

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

**Complaint no.:** 8058 of 2022  
**Date of filing:** 04.01.2023  
**Order pronounced on:** 18.02.2025

1. Urvinder Singh Kwatra  
2. Misty Kwatra

**R/o:-** C-13/12, DLF City, Phase 1, Gurugram, Haryana **Complainant**

Versus

M/s Vatika Limited

**Regd. Office at:** - Unit no. A-002, INXT City Centre,  
Ground Floor, Block-A, Sector-83, Vatika India Next,  
Gurugram

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

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

**APPEARANCE:**

Shri Rohit Oberoi (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.no.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2016
5.	HRERA registration	Not registered
6.	Date of builder buyer agreement	21.07.2011 [Page 25 of complaint]
7.	Unit no. as per BBA	291A, 2nd floor, tower A admeasuring 750 sq. ft. in Vatika Trade Centre [Page 26 of complaint]
8.	Unit no. as per letter of completion of construction dated 27.03.2018	COM-012, Tower- F-6-628, Block F, INXT City Center measuring 750 sq. ft. [Page 32 of complaint] No BBA w.r.t. this unit is placed on record whereas, the complainant on hearing dated 02.04.2024 stated that they have filed the BBA in the authority on 02.02.2024.
9.	Possession clause as per clause 2 of BBA dated 21.07.2011	<i>The Developer will complete the construction of the said complex within three (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 of Rs refer annexure-A (Rupees.....) 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> [Page 26 of complaint]



10.	Due date of handing over possession	21.07.2014
11.	Completion of construction for Block F dated	27.03.2018 [In respect of unit no. COM-012, Tower- F-6-628, Block F, INXT City Center measuring 750 sq. ft.] Page 32 of complaint
12.	Assured return/ committed return as per addendum of BBA	<i>ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 02.07.2011 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: This addendum forms an integral part of builder buyer Agreement dated 01.09.2010 A. Till Completion of the building: 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. 01.09.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month. [Page 24 of complaint]</i>
13.	Basic sale consideration	Rs.36,56,250/- [As per SOA dated 26.04.2017 at Page 30 of complaint]
14.	Amount paid by the complainants as per statement of account	Rs.37,88,789/- [As per SOA dated 26.04.2017 at Page 30 of complaint]
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained
17.	Assured return paid by the respondent to the complainants till	30.06.2019 [As alleged by the complainant in his brief facts at page no. 10 of the complaint]
18.	Amount of assured return paid by the respondent till June 2019	Rs.50,14,724/- [Page 5 of reply]

### B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
  - a. That in 2011 respondent launched a project by the name of "Vatika Trade Centre" situated in Sector-82, Gurgaon, for developing commercial office and retail space. It is stated that the complainants had signed a booking form in 2011 and had also paid the entire amount to the respondent vide cheque, which was duly

enchased. Thereafter, the respondent allotted a unit no. 291 A on 2nd Floor, Tower A of the project.

- b. It is stated that the complainants kept on requesting the respondent to issue allotment letters as well as get the builder buyer agreement executed. That the respondent had assured the complainants an assured return of Rs. 71.50 per Sq. Ft. till the offer of possession and thereafter ₹65/- per sq. ft. The Addendum also envisaged that after completion the property would be let out at a minimum of Rs. 65 per sq. ft. The respondent had also assured as per the BBA and the addendum agreement that they shall be liable to get the property leased out and in case it shall not be leased out on the agreed rate, they shall be liable to pay damages at the amount as envisaged in the addendum agreement.
- c. That the respondent thereafter on 21.07.2011, invited the complainants to enter into a builder buyer agreement with them, however it is stated that the builder buyer agreement was in total derogation of the promises, commitments as made by the respondent's officials and the complainants feeling hopeless, stated that they be refunded their entire money. It is submitted that vide the said BBA, the Complainants were allotted unit no. 291 A on 2nd Floor, Tower A of the project. It is stated that the respondent's officials seeing that the complainants are innocent people and would be swayed by their representations tried to convince them to accept the BBA, thereafter in spite of maintaining a negative stance. That in the builder buyer agreement as well as orally, the respondent had represented and committed that time was of the





essence of the contract and being one of the top builders having immaculate reputation, the respondent will ensure that the said project shall be ready within a period of 3 years and latest by 21.07.2014. The respondent also assured the complainants that they shall be getting the assured return as had been detailed in the addendum every month without fail till the time of handing over of possession.

- d. That the respondent thereafter on 16.03.2012, again called the complainants and informed them that due to some reasons, which were never revealed in spite of the requests of the complainants, the project i.e., Vatika Trade Centre shall not be made and there is another project by the name of 'VATIKA INXT CITY CENTRE' which the respondent is constructing, which as per their representations was better located and construction work was already under way. The complainants even at the said time were not comfortable with the sudden change being done and that too without any reason having been ascribed to the same. However, as they did not have any options, they were forced to keep quiet and toe the line as was being thrust upon them.
- e. That the respondent sent another letter on 25.04.2013 wherein they informed the complainants that the unit in which they had invested being unit no. 291 A on the 2nd floor, was now changed to a unit bearing no. 628 on the 6th Floor in some Tower F of the project. The complainants were not even consulted prior to forcing on them such a decision and no reasons for doing the same were provided to the complainants. That the Respondent thereafter kept

on paying the monthly commitment although there were certain irregularities however the same would be cured within a few months.

- f. That in 2018 the complainants seeing that there is no sense of commitment from the respondent's end and the period of construction is being increased endlessly as almost 4 years have passed over and above the committed date of delivery, visited their office where they were informed that the site is ready for fit outs and the complainants can take the possession and lease it out to anyone they feel. The complainants inquired from the CRM as to why such statements are being made, when it is the respondent's duty to lease out the premises and to ensure that the complainants get the proper returns. The said CRM was evasive in his answers and kept on giving vague answers to the queries of the complainants. The complainants noticing that something is amiss went to the site and were aghast at what lay in front of them. The building which was stated to be complete was nowhere near completion and in fact construction work was still going on in the premises. The complainants feeling hopeless, again contacted the respondent, however no concrete response was forthcoming from their side. That the respondent thereafter paid partially for the month of September and from 06.10.2018, stopped making the payments towards assured returns to the complainants who on multiple occasions tried to contact the respondent and seek their response for the same. It is stated that seeing that no response is forthcoming from the respondent's side, the complainants were



forced to write to the respondent on 16.11.2018 and request you to release the outstanding amounts as were due and payable to them. It is stated that the complainants had also documented that the building which was claimed to be completed as on 01.03.2018, was actually till date not complete and ready for possession as was being falsely alleged by the respondent.

- g. That the respondent even thereafter did not start making the payments of assured returns to the complainants and in fact on 30.11.2018, the respondent sent an e-mail to the complainants wherein they on the basis misinterpretation of the laws and taking cover under that misinterpretation, stated that the respondent shall not be paying any further amounts towards the assured returns. That the respondent in spite of multiple attempts having been made by the complainants to contact the respondent and try and get back their entire amounts as are due from 01.10.2018 and payable by the respondent to the complainants, have been unable to get any positive response from their side. That the respondent has not only failed in constructing the project which till date has not been completed in spite of over 5 years having passed from the assured date of completion, but have also failed to discharge their financial liability as was due and payable by them to the complainants. It is submitted that now the respondent has started evading the complainants and have stopped responding to any and all communication as is being tried from the complainants.
- h. The complainants were forced to send out a Legal Notice through their lawyer although the date was mentioned as 02.12.2022 was

delivered on 05.12.2022. In the Notice the Complainants requested, the respondent to complete the project VATIKA INXT CITY CENTRE and deliver the commitments as made in the builder buyer agreement and the addendums executed thereafter. The complainants be given an amount of Rs. 53,625/- per month, as assured to them and were paid till 30.06.2019 as well as the difference of the amounts as paid from 01.07.2019 till 21.12.2022 being an amount of Rs. 21,98,625/- and the entire amount as has not been paid thereafter being an amount of Rs.15,51,125/- to be paid to them along with interest @ 18% per annum, for flat bearing no. 628 F as is the commercial rate of interest due and payable by respondent. The complainants be compensated for the financial loss, mental harassment caused to them due to the inordinate delay, false commitments and misleading facts disclosed with respect to the completion of the said project, however in the present petition, payment of the assured return as is due and pending for the period of June 2019 till the date of actual realisation and further till the actual proper physical possession is not handed over to the complaints.

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

4. The complainant has sought following relief(s):
  - a. Direct the respondent to pay the outstanding amount of ₹37,49,750/- as is due and payable by the respondent along with interest of 18% per annum to the complainant from June, 2019 till the actual proper physical possession is not handed over to the complainants.



- b. Direct the respondent to release the assured return as is due and pending to complainants, as assured to them of the unit, which is due and payable till the time you do not obtain occupation certificate of the project to complainants.
- 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. Direct the respondent to pay the outstanding amount of ₹37,49,750/- as is due and payable by the respondent along with interest of 18% per annum to the complainant from June, 2019 till the actual proper physical possession is not handed over to the complainants.**

**F.II. Direct the respondent to release the assured return as is due and pending to complainants, as assured to them of the unit, which is due and payable till the time you do not obtain occupation certificate of the project to complainants.**

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



plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no



provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)*** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form.* Further, section 2(4)(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.

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 21.07.2011, the construction of the subject unit was to be completed within a period of 3 years, from date of execution of agreement dated 21.07.2011, therefore, the due date of possession comes out to be i.e., 21.07.2014. The assured return is payable to the allottees on account of provisions in the addendum to the buyer's agreement dated 02.07.2011. The assured return in this case is payable as per "Annexure A – Addendum to the agreement" the promoter had agreed to pay to the complainants allottee Rs.71.50/- per sq. ft. on monthly basis till completion of the building and Rs.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 June 2019 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 F is complete wherein the subject unit is located vide letter dated 27.03.2018. 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 ₹50,14,724/- to the complainants as assured return till June 2019. 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. 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., June 2019 till the date of completion of the building and thereafter, Rs. 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.

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.

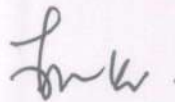
**G. Directions of the authority**

18. 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 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 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.
19. Complaint stands disposed of.
20. File be consigned to registry.



(Ashok Sangwan)  
Member



(Arun Kumar)  
Chairperson



(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 18.02.2025