

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

Complaint no.	317 of 2024
Date of filing complaint	06.02.2024
First date of hearing	27.03.2024
Date of decision	02.04.2025

1. Mr. Raj Kumar Khanna
2. Mrs. Radhika Khanna

Resident of: H. No. 108, Golf Links, New Delhi-110003**Complainants****Versus**

Vatika Limited

Regd. office: Flat no. 621A, 6th Floor, Devika Towers, 6,
Nehru Place, New Delhi – 110019Corporate office: Vatika Triangle, Block A, Sushant Lok,
Gurgaon-1220022**Respondent****CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Mr. Gaurav Rawat (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"Vatika Trade Centre", Gurugram (Now, "Vatika INXT City Centre", Sector- 83, Gurugram)
2.	Nature of the project	Commercial
3.	Registered/ not registered	Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
4.	License no.	258 of 2007 (As per BBA at page 57 of complaint)
5.	Unit no.	Unit no. 429, 4 th floor, Block-E Earlier: 1546, 15 th floor, tower A (page 59 of complaint)
6.	Unit admeasuring	500 sq. ft. (Super Area) (page 59 of complaint)
7.	Date of buyer agreement	16.06.2010 (page 56 of complaint)
8.	Addendum to the agreement	16.06.2010 (page 75 of complaint)
9.	Letter sent by respondent to complainants for relocation of project from Vatika Trade Centre to INXT City Centre	27.07.2011 (Page 45 of complaint)
10.	Total sale consideration	Rs.27,50,000/- (as per BBA page 59 of complaint)
11.	Amount paid by the complainant	Rs.27,50,000/- (as per BBA page 59 of complaint)
12.	Assured return clause	"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 offered for possession you will be paid an additional return of Rs.13/- per sq. ft. Therefore, the return payable to you shall be as follows:

		<p><i>This addendum forms an integral part of the builder buyer agreement dated 16.06.2010.</i></p> <p>a) Till offer of possession Rs.78/- per sq. ft.</p> <p>b) After completion of the building Rs.65/- per sq. ft.</p> <p><i>You would be paid an assured return w.e.f. 16.06.2010 on a monthly basis before the 15th of each calendar month.</i></p> <p><i>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 applicable:</i></p> <p>1) If the rental is less than Rs.65/- per sq. ft., then you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which the 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.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of the increased rentals."</p> <p><i>(Addendum to BBA at page 75 of complaint)</i></p>
13.	Assured return paid by the complainant till October, 2018	Rs.38,35,000/- (as alleged by respondent page 05 of reply)
14.	Letter as to completion of construction sent by respondent to complainant	27.03.2018 (Page 49 of reply)
15.	E-mails sent by the respondent to complainant regarding stoppage of assured returns	31.10.2018, 30.11.2018, 28.12.2018 (Page 38, 39 and 42 of reply, respectively)
16.	E-mail sent by respondent to complainant regarding reconciliation of accounts of the complainant	July 2019 (Page 49 of reply)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions by filing the present complaint as well as written submissions dated 04.03.2025:
- a) That in 2010, the respondent issued an advertisement announcing a commercial complex "Vatika Trade Centre" at Sector - 83, Gurugram being launched by M/s. Vatika Limited, under the license, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.
 - b) That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainants booked a unit in the project by paying an amount of Rs. 27,50,000/- on 14.06.2010 towards the booking of unit no. 1546, 15th floor, tower no. A, in Sector 83, having super area measuring 500 sq. ft. as full and final consideration amount and the same was acknowledged by the respondent.
 - c) That the respondent allotted the said unit for a total sale consideration of Rs. 27,50,000.00, which includes basic price, EDC and IDC, car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. The respondent vide letter dated 27.07.2011 without prior intimation to relocate the commercial unit from project "Vatika Trade Centre" (Unit no. 1546, 15th floor, tower A to the project "Vatika INXT City Centre" (Unit no. 429, 4th floor, Block-E) at Sector-83, Gurugram. Furthermore, vide letter dated 31.07.2013, the respondent confirmed the said transfer from previous project to new project.
 - d) That the builder buyer agreement was executed between the parties on 16.06.2010. As per clause 2 of the said agreement respondent undertook to complete the construction within period of 3 years from the date of execution of the agreement. Hence, the due date of possession comes out to

be 16.06.2013. The respondent further undertook that in 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 respondent for the possession.

- e) That an addendum to agreement dated 16.06.2010 was also executed between the parties wherein the respondent undertook to make payment of assured return at the rate of Rs. 78/- per sq. ft. per month on super area of 500 sq. ft. till the completion of the construction of the said unit. Further, the respondent promised that post the completion of the construction of the said building, complainant will be paid committed return of Rs. 65/- per sq. ft. per month on super area for upto 3 years from the date of completion of construction of said building or the said unit is put on lease, whichever is earlier. The respondent paid assured returns only till September, 2018.
- f) That as per clause of the addendum to agreement, the respondent agreed to put the said unit on lease @ Rs.65/- per sq. ft. per month. Till date respondent failed to abide and honor the above said clause of the addendum to agreement by not leasing out the above said unit till date.
- g) That the respondent further guaranteed the complainants in terms of booking application form, that in event the said unit is leased at a gross monthly rental of less than the commitment amount of Rs.65/- per sq. ft. per month, the respondent assured that the complainants would be entitled to refund @ Rs. 116/- per sq. ft. for every Rs.1/- by which the achieved rent is less than Rs.65/- per sq. ft.
- h) That as per clause of addendum to agreement, respondent further agreed that there will be no maintenance charges/ electricity charges/ water charges etc. shall be charged from the complainants for the period unit is on lease and the said charges will be paid by the prospective tenant.
- i) That as per the said addendum to agreement, the respondent was liable to handover the possession of the said unit on or before 16.06.2010, therefore,

the respondent was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 and HRERA Rules, 2017 for the delay in the delivery and the complainants are also entitled to get monthly assured amount till the completion of the construction of building and even post completion of construction of the said building, complainants will be paid committed return of Rs. 65/- per sq. ft. per Month on super area for up to 3 years from the date of completion of construction of said building or the said unit is put on lease, whichever is earlier.

- j) That the complainants paid an amount of Rs.27,50,000/- against the total sale consideration of Rs. 27,50,000/-. The respondent is unable to handover a possession even after a delay of 10 years.
- k) That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz work done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project.
- l) That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession.

That the respondent vide letter dated 26.03.2018 informed the complainants about completion of construction for Block-E and revised the committed return to Rs.65/- per sq. ft. per month from 01.03.2018. The respondent instead of complying as per the provisions of the Act, and obtaining the OC, and offering the possession of the said unit to the complainant and till date respondent has failed to offer the possession of the said unit against the spirit of the RERA Act,2016.

- m) That the complainants being the aggrieved person are filing the present complaint under Section 31 with the Authority for violation/ contravention

of provisions of this Act. As per Section 18 of the RERA Act, 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

- n) That the project in question is ongoing as defined under Rule 2(o) of the Rules, *ibid* and does not fall in any of the exception provided under the Rules. The complainants after losing all the hope from the respondent, having their dreams shattered of owning a flat and having basic necessary facilities in the vicinity of the INXT City Centre Project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to pay interest on total amount paid by complainant at prescribed rate of interest from due date of possession till handing over of possession.
 - II. Direct the respondent to pay monthly assured returns as per Annexure A of addendum to BBA.
 - III. Direct the respondent to lease out the unit in question in terms of clause 32 of BBA and handover symbolic and constructive possession of the said unit with all amenities and specifications as promised.
 - IV. Direct the respondent to pay monthly assured rentals @ Rs.65/- per sq. ft. per month or Rs. 32,500/- per month w.e.f. the date of completion of construction of the said building as per Annexure A-Addendum and clause 32.2 of the BBA as well as allotment letter dated 22.08.2010.
 - V. Direct the respondent to execute conveyance deed in favour of the complainants as per clause 8 and 9 of the BBA.
 - VI. Direct the respondent not to force the complainant to sign any indemnity cum undertaking as a pre-condition for executing the conveyance deed.
 - VII. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties, like holding charges, labour cess,

electrification charges, maintenance charges, etc. which in any case is not payable by the complainants.

- VIII. Restrain the respondent from raising any fresh demands under any of the heads.
- IX. Direct the respondent to provide exact layout plan of floor of the building along with location and marked dimensions and computation of carpet and super area of the unit.
- X. Take penal action against the respondent for violation of various provisions of the RERA Act, 2016.
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) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
6. The respondent contested the complaint on the following grounds vide its reply dated 27.03.2024:
- a) That the complainants have got no locus standi or cause of action to file the present complaint, same being 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 16.06.2010.
- b) That the builder buyer agreement executed between the parties on 16.06.2010 was signed between the respondent and two allottees namely Raj Kumar Khanna and Radhika Khanna. That the brief reading of the Proforma clearly reflects that the present complaint has been filed by one person Raj Kumar Khanna and the other allottee has neither been named nor details provided for them. Further the affidavit attached with complaint is on behalf of Mr. Raj Kumar Khanna and the affidavit of the other allottee is missing.
- c) 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.'

- d) 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. As a matter of fact, the respondent duly paid an amount of Rs.38,35,000/- till September 2018.
- e) That the complainants paid an amount of Rs.27,50,000/-, however, they have already received an amount of Rs.38,35,000/- as assured return from the respondent. That complainants herein have already received/ returned complete consideration by means of bifurcated monthly assured returns that were paid since 2010 to 2018. Therefore, the Authority must deduct amount already paid as assured return, while awarding delay possession charges or any other monetary relief to the complainants.
- f) That the commercial unit of the complainants was not meant for physical possession as the said unit was only meant for leasing purposes (Clause 32 – Leasing Arrangements) ('Deemed Possession') for return of investment. Further, said commercial space shall be deemed to be legally possessed by the complainants. Hence, the unit booked by complainants is not meant for physical possession and rather for commercial gain only.
- g) 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. ✓

- h) 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.
- i) That the respondent promoter has always been devoted towards its customer and have over the years kept all its allottees updated regarding amendments in law, judgments passed by Hon'ble High Courts and status of development activities in and around the project. Vide e-mail 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 the detailed information to all the investors of assured return-based projects. In furtherance to the said email, the respondent sent another e-mail dated 30.11.2018 further 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 the return based/ assured / committed return based sales. The e-mail 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 assured returns and other committed returns 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 keen to receive quarterly returns, the respondent had a SEBI registered product which offered quarterly returns with a 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 issued communication to all its allottees regarding ongoing transaction and possible leasing of block A, B, D, E and F in the project "Vatika INXT City Centre."

- j) That complainants have instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 16.06.2010 and issued completion of construction letter on 26.03.2018. Further for the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence as well as cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- k) That it is a matter of record and admitted by the complainants that the respondent duly paid the assured return to the complainants till September 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 27.03.2018.
- l) That regarding the issue of maintenance, in-terms of the allotment letter dated 08.06.2011 and BBA dated 08.06.2011, the respondent was well within its rights to engage appropriate agency for maintenance of the project and liability of payment of the maintenance charges would rest upon the allottee in absence of tenant. 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 complainants is located completed in 2018 and thereafter maintenance agency was duly appointed for regular upkeep of the project.

m) That even though the assured return scheme was stopped in the year 2018, yet the complainants chose to sit till 2023, i.e., till the 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 6 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. That the inaction of the complainants is a patent acquiescence, and they cannot demand recovery of arrears after a massive delay of 6 years.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

8. 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

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

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding non-joinder of necessary party.

12. It is contended on behalf of the respondent that a builder buyer agreement dated 16.06.2010 was executed between the respondent and the two co-allottees, the 1st allottee being complainant herself i.e., Mr. Raj Kumar Khanna and the 2nd allottee is Mrs. Radhika Khanna regarding allotment of a unit bearing no. 429, 4th floor, Block-E in the project of respondent named "Vatika INXT City Centre" at Sector- 83, Gurugram. However, the present complaint is filed only by the 1st allottee i.e., Mr. Raj Kumar Khanna and the 2nd allottee Mrs. Radhika Khanna has not been added while filing the present complaint. Therefore, the co-allottee namely is Mrs. Radhika Khanna being necessary party was required to be added for complete, proper and effectual adjudication of the present matter, hence the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party as laid down by the Hon'ble Supreme Court in Vidur Impex and Traders Private Limited v. Tosh Apartments Private Limited and Others (2012 (8) SCC 384). Hence, the present complaint is not maintainable in the

present form and liable to be dismissed as proved under Order I, Rule 9 of the Code of Civil Procedure, 1908. However, to rectify this defect, the complainant filed an application under Order 1 Rule 10 of CPC, 1908 for impleading is Mrs. Radhika Khanna as necessary party. Same was allowed by the Authority vide its proceedings dated 04.12.2024. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

F.II Objections regarding force Majeure.

13. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to some force majeure circumstances. However, the respondent has failed to give details as to what force majeure circumstances surfaced before it. Otherwise too, the respondent should have foreseen any such situations. Thus, the promoter respondent cannot be given any leniency based on aforesaid reason, as it is a well-settled principle that a person cannot take benefit of his own wrong.

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

14. The respondent has raised an objection that 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.
15. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated 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."

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

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay interest on total amount paid by complainant at prescribed rate of interest from due date of possession till handing over of possession.

G.II Direct the respondent to pay monthly assured returns as per Annexure A of addendum to BBA.

G.III Direct the respondent to lease out the unit in question in terms of clause 32 of BBA and handover symbolic and constructive possession of the said unit with all amenities and specifications as promised.

G.IV Direct the respondent to pay monthly assured rentals @ Rs.65/- per sq. ft. per month or Rs. 32,500/- per month w.e.f. the date of completion of construction of the said building as per Annexure A- Addendum and clause 32.2 of the BBA as well as allotment letter dated 22.08.2010.

16. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

I. Assured returns

17. The complainants are seeking unpaid assured returns on monthly basis as per addendum to builder buyer agreement dated 16.06.2010 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum to builder buyer agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) 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 while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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.

18. The money was taken by the builder as a 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.
19. 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.
20. 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 latter from the former against the

immovable property to be transferred to the allottees later. In view of the above, the respondent is liable to pay assured return to the complainant-allottees in terms of the addendum to builder buyer agreement dated 16.06.2010.

II. Delay possession charges.

21. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges with respect to the subject unit 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."

22. The subject unit was allotted to the complainants vide builder buyer agreement dated 16.06.2010. The due date of possession had to be calculated from the date of execution of the builder buyer agreement 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 16.06.2013. As per the builder buyer agreement, the respondent developer was under an obligation to further lease out the unit of the complainants post completion.
23. **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. *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]

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."

24. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid 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., 02.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. The definition of term 'interest' as defined under Section 2(za) 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:

"(za) "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—

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 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;"

26. 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 completed within a stipulated time i.e., by 16.06.2013.

27. 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?
28. 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 or an addendum to the BBA. The assured return in this case is payable as per "Addendum to builder buyer agreement". The rate at which assured return has been committed by the promoter is Rs.78/- per sq. ft. of the super area per month till the completion of the building which is more than reasonable in the present circumstances. 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 at Rs.39,000/- per month till completion of the building whereas the delayed possession charges are payable approximately Rs.25,437.50/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till offer of possession of the said unit to the complainants and thereupon @ Rs.32,500 per month. Moreover, the interest of the allottee is protected even after the completion of the building as the assured returns are payable even after completion of the building. 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 allottee 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.

29. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till 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.
30. 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 addendum to builder buyer agreement. As per Annexure A of buyer's agreement dated 16.06.2010, the promoter had agreed to pay to the complainant-allottees Rs.78/- per sq. ft. on monthly basis till offer of possession and Rs.65/- per sq. ft. on monthly basis after the completion of the building. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till October 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.
31. In the present complaint, vide letter dated 27.03.2018, the respondent has intimated the complainants that the construction of subject tower is complete wherein the subject unit is located. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. 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 made i.e., November 2018 till the date of completion of building (on receipt of occupation certificate) and thereafter, Rs.65/- per sq. ft. per month till first 36 months after completion of the project (on receipt of occupation certificate) or till the date said unit is put on lease, whichever is earlier. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of the addendum to BBA dated 16.06.2010.

32. 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.
33. Further, it is observed that the respondent had paid assured returns @ Rs.65/- per sq. ft. per month from April, 2018 till October, 2018 to the complainants as evident from Annexure R2 annexed by respondent at page 32-34 of the reply. However, the respondent was duty bound to pay assured returns @ Rs.78/- till the date of valid offer of possession as per Addendum to BBA dated 16.06.2010. Therefore, the respondent is directed to pay the difference of assured return amount of Rs.13/- per sq. ft. per month from April, 2018 to October, 2018 along with interest @ 9.10% per annum.
- G.V Direct the respondent to execute conveyance deed in favour of the complainants as per clause 8 and 9 of the BBA.**
- G.VI Direct the respondent not to force the complainant to sign any indemnity cum undertaking as a pre-condition for executing the conveyance deed.**
34. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

35. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

36. Further, 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."

37. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter from the competent authority till date. 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. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of issuance of occupation certificate with respect to project in which unit of the complainants is situated.

G.VII Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties, like holding charges, labour cess, electrification charges, maintenance charges, etc. which in any case is not payable by the complainants. ✓

G.VIII Restrain the respondent from raising any fresh demands under any of the heads.

38. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
39. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.
40. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.
41. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in complaint bearing no. 4031 of 2019 ✓

titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMSD amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMSD/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.

42. The respondent is further directed that it shall not charge anything from the complainants which is not the part of the buyer's agreement.

G.IX Direct the respondent to provide exact layout plan of floor of the building along with location and marked dimensions and computation of carpet and super area of the unit.

43. As per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

G.X Take penal action against the respondent for violation of various provisions of the RERA Act, 2016.

44. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case. ✓

45. The above said relief was not pressed by the counsel for the complainants during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

H. Directions issued by the Authority:

46. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. 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 made i.e., November 2018 till the date of completion of building (on receipt of occupation certificate) and thereafter, Rs.65/- per sq. ft. per month till first 36 months after completion of the project (on receipt of occupation certificate) or till the date said unit is put on lease, whichever is earlier. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than is fixed by the respondent, the respondent is obligated to settle the same in terms of the addendum to BBA dated 16.06.2010.
- II. The respondent is directed to pay the difference of assured return amount of Rs.13/- per sq. ft. per month from April 2018 to October 2018.
- III. The respondent is directed to pay the above outstanding accrued assured return amounts till date along with interest rate of 9.10% per annum within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that

amount would become payable with interest @ 9.10% p.a. till the date of actual realization.


- IV. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in ***complaint bearing no. 4031 of 2019*** titled as "***Varun Gupta Vs. Emaar MGF Land Limited***" decided on 12.08.2021.
- V. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of issuance of occupation certificate with respect to project in which unit of the complainants is situated.
- VI. The respondent is not entitled to charge labour cess as it is the respondent builder who is solely responsible for the disbursement of said amount.
- VII. The respondent cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
- VIII. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in complaint bearing no. 4031 of 2019 titled as "***Varun Gupta Vs. Emaar MGF Land Limited***" decided on 12.08.2021.
- IX. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- X. The respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

47. Complaint stands disposed of.

✓

48. File be consigned to the Registry.

Dated: 02.04.2025



Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM