially completed.
- i. That the complainant is a senior citizen and having very less source of income being a pensioner and is totally dependent on VATIKA'S INXT CITY CENTRE assured return amount. The complainant has suffered great hardship and mental agony due to the acts of the respondents. Respondents have used the money collected from the complainant for the purposes other than the construction of the project. The complainant is seeking adequate compensation for being deprived of the money by the respondents, which was paid for the commercial unit.
- j. That the respondent has committed breach of trust and have cheated the complainant. The complainant would not have made the payments of the said amount but for the reorientations and promises made by respondent and their directors and officers the complainant did the booking and thereafter made the payments. The complainant visited on several occasions to find out the activities at the site and to meet the concerned officials and noticed the project was massively lagging behind their deadline.



- k. That the respondents are liable for acts and omissions and have misappropriated the said amount paid by the complainants and therefore, are liable to be prosecuted under the provisions of law. That the cause of action accrued in favour of the complainant who booked her commercial unit based on the representations of the respondents. since the assured return dues/refund has not been given to the complainant till date, the cause of action is still continuing.

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

4. The complainant has sought following relief(s):
- a. That based on the above facts placed before the Hon'ble Court, it is humbly requested that the respondent be directed to clear all dues of assured return with interest.
  - b. Direct the respondent to pay a sum of ₹2,00,000/- towards the cost of litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds:
- a. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the Complainant cannot be said to fall within the realm of



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

***Banning of Unregulated Deposit Schemes Act, 2019***

*That Section 2 (4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the Explanation to the Section 2(4) further expands the definition of the "Deposit" in respect of Company, to have same meaning as defined within the Companies Act, 2013.*

***Companies Act, 2013***

*The Companies Act, 2013 in Section 2 (31) defines "Deposit" as "deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India". The Legislature while defining the term "deposit" intentionally used the term prescribed so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014.*

***Companies (Acceptance of Deposits) Rules, 2014***

*Section 2(1)(c) defines the term "deposit" to includes any receipt of money by way of deposit or loan or in any other form, by a company, except any amount received from the following: -*

*Central Government or a State Government,  
amount received from foreign Governments, foreign or  
international banks*





*any amount received as a loan or facility from any banking company,*  
*any amount received as a loan or financial assistance*  
*any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;*  
*any amount received by a company from any other company;*  
*any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities*  
*any amount received from a director of the company;*  
*any amount raised by the issue of bonds or debentures*  
*any amount received from an employee in the nature of non-interest-bearing security deposit;*  
*any non-interest-bearing amount received or held in trust;*  
*any amount received in the course of, or for the purposes of, the business of the company, any amount brought in by the promoters of the company; any amount accepted by a Nidhi company.*

- b. That further the Explanation for the Clause (c) of Section 2(1) states that any amount - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit;
- c. Thus, the simultaneous reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal. That further the Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" as follows:

*"2(17) Unregulated Deposit Scheme- means a Scheme or an arrangement under which deposits are accepted or*

*solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule"*

- d. The First Schedule of the Banning of Unregulated Deposit Schemes Act, 2019 prescribed limited Regulator who can publish Regulated Deposit Schemes, the same being only,
- The Securities and Exchange Board of India,
  - The Reserve Bank of India,
  - The Insurance Regulatory and Development Authority of India,
  - The State Government or Union territory Government,
  - The National Housing Bank,
  - The Pension Fund Regulatory and Development Authority,
  - The Employees' Provident Fund Organisation,
  - The Central Registrar, Multi-State Co-operative Societies
  - The Ministry of Corporate Affairs Government of India,
- e. Thus the 'Assured Return Scheme proposed and floated by the Respondents has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the Respondent duly paid assured return till September, 2018.
- f. That as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept





deposit. Thus, the section 3 of the BUDS Act, makes the Assured Return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the assured return scheme of the Respondent Company has become illegal by the operation of law and the Respondent Company cannot be made to run a scheme which has become infructuous by law.

- g. The casual approach of the State/UT in not issuing the notification of the Designated Courts and their jurisdiction. The Report of the Parliamentary Committee is noteworthy since the importance of Jurisdictional Designated Court/Authorities for implementation of BUDs Act, 2019 and the ambit of definition of "DEPOSIT" would be brought to light only upon institution of proper Rule and duly designated/jurisdictional Court to adjudicate upon issues of Assured Return Schemes/Collective Investment Schemes/Other similarly founded schemes.
- h. That it is also relevant to mention here that the commercial unit of the Complainants was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the Agreement, the said commercial space shall be deemed to be legally possessed by the Complainants. Hence, the commercial space booked by the Complainants' is not meant for physical possession.

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





21.07.2011 and issued letter of completion of construction on 27.03.2018. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- l. It is submitted that the Complainants entered into an agreement i.e., BBA dated 21.07.2011 with Respondent Company owing to the name, good will and reputation of the Respondent Company. That it is a matter of record and also admitted by the Complainants' that the Respondent duly paid the assured return to the Complainant till September, 2018. Further due to external circumstances which were not in control of the Respondent, construction got deferred. That even though the Respondents suffered from setback due to external circumstances, yet the Respondents managed to complete the construction.
- m. The present complaint of the Complainants has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has



been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/Developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the Developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- n. That in matter titled *Anoop Kumar Rath Vs M/S ShethInfraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the Promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- o. That the Complainants are attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the Respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent Company. It is pertinent to submit that the Complainants were sent the letter dated 27.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and





no cause of action has arisen till date in favour of the Complainants and against the Respondent and hence, the complaint deserves to be dismissed.

- p. That, it is evident that the entire case of the Complainants' is nothing but a web of lies and the false and frivolous allegations made against the Respondent are nothing but an afterthought, hence the present complaint filed by the Complainants deserves to be dismissed with heavy costs.
- q. That the various contentions raised by the Complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the Complainants are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
- E. Jurisdiction of the Authority:**
8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial Jurisdiction:**

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

**E.II Subject-matter Jurisdiction:**

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

*Section 11(4)(a)*

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

*Section 34-Functions of the Authority:*

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

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 relief sought by the complainants.**



**F.I. Assured return**

12. 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)(l)(ii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

13. 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.



14. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.
15. 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 22.10.2011. The assured return is payable to the allottees as per clause 12 of the buyer's agreement dated 22.10.2011. The promoter had agreed to pay to the complainants allottee 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.

16. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block C is complete wherein the subject unit is located vide letter dated 15.03.2018. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of ₹29,08,532/- to the complainants as assured return till October 2018. 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.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 respondent has neither put on record any document for lease nor occupation certificate of the project has been obtained and hence, any lease prior to obtaining of occupation certificate cannot be considered as valid lease.
17. 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.

**F.II. Litigation cost-₹2,00,000/-**

18. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.

**G. Directions of the authority**

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- 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 a valid lease after obtaining occupation certificate, whichever is earlier.
  - The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the





date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
  - d. 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.
20. Complaint stands disposed of.
21. File be consigned to registry.

(Ashok Sangwan)  
Member

(Arun Kumar)  
Chairperson

(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 11.02.2025