

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

Order pronounced on : 27.03.2025

NAME OF THE BUILDER		VATIKA LIMITED
PROJECT NAME		"VATIKA INXT CITY CENTER"
S. No.	Case No.	Case title
1.	CR/4355/2023	Madhu Ahuja and Rejeev B Ahuja V/S M/s Vatika Limited
2.	CR/4356/2023	Aarti Ahuja and Rejeev B Ahuja V/S M/s Vatika Limited

CORAM:

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Ms. Tulna Rampal, Advocate

Ms. Ankur Berry, Advocate

Complainants**Respondent****ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority 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 there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Vatika INXT City Center" (Commercial Complex) being developed

by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate and execution of conveyance deed.

3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, assured return clause, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Vatika Limited at "Vatika INXT City Center" situated in Sector-83, Gurugram.
Assured Return Clause: - <p style="text-align: center;">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 23.02.2011</p> <p>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.13/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>A. Till completion of building: Rs.78/- per sq. ft. B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 22.08.2009 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.</p> <p>1. If the rental is less than Rs.65/- per sq. ft. then you shall be refunded @Rs.116/- per sq. ft. (Rupees One Hundred Sixteen only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft.</p> <p>2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.116/- per sq. ft. (Rupees One Hundred Sixteen Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p>	
Date of execution of buyer's agreement: 22.08.2009.	
Possession Clause: 2 Sale Consideration: <i>"The developer undertakes to complete the construction of the complex/building within 3 (three) years from the date of execution of this agreement"</i>	

Due date of possession: 22.08.2012
(Note: the due date is calculated 3 years from the date of execution of buyer's agreement.)
Occupation certificate: - Not Obtained.

Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration, amount paid & Assured return paid
1.	CR/4355/2023 Madhu Ahuja and Rajeev B Ahuja V/S Vatika Limited DOF 21.09.2023 Reply 21.12.2023	310, 3 rd floor, block-A, in INXT City Centre. 500 sq. ft. (super area) (page 51 of complaint)	22.08.2009 (page 22 of complaint)	Due date of possession: 22.08.2012 OC: Not obtained OFP: Not offered CD: Not Executed	TSC: - Rs.19,50,000/- (page 24 of complaint) AP: - Rs.19,50,000/- (page 24 of complaint) AR Paid: Rs.37,89,500/- (Till July, 2018) (page 36 of reply)
2.	CR/4356/2023 Aarti Ahuja and Rajeev B Ahuja V/S Vatika Limited DOF 21.09.2023 Reply 21.12.2023	311, 3 rd floor, block-A, in INXT City Centre. 500 sq. ft. (super area) (page 51 of complaint)	22.08.2009 (page 22 of complaint)	Due date of possession: 22.08.2012 OC: Not obtained OFP: Not offered CD: Not Executed	TSC: - Rs.19,50,000/- (page 24 of complaint) AP: - Rs.19,50,000/- (page 24 of complaint) AR Paid: Rs.37,89,500/- (Till July, 2018) (page 35 of reply)

The complainants in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to pay assured monthly return from May, 2018 @78/- pe sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. completion of the building with interest @18% p.a.
2. Restrain the respondent from charging any amount towards the alleged maintenance charges.
3. Respondent be also directed to execute conveyance deed from the final offer of possession along with OC.
4. The cost of litigation at Rs.1,00,000/- be awarded in favor of complainants.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)
OC	Occupation certificate
OFP	Offer of possession
CD	Conveyance Deed
AR	Assured Return

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate and execution of conveyance deed.
 5. 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 allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/4355/2023 titled as Madhu Ahuja and Rajeev B Ahuja V/S Vatika Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others
- A. Project and unit related details.**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Project area	10.718 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 Valid upto 13.06.2016
5.	Name of Licensee	M/s Trishul Industries
6.	Rera registered/ not registered	Not Registered
7.	Allotment letter	22.08.2009 (page 45 of complaint)
8.	Date of buyer's agreement	22.08.2009 (page 22 of complaint)
9.	Unit No. as per BBA dated 22.08.2009	908, 9 th floor, tower-A, in Vatika Trade Centre (500 Sq. ft. Super Area) (page 24 of complaint)
10.	Addendum to the buyer's agreement (W.r.t amendment in Clause)	27.07.2011 (page 48 of complaint)
11.	Shifting of the unit vide letter dated	31.07.2013 (page 51 of complaint)
12.	New unit no. as per letter dated 31.07.2013	310, 3 rd floor, block-A, admeasuring 500 sq. ft. (super area) in INXT City Centre. (page 51 of complaint)
13.	Possession clause	2 Sale Consideration <i>"The developer undertakes to complete the construction of the complex/building within 3 (three) years from the date of execution of this agreement"</i> (Emphases Supplied)
14.	Assured return/ committed return as per Annexure A of BBA	ANNEXURE A ADDENDUM TO THE AGREEMENT The unit has been allotted to you with an assured monthly return of Rs.65/- per sq.

		<p>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.13/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>A. Till completion of building: Rs.78/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 22.08.2009 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.</p> <p>1. If the rental is less then Rs.65/- per sq. ft. then you shall be refunded @Rs.116/- per sq. ft. (Rupees One Hundred Sixteen only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq. ft.</p> <p>2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.116/- per sq. ft. (Rupees One Hundred Sixteen Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p> <p style="text-align: right;">[Emphasis supplied]</p> <p>[Page 44 of complaint]</p>
15.	Due date of possession as per BBA dated 22.08.2009	22.08.2012 (Calculated from the date of execution of buyer's agreement)
16.	Total Sale Consideration	Rs.19,50,000/-



	as per clause 1 of BBA dated 22.08.2009.	(page 24 of complaint)
17.	Amount paid against the allotted unit <i>as per clause 2 of BBA dated 22.08.2009.</i>	Rs.19,50,000/- (page 24 of complaint)
18.	Assured return paid to the complainants	Rs.37,89,500/- (Paid till July, 2018) (page 36 of reply)
19.	Completion of construction of block-A in INXT City Centre	29.02.2016 (page 52 of complaint)
20.	Demand notice (By <i>M/s Enviro Integrated Facility Services Private Limited</i>)	07.01.2023 of Rs. 6,07,307/- (page 54 of complaint)
21.	Protest against the unfair demand notice	23.01.2023 (Page 58 of complaint)
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered

B. Facts of the complaint: -

8. The complainants have made the following submissions in the complaint: -

- That in the year 2009, On the basis of the assurances given by the representative of the respondent, on 22.08.2009, the complainants booked a unit measuring 500 sq. ft. located on 9th Floor in Tower-A, in the commercial complex, Sector 82, in respect of which the respondent had acquired development rights.
- That the complainants and the respondent duly entered into a builder buyer agreement on 22.08.2009 whereby in respect of unit no. 908 measuring 500 sq. ft. located in Sector 82, 9th Floor, Tower-A of the commercial complex, at that time, it was known as "Vatika Trade Center".
- The unit was allotted to the complainants at Rs.3900/- per sq. ft. of super area for a total consideration of Rs.19,50,000/-. The said consideration was

duly paid by the complainants vide cheque no. 177788 drawn on ICICI Bank dated 20.08.2009.

- d. That as per clause 2 of the buyer's agreement, the respondent was under obligation to complete the construction of the complex/ building within 3 years from the date of execution of agreement.
- e. That since the complainants had paid entire sale consideration, an addendum/ annexure of the same date was also entered between the parties, whereby the respondent further undertook to make payment of Rs.78/- per sq. ft. super area per month by way of committed return during construction period and Rs.65/- per sq. ft. super area per month after completion of the building.
- * f. That as per the Annexure-A of the addendum to the builder buyer agreement, the complainants were promised and assured a monthly return @Rs.78/- per sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. after completion of the building. It was assured that the said amount would be paid on a monthly basis before the 15th day of each calendar month.
- g. That as per the terms of the builder buyer agreement, the respondent was under obligation to a notice in writing to the complainants for taking over possession. That the builder buyer agreement also provided for terms for leasing arrangement.
- h. That vide letter dated 22.08.2009, the allotment was confirmed by the respondent. That vide letter dated 22.08.2009, it was clarified by the respondent that the maintenance charges on possession of the unit shall be paid by the incoming lessee directly to the developer and no maintenance charges shall be charged for the period up to which the property leased out.

- i. That the respondent unilaterally on 27.07.2011, relocated the site from Vatika Trade Centre to a commercial colony compendiously called INXT City Centre (Sector 83).
- j. That pursuant to the same, an addendum dated 27.07.2011 was also executed between the complainants and respondent. The respondent vide letter dated 31.07.2013, allotted unit measuring 500 sq. ft. on third floor of Block-A and unit number given was 310. That the respondent has failed to pay the assured return from May, 2018. That the respondent has also failed to complete the construction and deliver the possession of the allotted unit till date.
- k. That the respondent had promised to deliver the possession of the booked unit within a period of 36 months. However, till date, no possession has been offered to the complainants.
- l. That the complainants have invested their hard-earned money in booking of unit in the project. However, the respondent has failed to abide by all the obligations of the agreement executed between parties despite the complainants making the payments of complete consideration amount to the respondent.
- m. That the respondent sent letter dated 29.02.2016 stating that the construction for Block A is complete and the assured return amount would be revised to Rs.65/- per sq. ft. per month w.e.f. from 01.03.2016, however no offer of possession was made by the respondent.
- n. That the said letter dated 29.02.2016 was a mere eye wash and a means of avoiding liability towards the complainants as neither was the building to any extent was operational nor did the respondent entered into any talks for leasing out the unit. Even the respondent did not offer possession of the

unit to the complainants. That an e-mail was circulated by the respondent on 02.02.2021 which clearly shows that the property was not let-out.

- o. That instead of handing over of possession, the respondent under the name of an entity Enviro Integrated Facility Services Pvt. Ltd. (Claiming itself to be the maintenance agency) on 07.01.2023 raised a demand towards maintenance charges and alleged arrears from March, 2019.
- p. That in response to the frivolous demand raised by the respondent towards maintenance charges, complainants had also sent a reply dated 23.01.2023 objecting to the same and sought information with respect to the offer of possession, leasing out of the unit etc. However, no response to the same has been received by the complainants.
- q. That till date, unit has not been let-out by the respondent and instead of performing its obligations, the respondent through its agency has started raising frivolous demands towards maintenance charges.
- r. That till date to the misery of the complainants, the respondent complied with the original agreement, the self-serving addendums nor gave the possession & ownership of the unit and let out the unit on rent as assured.
- s. That the respondent has not got the project registered under HRERA nor any completion certificate or occupancy certificate has been granted to the respondent. The said fact has already been adjudicated by this Hon'ble Authority in many cases against the respondent.
- t. That without occupation certificate, no offer of possession could be made by the respondent and as such the respondent is liable to pay assured return as agreed by the respondent.
- u. That at the time of introduction of RERA Act, the project was an ongoing project and it was mandatory for the respondent to get the same registered under the Act, which the respondent had failed.



C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):
- Direct the respondent to pay assured monthly return from May, 2018 @78/- pe sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. completion of the building with interest @18% p.a.
 - Restrain the respondent from charging any amount towards the alleged maintenance charges.
 - Respondent be also directed to execute conveyance deed from the final offer of possession along with OC.
 - The cost of litigation at Rs.1,00,000/- be awarded in favor of complainants.
10. 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: -

11. The respondent contested the complaint on the following grounds: -
- That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the BBA dated 22.08.2009, as shall be evident from the submissions made in the following paras of the present reply.
 - 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. 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".

- c. 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;
- d. 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".

Thus the 'Assured Return Scheme' proposed and floated by the Respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs.37,89,500/- till July, 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.

- e. That the complainants have invested in the unit 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, that the complainants in total investment of Rs.19,50,000/- However, till now, the complainant has already received an amount of Rs.37,89,500/-, as assured return from the respondent as shown in assured return calculation sheet. It is pertinent to mention that the complainants herein have already received / have been returned the complete consideration amount by means of bifurcated monthly assured returns that were paid since 2009 to 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 Opposite Party / Respondent Company has become illegal by the operation of law and the Opposite Party / Respondent Company cannot be made to run a scheme which has become infructuous by law.
- g. That further the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is listed on 22.11.2023. That once the Hon'ble High Court has taken cognizance and State

of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

- h. That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That the Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter simpliciter understanding that any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- i. That it is also relevant to mention here that the commercial unit of the Complainant's was not meant for physical possession as the said unit is only meant for leasing (Clause N – Leasing Arrangements) (Clause N (d) 'Deemed Possession') the said commercial space for return of investment. Furthermore, the said commercial space shall be deemed to be legally possessed by the Complainants. Hence, the commercial space booked by the Complainant's is not meant for physical possession and rather is for commercial gain only.

- j. 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.
- k. 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.
- l. 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.
- m. That it is pertinent to note that the Respondent Company has always been devoted towards its customer and have over the years kept all its allottees updated regarding the amendments in law, judgments passed by the Hon'ble High Courts and the status of development activities in and around the project. That vide email dated 31.10.2018, the respondent sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investor of assured return-based projects. That in furtherance the said email, the respondent sent another email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all return based/assured /committed return based sale. The email communication of 29.02.2016 also confirmed to the allottees that the project was ready and available for leasing. That on 28.12.2018, the Respondent sent another

clarificatory email stating that the assured returns and other committed return would stop altogether and alternatively gave the allottees an option to shift to a project of the Respondent in the vicinity, further the allottees who were keep to receive quarterly returns, the Respondents dis have a SEBI registered product which offered quarterly returns with fixed tenure. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project. Further the Respondent intimated to all its allottees that in view of the legal changes and formation of new laws the amendment to BBA vide Addendum would be shared with all the allottees to safeguard their interest. Thereafter on 25.02.2020, the Respondent Company issued communication to all its allottees regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the Project INXT City Centre.

- n. That the complainants have instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 22.08.2009 and issued completion of construction letter on 29.02.2016. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants, 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.
- o. That the complainant's decided to invest in the commercial unit of respondent owing to the name, good will and reputation of the respondent. That that the respondent duly paid the assured return to the complainants till July, 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the

respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction and duly issued letter of completion of construction on 29.02.2016.

- p. The present complaint of the complainant's have 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.
- q. Further regarding the issue of maintenance, it is brought to the notice of this Hon'ble Authority that in-terms of the allotment letter dated 22.08.2009 and also BBA dated 22.08.2009, the respondent was well within its rights to engage appropriate agency for maintenance of the project and the liability of payment of the maintenance charges would rest upon the allottee in absence of tenant. That as per clause 12 of the BBA it is clear that the liability of payment of maintenance was upon the allottee. Thus, the complainants are



bound to pay all such charges agreed upon at the time of executing the BBA. That admittedly the construction of the building, where the unit of the complainant's is located completed in 2016 and thereafter the maintenance agency was duly appointed for regular upkeep of the project.

- r. That the Hon'ble Authority ought to consider that even though the assured return schemes were stopped in the year 2018, yet the complainants chose to sit till filing of the present complaint. The delay in claiming the relief of recovery of dues on account of assured return non-payment, suffered from severe delay of 5 years. That the onus is upon the complainants to show that the alleged cause of action i.e., non-payment of assured returns arose in 2018 and yet the complainants did not file any such claim and hence, the complaint deserves to be dismissed.
- s. That, it is evident that the entire case of the complainant's 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. 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.
12. All other averments made in the complaint were denied in toto.
13. 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 written submissions made by the parties.

E. Written submission made by both the parties

14. The complainants have filed the written submission on 03.02.2025 and the respondent has filed the written submission on 19.03.2025 and the same are taken on record. No additional facts apart from the complaint has been stated in the written submission.

F. Jurisdiction of the authority

15. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

16. 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.

F.II Subject-matter jurisdiction

17. 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) The promoter shall-

(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.

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent:

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

19. The respondent took a stand that the complainants are investor and not consumer and therefore, he is 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 complainants are buyer's, 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;"

20. 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 complainants, it is crystal clear that the complainants 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.II Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return.

21. 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.
22. 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 no 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."

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

H. Findings on the relief sought by the complainants.

- H.I Direct the respondent to pay assured monthly return from May, 2018 @78/- pe sq. ft. till the time the building is ready for possession and thereafter Rs.65/- per sq. ft. completion of the building with interest @18% p.a.**

24. The complainants in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. 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 of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act 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. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

25. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions

between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017**. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

26. It is now well settled preposition of law 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 can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. 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. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. 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.

27. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. 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, but does not include*

- i. an amount received in the course of, or for the purpose of, business and*

bearing a genuine connection to such business including—

- ii. 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.*

28. 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.
29. 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. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as **Nikhil Mehta, Pioneer Urban Land and Infrastructure** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case **Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands

handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)* as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

30. 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.
31. 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 agreement executed between the parties on 22.08.2009, As per clause 2 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 22.08.2012.
32. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement or an addendum to the buyer's agreement. The assured return in this case is payable as per "Annexure A – Addendum to the agreement dated 22.08.2008". The rate at which assured return has been committed by the promoter is Rs.78/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the

allottee that they would be entitled for this specific amount till completion of the building and Rs.65/- per sq. ft. after completion of the building.

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 buyer's agreement and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of buyer's agreement dated 22.08.2009, the promoter had agreed to pay to the complainants-allottees Rs.78/- per sq. ft. on monthly basis till completion of the building and Rs.65/- per sq. ft. on monthly basis after completion of the building. The buyer's agreement further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent-promoter till July, 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. In the present complaint, the respondent has not obtained the occupation certificate and hence, 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. 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.78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., August, 2018 till the completion of the building and thereafter,

@Rs.65/- per sq. ft. per month after the completion of the building as per the agreed terms of addendum to the agreement dated 22.08.2009.

35. 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% per annum till the date of actual realization.

H.II Restrain the respondent from charging any amount towards the alleged maintenance charges.

36. The complainants are seeking direction to restrain the respondent from charging any amount in lieu of maintenance charges, as a demand was raised by M/s Enviro Integrated Facility Services Private Limited for payment of Rs.6,07,307/- dated 07.01.2023.

37. Upon consideration, this Authority observes that no demand for maintenance charges has been raised by the respondent-promoter in the present matter. The said demand has been issued by M/s Enviro Integrated Facility Services Private Limited, which is not a party to these proceedings. Thus, the authority cannot deliberate upon the said relief.

H.III Direct the respondent to execute the conveyance deed of the unit in question in favour of the complainants.

38. The complainants are seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016 and also as per clause (D) of buyer's agreement, the relevant clause of the buyer's agreement is reproduced for ready reference: -

D. Conveyance

"Subject to the approval/ no objection of the appropriate authority the developer shall sell the said unit to the allottee by executing and registering the conveyance deed and also execute such acts, deeds and assurances as may be necessary to confirm upon the allottee, marketable title to the said unit free from all encumbrances. The conveyance deed shall be in the form and content as approved by the developer's legal advisor and shall be in favour of the allottee."

39. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.
40. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of allottee(s) within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

"Section 17: Transfer of title.

17(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."

41. The Authority hereby directs the respondent to execute the conveyance deed in terms of Section 17 of the Act, 2016 in favor of the complainants within 3 months after obtaining the occupation certificate from the competent authorities and upon payment of requisite stamp duty charges.

H.IV Direct the respondent to pay an amount of Rs.1,00,000/- on account of litigation charges.

42. The complainants are also seeking relief w.r.t litigation charges. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s*

Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (supra) has held that an allottee is entitled to claim compensation & litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the authority:

43. 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-promoter is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., July, 2018 till the completion of the building and thereafter, @ Rs.65/- per sq. ft. per month after the completion of the building, as per the agreed terms of addendum to the agreement dated 22.08.2009.
 - The respondent-promoter 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.
 - The respondent is directed to execute the registered conveyance deed in terms of Section 17 of the Act, 2016 in favor of the complainants within 3




months after receipt of occupation certificate from the competent authority and upon payment of requisite stamp duty charges.

44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, total sale consideration, amount paid against the allotted unit and assured return paid by the respondent-promoter is mentioned in each of the complaints.
45. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
46. Files be consigned to registry.

Dated: 27.03.2025



V.I. 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM