

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

Date of decision: 18.03.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5775/2022	Atul Kochar V/s Vatika Limited.	Sh. Abhijeet Gupta Sh. Ankur Berry
2.	CR/5885/2022	Atul Kochar V/s Vatika Limited	Sh. Abhijeet Gupta Sh. Ankur Berry

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

ORDER

1. This order shall dispose of both the 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	"Vatika INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.	
Assured return clause:		
This addendum forms an integral part of builder buyer Agreement dated 10.11.2010		
A. Till Completion of the building: Rs. 71.50/- per sq. ft.		
B. After Completion of the building: Rs. 65/- per sq. ft.		
Clause 32.2		
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.		
Possession clause:		
D		
The developer shall complete the construction of the said complex and make it ready for occupation and possession in all respects, on or before expiry of 3 years from the date of execution of this agreement.		
OC: Not obtained		
Offer of possession: Not offered		
Comp no.	CR/5775/2022	CR/5885/2022
Date of BBA w.r.t trade centre	10.11.2010 [pg. 18 of complaint]	16.11.2010 [pg. 18 of complaint]



Unit no. and area	125 admeasuring 500 sq. ft. [pg. 28 of reply]	126 admeasuring 500 sq. ft. [pg. 26 of reply]
Allocation of unit	31.07.2013 [pg. 28 of reply]	31.07.2013 [pg. 26 of reply]
Addendum agreement for assured return	10.11.2010 [pg. 33 of complaint]	16.11.2010 [pg. 37 of complaint]
Addendum agreement for change of project * as per clause 8 of this addendum all the terms and conditions of BBA shall remain same until amended in writing.	27.07.2011 [pg. 38 of complaint]	27.07.2011 [pg. 38 of complaint]
Due date of possession	10.11.2013	16.11.2013
Total consideration sale and amount paid	TC: ₹25,00,000/- AP: ₹25,00,000/-	TC: ₹25,00,000/- AP: ₹25,00,000/-
Assured return paid	₹33,08,500/- till 01.09.2018	₹58,92,900/- till 01.09.2018
<p>a. To deliver the possession of the aforementioned unit bearing no. B - 125 admeasuring 500 sq. ft. on 1st Floor of Block B in India Next City Centre, NH-8, Sector-83, Gurugram.</p> <p>b. To direct the respondent to register the sale deed for the aforesaid unit.</p> <p>c. To direct the respondent to pay the outstanding assured monthly return due from August 2018 at the rate of Rs. 71.50/- per sq. ft.</p> <p>d. To direct the respondent to pay the balance assured return of Rs. 6.50/- per sq. ft. from April 2016 to August 2018.</p> <p>e. To direct the respondent to pay the delay penalty charges and interest on the amount paid i.e. along with assured rentals till realization, as per RERA Act</p> <p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>TC: Total consideration</p> <p>AP: Amount paid by the allottee(s)</p>		

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/5775/2022 titled as Atul Kochar V/s Vatika Limited.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement 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/5775/2022 titled as Atul Kochar 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	10.718 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008 valid up to 13.06.2016
5.	Name of licensee	Trishul Industries
6.	RERA Registered/ not registered	Not Registered
7.	Date of builder buyer agreement	10.11.2010 [pg. 18 of complaint]
8.	Unit no.	B-125, 1 st floor, of block B, measuring 500 sq. ft. [pg. 5 of complaint]



9.	Allocation of unit	31.07.2013 (unit changed from 329 to 125, 1 st floor) [pg. 28 of reply]
10.	Possession clause	2 <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>
11.	Due date of completion of construction	10.11.2013
12.	Date of addendum to the agreement	10.11.2010 [pg. 37 of complaint]
13.	Assured return clause	The allottee is entitled for assured return w.e.f. 10.11.2010 @ ₹ 71.50/- per sq. ft. till completion of building and ₹ 65/- per sq. ft. after completion
14.	Total sale consideration	₹ 25,00,000/- [pg. 21 of complaint]
15.	Paid up amount as per sum of receipts	₹ 25,00,000/- [pg. 21 of complaint]
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained
18.	Assured return paid till 01.09.2018	₹ 33,08,500/- [pg. 30 of reply]

B. Facts of the complaint

7. The complainant has submitted as under:

- a. That the Complainant, Atul Kochhar R/o B - B4/158, Safdarjung Enclave, New Delhi 110029. That the Complainant are Taxpayer to the Public Exchequer and entitled to the Constitutional Right to Property as envisaged in the Constitution of India.



- b. That, the Respondent Vatika Limited is a company incorporated under the provisions of Companies Act, 1956 Vide CIN U74899HR 1998PLC054821 and having its registered office at Vatika Limited A-002, Ground Floor, Vatika India NXT, Sector 83, Gurugram, Haryana 122004 and is interalia engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/clients and works for gain.
- c. That, in Pursuant to the elaborate advertisements, assurances, representations and promises made by Respondent in the brochure circulated by them about the timely completion of a premium Project with impeccable facilities and believing the same to be correct and true, the complainant in year 2010, considered the purchasing a property bearing no. 329 ad-measuring 500 Sq. Ft., on 3rd Floor, Tower A in Vatika Trade Centre, Sector 82, Gurugram for a total sale consideration of Rs. 25,00,000/-. The Payment Receipts amounting to Rs. 25,00,000/- were issued by the Respondent for the amount paid by the Complainant.
- d. That subsequently, the booking of the said Unit i.e., 329 ad-measuring 500 Sq. Ft., on 3rd Floor, Tower A in Vatika Trade Centre, Sector 82, Gurugram was confirmed to the complainant vide Builder Buyer Agreement dated 10.11.2010, wherein the Respondent explicitly assigned all the rights and benefits to the complainant. Both the parties also signed the Addendum to the Agreement dated 27.07.2011.



- e. That in a shocking event, the Respondent executed an Addendum to the Agreement dated 10.11.2010, wherein the entire project was relocated and the name of the project was changed to 'VATIKA INXT CITY CENTRE' Furthermore the Complainant signed an Addendum dated 27.07.2011 with the Respondent, wherein the entire project of the Respondent has been reallocated and a new Unit allocated to the allottee bearing no. B - 125 ad-measuring 500 Sq. Ft. on 18 Floor of Block B in India Next City Centre, NH-8, Sector-83, Gurugram. That it would not be out of place to mention that the aforementioned step of the Respondent was completely arbitrary and lacked consent of the Complainant for that purpose.
- f. That it is also pertinent to mention that in addendum to the agreement dated 10.11.2010, respondent had promised an assured monthly return to be calculated @ 71.50/- per sq. ft. per month till the completion of the building and @65/- per sq. ft. per month after the completion of the building. That it is pertinent to mention that the respondent had paid the complainant with assured return till July 2018. Also, clause 32.2 (a) of the builder buyer agreement dated 10.11.2010, the respondent promised the monthly rental to the complainant after the completion of the construction work of the building. The said clause of the BBA is reproduced here for the benefit of the authority: -

"That on completion of the project, the unit would be let-out by the developer to a bonafide lessee at a minimum rental of Rs. 65/- per sq. ft. per month less tax deducted at source. In the event of the Developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs. 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 of the said unit is put on lease, whichever is earlier. If on account on any reason, the lease rent achieved is less than Rs. 65/- per sq.ft. per month of super area, then the Developer shall return to the Allottee, a compensation calculated at Rs. 120/- for every one rupee drop in the lease rental below Rs. 65/- per sq.ft. Per month."

- g. That, by the act and conduct of the respondent it's been unambiguously lucid that the respondent from the very beginning had malafide intention to cheat and defraud the complainants. That, the complainants have no other efficacious remedy with them but to file the present complaint against the respondents. That, the respondent is not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the complainant by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- h. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. Some or the other reason was being given in terms of some dispute in regard to land or shortage of resources etc.
- i. That the respondent builder without completion of the project reduced the assured return payable to the complainant from Rs. 71.50/- per sq. ft. to Rs. 65/- per sq. ft. from April 2016 without any justification. This reduction in payment of assured return clearly in



violation of addendum dated 10.11.2010 executed by and amongst the complainant and the respondent builder.

- j. That the respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same will not be able to deliver the possession within the stipulated time. It is abundantly clear that the respondent has played a fraud upon the complainant and has cheated him fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.
- k. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- l. That the complainant having shattered and scattered dreams of owning his own unit herein are constrained and left with no option but to approach this Hon'ble Authority. Further, the complainant herein reserves his rights to add/supplement/amend/change/alter any submissions made herein in the complaint and further, reserve the right to produce additional documents or submissions, as and when necessary or directed by this Hon'ble Authority.



- m. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee by raising illegal demands without giving any heed to the construction linked payment plan attached to the builder buyer's agreement.
- n. That as per section 11 (4) of the RERA Act. 2016, the promoter is liable to abide by the terms and agreement of the sale. That as per section 18 of the RERA Act. 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- o. In addition to the abovementioned provision, the Respondent is also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating compensation to be given by a Promoter to an allottee in case of a default.
- p. The Honorable Authority has decided to treat such complaints as an application for non-compliance of contractual obligation on the part of the promoter/ Respondent in terms of Section 34(f) of The Real Estate (Regulation and Development) Act, 2016 (RERA).



- q. The Complainants after losing all the hope from the Respondent Company, after being mentally tortured and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance. That, the Complainants further declare that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- To deliver the possession of the aforementioned unit bearing no. B - 125 ad-measuring 500 sq. ft. on 1st Floor of Block B in India Next City Centre, NH-8, Sector-83, Gurugram.
 - To direct the respondent to register the sale deed for the aforesaid unit.
 - To direct the respondent to pay the outstanding assured monthly return due from August 2018 at the rate of Rs. 71.50/- per sq. ft.
 - To direct the respondent to pay the balance assured return of Rs. 65.0/- per sq. ft. from April 2016 to August 2018.
 - To direct the respondent to pay the delay penalty charges and interest on the amount paid i.e. along with assured rentals till realization, as per RERA Act.
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 at the very outset, it is submitted that the instant complaint is untenable both in facts and in law, and is filed without a cause of action, hence is liable to be rejected on this ground alone. That the complainant has approached the Hon'ble Authority with unclean hands. That the claims of the complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. That the Complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
 - b. That the Complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the Complainant is raising false, frivolous, misleading and baseless allegations against the Respondent with intent to make unlawful gains. That the Complainant has 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.
 - c. At the outset, the Complainant has erred gravely in filing the present Complaint and misconstrued the Provisions of the RERA Act. It is imperative to bring the attention of this Ld. Authority that the Real Estate Regulatory Act, (RERA), 2016 was passed with the sole intention of regularisation of real estate Projects, Promoters and the dispute resolution between Builders and Buyers.



- d. That it is an admitted fact that by no stretch of imagination it can be concluded that the Complainant herein is an "Allottee/Consumer". That the Complainant is simply an investor who approached the Respondents for investment Opportunities and for steady Assured Returns and Rental Income. That the Complainant being an investor in the Project has no locus standi to file the present Complaint.
- e. That in the year 2010, Mr. Atul Kochhar (hereinafter referred to as "Complainant"), learned about the commercial project launched by the Respondent under the name and title 'Vatika Trade Centre' (now, Vatika INTX City Centre) ("Project") and repeatedly visited the office of the Respondent to know the details of the said project.
- f. That after having an interest in the commercial project being developed by the Respondent the Complainant, being a real estate investor, tentatively booked a Unit bearing no. 330, 3rd Floor, Tower B tentatively admeasuring 500 Sq. ft on free will and consent, without any demur whatsoever. Thereafter, considering the future speculative gains, the Complainant, in March 2011, at their own will made the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same.
- g. The Respondent vide Buyer's Agreement dated 10.11.2010, allotted a Unit bearing no. 330, 3d Floor, Tower 'B' admeasuring to area of 500 Sq. ft. in the earlier project. On, 27.07.2011, an addendum dated 27.07.2011 (herein referred to as 'Agreement') were executed between the Complainant and the Respondent for the unit allotted in the Project. It is pertinent to mention that Complainant was aware of terms and conditions under the aforesaid agreement and only



upon being satisfied with each and every term, agreed to execute the same with free will and consent.

- h. That the unit of the Complainant was tentative and subject to change, as was categorically agreed between the Parties in terms of the Agreement. Consequently, the Complainant was allocated the Unit no. 126 on 1st floor, B Block admeasuring 500 sq. ft. ("Unit") vide letter dated 31.07.2013. The said letter categorically mentioned that the builder buyer agreement shall stand amended with respect to the Unit Number. That it is a matter of fact and record that the Complainant had duly, willingly and happily accepted the same.
- i. That at this stage, it is categorical to highlight that the Complainant is trying to mislead this Hon'ble court by concealing facts which are detrimental to this Complaint at hand. That the Agreement executed between the parties on 10.11.2010 was in the form of an "Investment Agreement". That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.
- j. That it is also most humbly submitted that the present Complaint is not maintainable and the Complainant herein has no locus standi. The Complainant merely seeks to earn profits. That in any case whatsoever, the aspect of leasing of the unit and the investment of



the Complainant cannot be dealt with by this Hon'ble Authority. Regardless, at the utmost bonafide, the Hon'ble Authority is most humbly appraised by the fact that the Respondent had been rightly obliging with the payments of committed returns to be made by it. That in spite after paying the committed returns as per agreed terms, the Respondent was committed to complete the construction of the project but the same was subject to various obstacles in midway of the completion of the project which were beyond the control of the Respondent.

- k. That it is humbly submitted before the Hon'ble Authority that the Respondent was always prompt in making the payment of assured returns as agreed under the Agreement. It is not out of the place to mention that the Respondent herein had been paying the committed return of Rs. 65/-per sq. ft. for every month to the Complainants without any delay since 10.11.2010 till 01.04.2018 and after the completion of the Project/operationalization of the building in March 2016, as communicated to the Complainant vide letter dated 29.03.2016, the returns of Rs.65/- per sq. ft. were paid from 01.04.2018 to 01.09.2018 It is to note, that as on 30th of September 2018, the Complainant herein had already received an amount of Rs.58,92,900/- as assured return as agreed by the Respondent under the aforesaid agreement. However, post September 2018, the Respondent could not pay the agreed Assured Returns due to change in the legal position and the illegality of making the payment of the same.



- l. That in the given facts and circumstances, it is most humbly submitted that the Respondent had rightly stopped making the payment, and in any case whatsoever, the present Complaint cannot be entertained by this Hon'ble Authority. That the Complainant is 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 between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".
- m. That as the Complainant in the present complaint is seeking the relief of Assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019. That the Respondent cannot pay "Assured Returns" to the Complainant by any stretch of imagination in the view of the prevailing legal position. That on 21.02.2019, the Central Government passed an ordinance "Banning of Unregulated Deposits,



2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

- n. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") was notified on 31.07.2019 and came into force. That under the said Act, all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination, the Respondent could have continued to make the payments of the said Assured Returns in violation of the BUDS Act.
- o. 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. Wherein, the Hon'ble High Court in the matter of 'Vatika Limited vs Union of India and Anr.' in CWP No. 26740 of 2022, had issued notice to the Respondent Parties and had also restrained the competent authorities from taking any coercive actions against the Respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.
- p. That it is also apropos to bring into the Knowledge of the Ld. Authority that an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favour of the allottee.

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.

E. Jurisdiction of the authority

12. 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

13. As per notification no. 1/92/2017-1TCP 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

14. 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.

15. 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

16. 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"



17. 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.

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

18. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.
19. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the



pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"

20. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainant.

G.I. Assured return.

21. 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)(l)(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.

22. 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.
23. 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.
24. 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 to BBA dated 10.11.2010.

G.II. Delayed possession charges

25. 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"

26. As per clause D of the BBA dated 10.11.2010 the possession was to delivered within 3 years from the date of agreement. Therefore, the due date of possession comes out to be i.e., 10.11.2013.
27. **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”

28. 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., 18.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. 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., 10.11.2013.
30. 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?
31. 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 BBA dated 10.11.2010. The assured return in this case is payable as per “BBA” 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. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. 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.

32. 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 the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
33. 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 BBA dated 10.11.2010, 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 till the said unit is put on lease thereafter the lease rent as agreed between the parties. 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 01.09.2018 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.

34. Admittedly, the respondent has paid an amount of ₹33,08,500/- to the complainants as assured return till 01.09.2018. 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., 01.09.2018 till the date of completion of the project after obtaining occupation certificate from the competent authority 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.
35. 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. Possession

36. From the bare perusal of the documents the authority observes that since there was a leasing arrangement between the parties therefore, the physical possession was not to be handed over to the complainants rather they are entitled for assured return and thereafter once the unit is put on lease, he shall be entitled for lease rent as agreed in addendum dated 10.11.2010.

G.IV. Conveyance deed

37. 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.
38. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

“17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.”



39. 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 after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

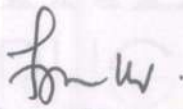
H. Directions of the authority:

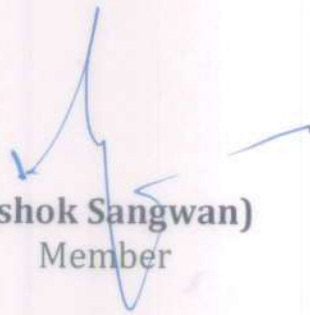
40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹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.
 - 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.
 - e. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
42. True certified copies of this order be placed on the case file of each matter.
43. Files be consigned to registry.


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.03.2025