

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

Date of decision: 11.02.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1915/2023	Dr. Sunil Trakru & Dr. Jyoti Raina V/s Vatika Limited.	Sh. Satya Sahrawat & Aditi Laxman Sh. Venkat Rao
2.	CR/1926/2023	Dr. Sunil Trakru & Dr. Jyoti Raina V/s Vatika Limited.	Sh. Satya Sahrawat & Aditi Laxman Sh. Ankur Berry
3.	CR/1928/2023	Dr. Sunil Trakru & Dr. Jyoti Raina V/s Vatika Limited.	Sh. Satya Sahrawat & Aditi Laxman Sh. Venkat Rao
4.	CR/1929/2023	Dr. Sunil Trakru & Dr. Jyoti Raina V/s Vatika Limited.	Sh. Satya Sahrawat & Aditi Laxman Sh. Venkat Rao

CORAM:

Shri. Arun Kumar	Chairperson
Shri. Vijay Kumar Goyal	Member
Shri. Ashok Sangwan	Member

ORDER

- This order shall dispose of all the 4 complaints titled as above filed before this authority in Form CRA 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") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA INXT CITY CENTER' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
Assured return clause <i>The broad terms of assured return are as under</i> A) Till offer of possession: Rs. 71.50/- per sq. ft. B) After Completion of the building: Rs. 65/- per sq. ft. You would be paid an assured return w.e.f. 04.04.2011 on a monthly basis before the 15th of each calendar month.	
Clause 32.2 <i>That on the completion of the project, the unit would be let-out by the Developer to a bonafide lessee at a minimum rental of ₹65 per sq. ft. per month less tax deducted at source, in the event of the developer being unable to finalise the leasing arrangements it shall pay the minimum rent at ₹65 per sq. ft. per month to the allottee as minimum guaranteed rent for the first 36 months after the date of completion of the project or till the date the said unit is put on lease whichever is earlier.</i>	
Possession clause: D <i>The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue</i>	

to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession.

OC: Not obtained

Offer of possession: Not offered

Comp no.	CR/1915/2023	CR/1926/2023	CR/1928/2023	CR/1929/2023
Allotment letter w.r.t. allotment of unit in vatika trade centre	04.04.2011 [pg. 38 of complaint]	04.04.2011 [pg. 38 of complaint]	04.04.2011 [pg. 38 of complaint]	04.04.2011 [pg. 41 of complaint]
Date of builder buyer agreement w.r.t. allotment of unit in vatika trade centre	Not dated [pg. 40 of complaint]	Not dated	Not dated	Not dated
Date of addendum to the agreement	04.04.2011 [pg. 50 of complaint]	04.04.2011 [pg. 50 of complaint]	04.04.2011 [pg. 50 of complaint]	04.04.2011 [pg. 50 of complaint]
Relocation of unit	27.07.2011 [pg. 51 of complaint]	27.07.2011 [pg. 51 of complaint]	27.07.2011 [pg. 51 of complaint]	27.07.2011 [pg. 51 of complaint]
Allocation of unit	17.09.2013 [pg. 54 of complaint]	17.09.2013 [pg. 54 of complaint]	17.09.2013 [pg. 54 of complaint]	17.09.2013 [pg. 54 of complaint]
Unit no.	937, 9 th floor, block F admeasuring 500 sq. ft. [Pg. 54 of complaint]	938, 9 th floor, block F admeasuring 500 sq. ft. [Pg. 54 of complaint]	939, 9 th floor, block F admeasuring 500 sq. ft. [Pg. 42 of complaint]	940, 9 th floor, block F admeasuring 500 sq. ft. [Pg. 42 of complaint]
Due date of possession	04.04.2014	04.04.2014	04.04.2014	04.04.2014
Date of addendum to the agreement w.r.t. inxt	not signed [pg. 60 of complaint]	not signed [pg. 59 of complaint]	not signed [pg. 60 of complaint]	not signed [pg. 60 of complaint]
Total Sale Consideration	₹25,00,000/-	₹25,00,000/-	₹25,00,000/-	₹25,00,000/-
Paid up amount as per BBA	₹25,00,000/-	₹25,00,000/-	₹25,00,000/-	₹25,00,000/-
Assured return paid till	September 2018 [pg. 59 of reply]	September 2018 [pg. 32 of reply]	September 2018 [pg. 59 of reply]	September 2018 [pg. 59 of reply]
Assured return paid	₹31,91,175/- [pg. 59 of reply]	₹31,91,175/- [pg. 32 of reply]	₹31,91,175/- [pg. 59 of reply]	₹31,91,175/- [pg. 59 of reply]

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case *CR/1915/2023 titled as Dr. Sunil Trakru & Dr. Jyoti Raina V/s Vatika Limited.* are being taken into consideration for determining the rights of the allottees qua delay possession charges and conveyance deed.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

***CR/1915/2023 titled as Dr. Sunil Trakru & Dr. Jyoti Raina V/s
Vatika Limited.***

S.no.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	Project area	6 acres
4.	DTCP license no.	258 of 2007 dated 19.11.2007 license migrated from commercial in residential

		zone to commercial plotted colony vide order dated 13.10.2022.
5.	Name of licensee	M/s Shivam Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered *Since the project is not registered the registration branch may take the necessary action under the provisions of the Act, 2016
7.	Allotment letter w.r.t. allotment of unit in vatika trade centre	04.04.2011 [pg. 38 of complaint]
8.	Date of builder buyer agreement w.r.t. allotment of unit in vatika trade centre	not dated [Page 40 of complaint]
9.	Date of addendum to the agreement	04.04.2011 [pg. 50 of complaint]
10.	Assured return clause	<p align="center">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 04.04.2011</p> <p><i>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:</i></p> <p><i>This addendum forms an integral part of builder buyer Agreement dated 04.04.2011</i></p> <p><i>A. Till offer of possession: Rs. 71.50/- per sq. ft.</i></p> <p><i>B. After Completion of the building: Rs. 65/- per sq. ft.</i></p> <p><i>You would be paid an assured return w.e.f. 04.04.2011 on a monthly basis before the 15th of each calendar month.</i></p> <p>[Page 50 of complaint]</p>
11.	Relocation of unit	27.07.2011 (project changed from trade centre to Inxt city centre) [pg. 51 of complaint]

12.	Allocation of unit	17.09.2013 [pg. 54 of complaint]
13.	Unit no.	937, 9 th floor, Block F (page 54 of complaint)
14.	Possession clause	<p>2</p> <p><i>The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession.</i></p> <p>Note: Possession clause stands deleted as per amendment agreement dated 11.09.2019 (Not signed)</p>
15.	Due date of possession	04.04.2014
16.	Date of addendum to the agreement w.r.t. inxt	11.09.2019 (not signed) [pg. 60 of complaint]
17.	Total Sale Consideration	₹ 25,00,000/- [pg. 42 of complaint]
18.	Paid up amount as per BBA	₹ 25,00,000/- [pg. 42 of complaint]
19.	Offer of possession	Not offered
20.	Occupation certificate	Not obtained
21.	Assured return paid till	September 2018 [pg. 59 of reply]

22.	Assured return paid	₹ 31,91,175/- [pg. 59 of reply]
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B. Facts of the complaint

7. The complainant has submitted as under:

- a. That the respondents in collaboration with M/s Shivam Infratech Pvt Ltd and M/s Kolina Developers Pvt. Ltd (Group companies of Vatika Ltd) launched a commercial project namely 'Vatika Trade Centre' admeasuring 10.48 acres falling in the revenue estate of Village Sikhopur Tehsil Sohna, Distt. Gurugram.
- b. That the Director of Town and Country Planning Haryana, Chandigarh (DTCP) issued License No. 258 of 2007 in favour of Shivam Infratech Pvt. Ltd. and LOI vide Memo no. JD (BS)-LC1958/2008/6912 dated 12/08/08 in favour of Kolina Developers Pvt. Ltd. to construct a commercial colony upon the above-mentioned land.
- c. That the respondents proposed to construct a commercial colony complex, therefore, the respondents took out an advertisement in the newspapers advertising an opportunity to invest in the above-mentioned project and promised a lucrative assured-return based scheme. That the complainants vide email dated 24.03.2011, informed the representative of the respondents that they had seen the brochure for the Business Park and that they would like to make an investment and purchase property in the project namely 'Vatika Trade Centre'.
- d. Subsequently, vide email dated 30.03.2011, the Respondents shared their bank account details for transfer of Rs. 1,02,57,500/- (Rupees

One Crore two lakh Fifty-Seven Thousand and Five Hundred only) for an office space measuring 2000 sq. ft. including service tax comprising of 4 Units of 500 sq. ft. each. That on 04.04.2011 the Complainants paid Rs. 25,64,375/- to the Respondents as complete payment for a 500 sq. ft. unit of commercial space at Vatika Trade Centre.

- e. That on the same day the Respondents issued an allotment letter to the Complainants allotting Unit No. 371, measuring 500 Sq. ft. on the 3rd floor, Tower A in Vatika Trade Centre. That in the allotment letter dated 4.4.2011, the Respondents have categorically stated that the Unit would be ready for lease by 30.09.2012. That on the same date a Builder Buyer Agreement was annexed with the allotment letter for each unit that the Complainant's purchased. The Complainants were to sign the Builder Buyer Agreement and send it back to the Respondents. It is pertinent to mention that there were no signatures of the Respondents on the BBA.
- f. That the Complainants signed and returned the complete Builder Buyer Agreements for the unit no. 371 to the Respondents. That as per the agreement dated 4.4.2011, the Developer undertook to complete the construction of the complex within 3 years from the date of the Agreement. Also, the Complainants were assured a monthly return of Rs. 65/- per sq. ft. for each unit. A further, additional return of Rs. 6.5/- per sq Ft every month for each unit was assured as per an addendum to the agreement signed on the same day. This amounted to a total of Rs. 71.50/- per Sq. ft. of assured

monthly return till offer of possession. After grant of possession upon completion, the assured return would revert to Rs.65/- per sq Ft for a minimum period of three years or till the said Unit was put on lease, whichever is earlier. The Developer would thereafter amend the returns according to the actual lease rent received using criteria specified in the Builder Buyer Agreement.

- g. That the condition for receiving assured returns was that the entire sale consideration was to be paid at once (in advance), and thereafter the Complainants would avail the benefits of their investment. It is humbly submitted that complainants paid the entire sum in advance for the unit. That the respondents vide letter dated 27th July 2011 informed the complainants that the commercial project had been relocated and was coming up at a strategically better location. The respondents also informed the complainants that the project was no longer known as Vatika Trade Centre but would be renamed as INXT City Centre.
- h. The above-mentioned letter also amended clause A of the builder buyer agreement to record that a parcel of land admeasuring 10.718 acres falling in the revenue estate of village Sikhopur Tehsil Sohna and District Gurgaon is wholly owned by M/s Trishul Industries, a partnership firm wholly owned by the Developer, and that said M/s Trishul Industries had been issued Licence No. 122 of 2008 on 14.06.2008 to construct a commercial colony upon the said land parcel.

- i. That the Respondents vide letter dated 17.08.2011 issued an addendum relating to the relocation of the Unit No. 371, allotted to the Complainants, to the Commercial Project INXT City Centre, Gurugram. It is important to mention herein that the addendum related to relocation of Units was conspicuous in its silence on "Time of Possession". Therefore, even after the relocation of the Units to a different project, the Respondents were to place on lease the said Unit by 30.09.2012 and complete the construction of the complex within 3 years from 04.04.2011 at the latest.
- j. That vide letter dated 17.09.2013, the Respondents sent a fresh letter of allotment to the Complainants and informed them that a Unit admeasuring 500 sq ft has been allotted to them having No. 937 on the 9th floor of Block F in place of unit no. 371 allotted earlier. For all intents and purposes the complainant's interest, lien, rights and charge were shifted from Unit No. 371 on the 3rd floor, Tower A, Vatika Trade Centre to Unit No. 937 on the 9th floor, Tower F in INXT City Centre, India Next City Centre, NH-8, Sector- 83, Gurgaon. Respondents also assured the Complainants that work on the new site is progressing as per schedule and that the complex is going to be operational by the second quarter of the following year i.e., 2014.
- k. That the Respondent's vide email dated 15.06.2015, informed the Complainants that as per a Supreme Court Judgment, VAT is payable in all cases where an agreement is entered between a developer and buyer prior to completion of the construction. The amount of the monthly assured returns was accordingly reduced.

- l. That as per the provisions of RERA, 2016 all the developers/builders were required to register their projects under the said Act for which they did not receive the completion certificate on or before 01.05.2016. That the Respondents have applied for registration of their project Vatika India Next City Centre under RERA, 2016 having Temp. Project Id: - RERA-GRG-PROJ-97-2018.
- m. That to the shock and horror of the Complainants, the Respondents stopped paying the assured returns in September 2018 on the one hand and on the other, neither did they put the complainants Unit on lease. This action of respondents was clearly in breach of the terms and conditions of the BBA.
- n. The Respondents did not complete the project but instead sent the Complainants a letter dated 31.10.2018 wherein they informed the Complainants that Vatika has stopped all return-based sales and will not be selling any products in this format anymore. To the surprise of the Complainants, even though the Respondents said that they would not be selling any more return-based projects, they also stopped paying the returns to the Complainants who were pre-existing investors pre-dating the new regulations.
- o. That it is important to mention that in the above-mentioned letter dated 30.11.2018, the Respondents had also stated that the property allotted to the Complainants was likely to be leased between March and June 2019.
- p. The Respondent's vide email dated 14.06.2019, informed the Complainants that they (the Respondents) were in the process of

reconciling the Complainants' accounts as of 30.06.2019. The Respondents would be sending to the Complainants, an addendum-agreement containing revised clauses to the Builder Buyer Agreement. Only upon the execution of the addendum-agreement would the Respondents disburse the due payment within 90 days in three instalments.

- q. The respondents on 26.06.2019 sent the proposed amendment to the original builder buyer agreements of 4.4.2011, via email. The proposed amended agreement would do away with the respondent's obligation to pay the assured returns to the complainants beyond 30.06.2019. Also, allottees would be ultimately responsible for payment of the maintenance charges from the date of first lease of the unit or from 01.07.2021, whichever is earlier.
- r. That on 09.09.2019 upon visiting the property, the complainants were shocked to find out that even after a lapse of more than 8 years, the construction of the project was not completed. On the other hand, all building work had ceased with many towers including tower (Block) F left incomplete. All building materials and workers had been cleared from the site indicating no likelihood of imminent resumption of construction work.
- s. The complainants visited the respondents' office and informed the respondents that they had not received the signed copy of the builder buyer agreement despite several reminders. That they received a copy of the builder buyer agreement vide email dated 11.09.2019.

- t. That as per the builder buyer's agreement of 04.04.2011, the unit no 937 that was allotted to the complainants should have been ready for leasing by 30.09.2012 and the construction of the complex should have been completed in all aspects within 3 years from the date of execution of that agreement. That is to say that the date of execution of builder buyer agreements being 04.04.2011, then the construction of the complex should have been completed on or before 04.04.2014.
- u. Aggrieved by inaction of the respondents the complainants filed a combined complaint for all 4 units under the Real Estate (Regulation and Development) Act, 2016 being RERA-GRG-3559-2021 (HRERA Complaints). This Hon'ble Authority was pleased to allow the counsel for the complainants to withdraw the abovementioned petition with liberty to file fresh separate application for all 4 units. That the cause of action is still continuing as the respondents have till date not finished the construction of tower F in INXT project or paid the assured returns to the complainants.
- v. Aggrieved from the above unfair, illegal, arbitrary and perverse action/inaction of the respondents, the complainants are filing the present complaint under RERA, 2016 to protect their interest against the dominant, unfair and abusive builder/developer on the various issues as raised in the present complaint that need adjudication by this Hon'ble Authority.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):

- a. Direct the respondents to pay agreed assured return charges along with interest at the prescribed rate to the complainant accrued from the month of September 2018 to the date of offer of possession along with occupation certificate by respondent in terms of builder buyer agreement dated 04.04.2011.
 - b. Direct the respondent to pay for delay possession charges with interest as per RERA Act from the due date of delivery of possession.
 - c. Direct the respondent to execute and register the conveyance deed/sale deed of the booked unit after completion of pending construction works and receipt of occupation certificate in respect of same.
 - d. Cost of litigation to the tune of Rs.1,00,000/-.
9. On the date of hearing, the authority explained to the respondent /promoters 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.

10. The respondent has contested the complaint on the following grounds:
- a. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. That the complainants have filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondents. That the complainants herein have failed to provide the correct/complete

facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants have not approached the Ld. Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.

- b. At the outset, it is imperative to bring into the knowledge of the Ld. Authority that the complainants herein is merely an investor who has booked four commercial unit(s) under assured return scheme to make steady monthly return. The complainants have erred gravely in filing the present complaint and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act, 2016'). It is to note, that the provision of the RERA Act, 2016, was passed with the sole intention of regularisation of real estate projects, promoters and for the dispute resolution between builders and buyers.
- c. That it is an established fact herein that the complainants booked the unit with the respondents for investment purposes. The said complainants herein are not an "Allottee", as the complainants approached the respondents with an investment opportunity in the form of a steady rental income from the commercial units, which has been admitted by the complainants in the present complaint. That the respondent no. 2 and respondent no. 3 are directors of respondent no. 1. The respondent no. 2 and respondent no. 3, are not a necessary or proper party in the present complaint. The complainants while filing this complaint has not made any specific

averments and allegations against the respondent no. 2 and respondent no. 3. It is pertinent to note that the respondent no. 2 and respondent no. 3, cannot be held liable for the respondent no. 1 because of their key managerial roles.

- d. That therefore the respondent no. 2 and respondent no. 3, being the directors of the respondent no. 1 cannot be held liable, unless and until there are specific averments against them, which in the present complaint has not been alleged by the complainants. The complainants have not alleged the respondent no. 2 and respondent no. 3 of any specific act which has led to any wrong against the complainants.
- e. It is to note, that there is not privity of contract between the Complainant and the respondent no. 3 and respondent no. 4, therefore, in the interest of justice the respondent no. 3 and respondent no. 4, may not be arrayed as parties and be deleted from the present complaint. That in the year 2011, the complainants learned about the project launched by the respondent no. 1, titled as "Vatika Trade Centre" (herein referred to as 'Erstwhile Project') situated at Sector 83, Gurugram and visited the office of the respondent no. 1, to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- f. That after having dire interest in the project constructed by the respondent no. 1, the complainants decided to invest and thus

booked a unit vide application form dated 30.03.2011, under the assured return scheme, on their own judgement and investigation. It is evident that the complainants being investor were keen make steady monthly returns.

- g. That on 04.04.2011, respondent no. 1 vide allotment letter allotted a unit bearing no. 371, admeasuring 500 sq. ft. at 3rd floor (hereinafter referred to as 'Erstwhile Unit') in favor of the complainants. Thereafter, on the same day, a Builder Buyer Agreement dated 04.04.2011 (hereinafter referred to as 'Agreement') was executed between the Complainants and the Respondent No. 1 for the Erstwhile Unit, for a Total Sale Consideration of Rs. 25,64,375/- (Rupees Twenty-Five Lakhs Sixty-Four Thousand Three Hundred Seventy-Five Only) (including taxes) in the Erstwhile Project. However, upon knowing the assured return scheme, the Complainants upon own will paid entire amount of Rs. 25,64,375/- (Rupees Twenty-Five Lakhs Sixty-Four Thousand Three Hundred Seventy-Five Only) for making steady monthly returns.
- h. It is pertinent to bring into the attention of the Ld. Authority that the Agreement and other documents henceforth, are executed between the Complainants and the Respondent No. 1 and as evident the Respondent No. 2 and Respondent No. 3 are not a party to such documents and hence cannot be held liable for any non-compliance as alleged. That an Addendum, was also executed between the Complainants and the Respondent no. 1, wherein the Respondent No. 1 assured to provide assured return of Rs. 71.50/- per sq. ft. till

the completion of the building and Rs. 65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier. The said Addendum has to be read with Clause 32.2 of the Agreement.

- i. That an Addendum to the Builder Buyer Agreement dated 27.07.2011, was executed between the Complainants and the Respondent No. 1, to avail the benefit of strategically better location and for early completion of the Project, wherein the Complainants unit was shifted from erstwhile project to INXT City Centre, situated at NH-8, Sector-83, Gurgaon (hereinafter referred to as 'Project').
- j. It is not out of place to mention that the Complainants herein were well aware of the re-allocation of the Unit comprising in the Project in question and had agreed to same without any protest or demur as the Complainants were concerned about the monthly returns and have understood the same for financial gains. Thereafter the Respondent No. 1 vide Letter dated 17.09.2013, allocated a new Unit to the Complainants and allotted a Unit bearing no. 937, 9th Floor, Block 'F' admeasuring 500 Sq. Ft. (hereinafter referred to as 'Unit') in the Project, in favour of the Complainants in place of the erstwhile Unit.
- k. It is to note, the Respondent No. 1 was committed to complete the construction of the Project and subsequently lease out the same as agreed under the Agreement. However, the Respondent in due compliance of the terms of the Agreement has paid assured return till October 2018. It is imperative to bring into the knowledge of the

Ld. Authority that since starting the Complainants have always been in advantage of getting assured return.

- l. It is submitted that the Complainants had invested in four units of the Project and also paid the amount immediately, after learning about the assured return scheme. It can be clearly seen from the Bank Statement (Annexure P-3), that the Complainants in total investment of Rs. 1,02,57,500/- (total amount paid for all four units), has till now earned Rs. 1,09,97,495.48/-, as assured return from the Respondent No. 1, as accepted by the Complainants. It is pertinent to mention that the Complainants herein has been paid back their whole investment with a surplus return of Rs. 7,39,995.48/-, vide assured return scheme. Therefore, the Respondent No. 1 pleads the Ld. Authority to deduct the amount already paid as assured return, while awarding delay possession charges or any other monetary relief to the Complainants.
- m. It is submitted that since starting the Respondent no. 1 had always tried level best to comply with the terms of the Agreement and has always intimated the exact status of the project. However, the Respondent No. 1 herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019 and other prevailing laws. In this regard the Respondent had sent emails dated 31.10.2018 and 30.11.2018 to its customers and apprised them that the Respondent will not be in a position to pay any returns in future due to change in law.

- n. It is submitted that since starting the Respondent No. 1 had always tried level best to comply with the terms of the Agreement and has always intimated the exact status of the project. However, the delay is caused in the payment was bonafide and purely out of the control of the Respondent. It is submitted that the Complainants were aware that the Commercial Unit in question was subject to be leased out upon completion and the same was evidently mentioned and agreed by the Complainants in the Agreement dated 04.04.2011.
- o. It is a matter of fact, that the Unit in question was deemed to be leased out upon completion. It is imperative to note, that the Complainants had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties. That only valid inference that can be drawn out of the futile attempt of the Complainants by filling this Complaint is that the Complainants are an investor and seeks speculative gains. Therefore, the Complaint is liable to be dismissed at the very outset.
- p. That the Agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainants are not a "Allottee" but investor who has invested the money for making steady monthly returns.
- q. It is pertinent to note herein that the objective of the RERA Act, 2016 is to regulate the real estate sector in terms of the development of the Project in accordance with the law and to provide relief of

interest, compensation or refund to the allottees in case of violation of the provisions of the RERA Act, 2016. The objective of the RERA Act, 2016 is very clear to regulate the Real Estate Sector and form balance amongst the Promoter, Allottee and Real Estate Agent. However, the entire RERA Act, 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the Builder and the Buyer. Therefore, the said allotment of the said Commercial Unit contained a "Lease Clause" which empowers the Developer to put a unit of Complainants along with other commercial space unit on lease and does not have "Possession Clauses", for physical possession.

- r. It is imperative to mention that the issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of 'Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing and the same has now been listed for 23.11.2023.
- s. That a reading of the entire complaint on a demurrer reveals that the true nature of the relief sought is specific performance of the Assured Returns Commitment. It is respectfully submitted that the relief of specific performance flows from the Specific Relief Act, 1963

and no part of the RERA Act, 2016 clothes this Ld. Authority to exercise powers under Specific Relief Act, 1963.

- t. That the Complainants have misguided themselves in filing the present complaint before the wrong forum. That the Complainants are praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. 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 arise between a Builder and Buyer with respect to the Development of the project as per the Agreement. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. 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.
- u. That the Respondent cannot pay "Assured Returns" to the Complainants by any stretch of imagination in the view of prevailing laws. 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.
- v. Further, any orders or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent act passed post the RERA Act, which, is not violating the

obligations or provisions of the RERA Act. Therefore, enforcing an obligation on a Promoter against a Central Act which is specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.

- w. That, it is evident that the entire case of the Complainants is nothing but a web of lies, false and frivolous allegations made against the Respondents. That the Complainants has not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld. Authority that the Complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the Complainants.
- x. That the Complainants herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the Complainants are sustainable before this Ld. Authority and in the interest of justice. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

11. 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 those undisputed documents and submissions made by the parties.

12. Written submissions filed by the respondent is also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

13. 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

14. As per notification no. 1/92/2017-ITCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

15. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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) 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."

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding maintainability of complaint on account of complainant being investor

17. The respondent took a stand that the complainants are investors and not consumers and therefore, they are 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 complainant is buyer, 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"

18. 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 complainant, it is crystal clear that the complainant 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.

G. Findings on the relief sought by the complainant.

G.I. Assured return.

19. The complainants are seeking unpaid assured returns on monthly basis as per the acknowledgement letter at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said acknowledgement letter. 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) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held 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 and 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)(iii) 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.

20. 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.
21. 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.
22. 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 addendum agreement dated 04.04.2011.

G.H. Delayed possession charges

23. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

24. A builder buyer agreement executed between the parties the due date is calculated as per clause 2 of BBA i.e., 3 years from the date of execution of this agreement. The relevant clause is reproduced below:

"The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue to pay to the allottee the within

mentioned assured return until the unit is offered by the developer for possession."

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

26. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
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

possession of the subject unit was to be delivered within stipulated time i.e., by 04.04.2014.

28. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the addendum agreement dated 04.04.2011. The assured return in this case is payable as per "addendum agreement" the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till offer of possession and ₹65/- per sq. ft. on monthly basis after the completion of the building. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹35,750/- per month whereas the delayed possession charges are payable approximately ₹23,125/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease and thereafter he shall be entitled for lease rental as agreed. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be

paid either the assured return or delayed possession charges whichever is higher.

30. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
31. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per addendum agreement dated 04.04.2011, the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till offer of possession and ₹65/- per sq. ft. on monthly basis after the completion of the building. 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 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.

32. Admittedly, the respondent has paid an amount of ₹31,91,175/- to the complainants as assured return till September 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., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of offer of possession and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA.
33. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.III. Conveyance deed

34. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
35. 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 or 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"

36. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, 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. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

G.IV. Litigation cost-₹1,00,000/-.

37. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357), has held that an allottee is entitled to claim compensation 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority:

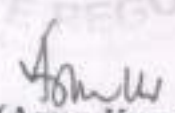
38. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of offer of possession and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA.
- b. 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 execute the conveyance deed of the allotted unit within the 3 months from the valid offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.
 - d. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
 - e. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. True certified copies of this order be placed on the case file of each matter.
41. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2025

