

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

Complaint no. 3883 of 2021
Date of filing complaint 22.09.2021
First date of hearing 23.11.2021
Order pronounced on 07.05.2025

1. Rahul Gupta, HUF through its Karta
Rahul Gupta
2. Shweta Gupta
Both Residents of: 304, Sector-15,
Part 1, Gurugram

Complainants

Versus

1. M/s Vatika Limited
Regd. office: 4th Floor, Vatika Triangle,
Phase I, Block A, Sushant Lok, MG Road
Gurugram-122002
2. M/s Trishul Industries
Regd. office: 98, 2nd floor, Sant Nagar,
New Delhi- 110065

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Animesh Goyal, Advocate

Complainants

Ms. Ankur Berry, Advocate

Respondent

ORDER

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

under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details:

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

Sr. No.	Particulars	Details
1.	Project name and location	"INXT High Street", (Phase I) Sector-83, Gurugram
2.	Project area	14918.258 sq. mtrs.
3.	Nature of the project	Commercial Unit
4.	DTCP License no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of the licensee	Browz Technologies Pvt. Ltd. and others
6.	RERA Registered/ not registered	Registered 263 of 2017 dated 03.10.2017 valid upto 02.10.2022
7.	Allotment Letter	17.02.2017 (Page 17 of complaint)
8.	Date of execution of buyer's agreement	Not Executed
9.	Unit no.	10, Ground Floor, tower D (Page 17 of complaint)
10.	Unit area admeasuring	1280 sq. ft. (Page 17 of complaint)
11.	Assured return and lease rental clause	Clause 3 of allotment letter <i>"The developer shall remit an assured monthly return of Rs. 56.25 per sq.ft. upto 3 year from the date of booking or unit is put on lease whichever is earlier. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/ said commercial unit soon."</i> Clause 4 of allotment letter



		<p><i>"The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises @ Rs 100/- per sq.ft. However, in the eventuality the achieved lease return being higher or lower than Rs 100/- per sq.ft. the following would be applicable.</i></p> <p><i>A. If the achieved rental is less than Rs 100/- per sq.ft. then you shall be re-funded @ Rs 150/- per sq.ft. (Rupees One Hundred Fifty Only) for every Rs.1/- by which achieved rental is less than Rs 100/- per sq.ft.</i></p> <p><i>B. If the achieved rental is more than 100/- per Sqft shall be liable to pay additional sales consideration @ Rs. 75/- Per Sqft. for every rupee of additional rental achieved."</i></p> <p>(Allotment letter at Page 18 of complaint)</p>
12.	Due date of possession	<p>17.02.2020</p> <p><i>(Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018- Hon'ble Apex Court observed that although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.)</i></p> <p>In view of the above-mentioned reasoning, the due date for handing over the possession of the unit comes out to be 17.02.2020.</p>
13.	Basic sale consideration	<p>Rs. 1,92,00,000/-</p> <p>(Page 17 of complaint)</p>
14.	Amount paid by the complainants	<p>Rs. 2,04,38,400/-</p> <p>(As per SOA dated 01.11.2021 submitted by respondent by way of e-mail dated 12.05.2025)</p>
15.	Assured return paid by respondent till September	<p>Rs.18,36,891/-</p> <p>(As per assured returns statement submitted by respondent by way of e-mail</p>

	2018	dated 12.05.2025)
16.	E-mails sent by the respondent to complainant regarding stoppage of assured returns	31.10.2018, 30.11.2018, 28.12.2018 (Page 7, 8 and 11 of written submissions dated 20.06.2024, respectively)
17.	E-mail sent by respondent to complainant regarding reconciliation of accounts of the complainant	June 2019 (Page 13 of written submissions dated 20.06.2024)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That in 2016, the complainants came to know through real estate agent of the respondent about a project called 'INXT CITY CENTRE', in Sector-83, Gurugram, Haryana. The complainants were enticed by the agent of the respondent and its officials to book a commercial unit in the said project with the assurances that the possession of the said unit would be delivered within a period of 3 years from the date of issuance of allotment letter further assuring that the project would be one of the best in its segment.
- b) That accordingly the respondent allotted a unit no. D-10, ground floor, block D, Sector-83, measuring 1280 sq. ft. in the aforesaid project known as "INXT City Centre", for a basic sale price of Rs. 1,92,00,000/-. The respondent issued allotment letter dated 17.02.2017 bearing reference no.17-02-027707/D-10/17022017 in the name of complainants, after receiving a sum of Rs.1,00,32,000/- by way of cheques from the complainants. The respondent and its officials assured to the complainants that the builder buyer agreement would be executed very soon.
- c) That as per the terms of the said allotment letter, the respondent had a liability to remit an assured monthly return to the complainants at the rate of Rs. 56.25/- per sq. ft., amounting to a monthly return of Rs. 72,000/- for a period of 3 years from the date of allotment or till the date when the unit

is put on lease, whichever is earlier. Through a letter dated 26.03.2018, the respondent revised the rate of monthly assured return from Rs.56.25/- per sq. ft. to Rs.78.75/- per sq. ft.

- d) That the complainants further paid the balance amount of Rs.91,68,000/- as per the demand of respondent no.1 and therefore, total cost of the unit i.e., Rs.1,92,00,000/- has been received by respondent no.1.
- e) That however the respondent no. 1 miserably failed to make payment of the amount of assured monthly return after September 2018. Though prior to this the respondent no. 1 had cleared the monthly assured return as agreed by it. The respondent no.1 never assigned any reason for non-payment of the assured return, nor intimated the complainants in any manner in this behalf.
- f) That the respondent initially sent a draft of the builder buyer agreement in the month of March 2020 asking the complainants to send the same after signing. However after receiving the draft copy of the said builder buyer agreement the complainants met with the officials of respondent Mr. R.K. Sahni on 16.03.2020, apprised them about all the facts and requested the said officials that the issue of assured return should be decided first and only thereafter the said builder buyer agreement would be signed as the same was not acceptable to the complainants being totally one sided and against the norms prescribed under the Real Estate (Regulation & Development) Act, 2016. Even the said agreement was totally silent regarding the payment of monthly assured return and the date and time of handing over the possession of the allotted unit.
- g) That the allotment letter clearly speaks about applicability of the provisions of builder buyer agreement. The officials of the respondent assured to do the needful but failed to do so. In this way in fact no builder buyer agreement has been signed between the parties till date, but the fact

remains that the respondent has miserably failed to pay the monthly assured return and even the possession of the unit allotted to the complainants have not yet been offered.

- h) That the complainants also tried to know about the exact status of the project and the unit allotted to the complainants i.e. whether the building is complete or not whether the respondent have obtained occupation certificate and completion certificate, whether the building is registered under HARERA enabling the respondent to offer the possession of the unit to the complainants which has not been offered so far till date.
- i) That since September 2018 the respondent has not been cooperating with the complainants in any manner, nor they are responding to the just and proper request of the complainants and the complainants have been deprived of their valuable money and the property which is totally illegal and even against the provisions of the Real Estate (Regulation & Development) Act, 2016. Hence the respondent is liable to pay the delay possession charges upon the total amount of Rs.1,92,00,000/- from October 2018 till handing over the actual physical and peaceful possession of the unit allotted to the complainants.
- j) That the modus operandi of the respondent has caused tremendous financial pressure upon the complainants herein for which the complainants are entitled to be reimbursed forthwith as well as for the mental agony caused to the complainants by the acts, omissions and mala fide conduct on the part of the respondent.

D. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to hand over the actual, physical and vacant possession of the D-10, GF, block D, Sector 83, Gurugram measuring 1280 sq. ft. to the complainants as per allotment along with penalty for delayed possession @18% per annum.

II. Direct the respondent to pay interest at the rate of 18% per annum on the entire payments made by the complainants to the respondent from the date of handing over possession till the unit is transferred in the name of the complainants.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

E. Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -

- a) That the present complaint is not maintainable or tenable in the eyes of the law as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' on deposit schemes have been banned. The respondent company having taken no registration from the SEBI board cannot run, operate, and continue an assured return scheme. Further, enactment of BUDS read with Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being taken within the definition of 'Deposit.'
- b) That 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 the operation of law.
- c) 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.

- d) That complainants are seeking relief of assured returns, and this Authority has no jurisdiction to entertain the present complaint as has been decided in the complaint case no. 175 of 2018, titled as “Sh. Bharam Singh and Ors. Vs. Venetian LDF Projects LLP” by the Authority itself.
- e) 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 cognizance in respect of the Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana from taking coercive steps in criminal cases registered against company for seeking recovery against deposits till the next date of hearing.
- f) That the complainants have emphasised heavily upon the terms of the allotment, in absence on an agreement for sale, however clause 2 of the allotment letter caters to default in execution of agreement and the fact that the allotment is provisional. Further, clause 7 clarifies that in case of any contradiction between the terms and conditions of allotment letter and buyer’s agreement, the terms and conditions of buyer’s agreement would prevail. The complainants cannot consider the allotment letter to be foundation of its complete set of rights against the respondent qua the allotment of commercial unit in question.
- g) That the allotment letter was issued in February, 2017 and Haryana Rules came into being and were enacted on 28.07.2017, thus immediately upon enactment of the rules, respondents shared agreement with the complainants, however till date the complainants have not signed and executed the same.

- h) 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 investors of assured return-based projects. The respondent also sent another e-mail dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 and other statutory changes which led to stoppage of all the 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, respondent sent a 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 receiving quarterly returns, the respondents have a SEBI registered product which offered quarterly returns with fixed tenure. That the issue regarding stoppage of assured/committed return and reconciliation of all accounts as of June 2019.
- i) That there is no possession clause in BBA. Only constructive possession was to be delivered. Since the promoter is still using the complainants money the complainants may at best be allowed delay possession charges at the prescribed rates from the due date of possession till receipt of occupation certificate plus two months as per section 13(1) of the Act of 2016 after adjustment of assured returns already paid till September 2018.
- j) That it is an admitted fact that OC for the subject unit had not yet been received and thus, conveyance deed cannot be executed in respect of the subject unit. Thus, the relief as to execution of conveyance deed is premature and would arise only after the receipt of occupation certificate from the statutory authority.

7. All other averments made by the complainant were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

F. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

11. 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) 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.

12. 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to hand over the actual, physical and vacant possession of the D-10, GF, block D, Sector 83, Gurugram measuring 1280 sq. ft. to the complainants as per allotment along with penalty for delayed possession @18% per annum.

G.II Direct the respondent to pay interest at the rate of 18% per annum on the entire payments made by the complainants to the respondent from the date of handing over possession till the unit is transferred in the name of the complainants.

13. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

14. The factual matrix of the case reveals that the complainants were allotted unit no. 10, ground floor, tower d in the respondent no.1's project "Vatika INXT High Street" vide allotment letter dated 17.02.2017. The complainants paid the entire sale consideration of Rs.1,92,00,000/-. The builder buyer agreement was not executed between the parties. Therefore, the due date of possession is to be calculated from the date of allotment in view of "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.*" Accordingly, the due date of possession comes out to be 17.02.2020.

15. Herein, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso 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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

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."

16. The interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottees for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of Section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and to pay for the unit as per today's rate.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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, *ibid*. 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]

(1) 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.

18. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. 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., 07.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
20. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the

respondent no.1 is in contravention of the provisions of the Act. The due date of handing over possession was 17.02.2020. Occupation certificate has also not been obtained by the respondent no.1 from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent no.1 to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to handover the possession within the stipulated period. Therefore, the delay possession charges shall be payable by respondent no.1 from the due date of possession, i.e., from 17.02.2020 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

23. Further, the respondent no. 1 is obligated to handover the possession of the unit to the complainants in terms of the allotment letter dated 17.02.2020, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.

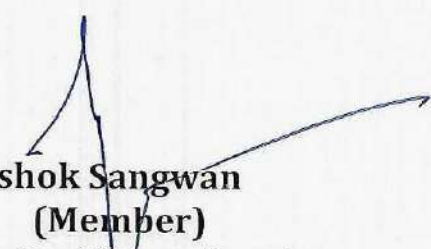
24. It is important to note that the allotment letter was issued by respondent no.1 in favour of the complainants and all the payments in this regard were made to respondent no.1 only. No agreement was ever executed between the complainants and the respondent no.2. The Authority is of the view that as there is no privity of contract between the complainants and the respondent no.2, no findings/directions have been passed with respect to respondent no.2.

H. Directions of the Authority:

25. 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):

- I. The respondent no.1 is directed to pay delay possession charges at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 17.02.2020 till the date of offer of possession plus two months or actual handing over of possession, whichever is earlier, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, ibid.
 - II. The respondent no.1 is directed to handover the possession of the unit to the complainants in terms of the allotment letter dated 17.02.2020, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.
 - III. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
 - IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1 which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - V. The respondent no.1 shall not charge anything from the complainants which is not the part of the buyer's agreement.
26. Complaint stands disposed of.
27. File be consigned to the registry.

Dated: 07.05.2025


Ashok Sangwan
(Member)
Haryana Real Estate Regulatory
Authority, Gurugram