

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

Date of decision: 09.07.2025

Name of the Builder		Vatika Limited	
Project Name		"Vatika India Next City Centre" Situating at: Sector 83, Gurugram	
Sr. No.	Case No.	Case title	APPEARANCE
1.	CR/4930/2023	Dharam Bir Sethi and Anita Sethi V/s Vatika Limited	Shriya Takkar, Advocate (Complainant) Ankur Berry, Advocate (Respondent)
2.	CR/4931/2023	Dharam Bir Sethi and Anita Sethi V/s Vatika Limited	Shriya Takkar, Advocate (Complainant) Ankur Berry, Advocate (Respondent)
3.	CR/4932/2023	Dharam Bir Sethi and Anita Sethi V/s Vatika Limited	Shriya Takkar, Advocate (Complainant) Ankur Berry, Advocate (Respondent)
4.	CR/4934/2023	Dharam Bir Sethi and Anita Sethi V/s Vatika Limited	Shriya Takkar, Advocate (Complainant) Ankur Berry, Advocate (Respondent)
5.	CR/4935/2023	Dharam Bir Sethi and Anita Sethi V/s Vatika Limited	Shriya Takkar, Advocate (Complainant) Ankur Berry, Advocate (Respondent)

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 5 complaints titled as above, filed before this authority in Form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA INDIA NEXT CITY CENTRE' being developed by the same respondent promoter i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, and allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"India Next City Centre" , Sector 83, Vatika India Next, Gurugram, Haryana.
Nature of the project	Commercial complex
Area of the project	10.72 acres
DTCP License no.	122 of 2008 dated 14.06.2008 Valid up to 13.06.2018
RERA registered or not	Not registered
Possession clause 2 of BBA	Clause 10 - Force Majeure ".....Subject to the aforesaid and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the developer, the Developer contemplates to complete construction of the said Commercial Unit

	<p><i>within 48 months of execution of this Agreement."</i></p> <p><i>(Emphasis supplied)</i></p>
Assured return clause	<p>Clause 12. Assured Return and Leasing Arrangement</p> <p>"Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 65 (Rupees Sixty-five only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs. 65 (Rupees Sixty-five) per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter....."</p> <p><i>(Emphasis supplied)</i></p>



Occupation certificate	Not obtained
Offer of possession	Not offered

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. and size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession/AR paid to complainant
1.	CR/4930/2023 Dharam Bir Sethi Vs. Vatika Ltd. DOF:30.10.2023 Reply:20.06.2024	307, Block D, 3 rd floor measuring 500 sq. ft. (page 20 of complaint)	23.08.2012 (page 18 of complaint)	TSC- Rs.22,50,000/- (as per BBA at page 20 of complaint) AP- Rs.23,19,525/- (as per BBA at page 20 of complaint)	Not Offered/ Rs.23,89,274 till October, 2018 (As pleaded by respondent at page 9 of reply)
2.	CR/4931/2023 Dharam Bir Sethi Vs. Vatika Ltd. DOF:30.10.2023 Reply:20.06.2024	304, Block D, 3 rd floor measuring 500 sq. ft. (page 20 of complaint)	23.08.2012 (page 18 of complaint)	TSC- Rs.22,50,000/- (as per BBA at page 20 of complaint) AP- Rs.23,19,525/- (as per BBA at page 20 of complaint)	Not Offered/ Rs.23,89,274 till October, 2018 (As pleaded by respondent at page 9 of reply)
3.	CR/4932/2023 Dharam Bir Sethi Vs. Vatika Ltd. DOF:30.10.2023 Reply:20.06.2024	305, Block D, 3 rd floor measuring 500 sq. ft. (page 20 of complaint)	23.08.2012 (page 18 of complaint)	TSC- Rs.22,50,000/- (as per BBA at page 20 of complaint) AP- Rs.23,19,525/- (as per BBA at page 20 of complaint)	Not Offered/ Rs.23,89,274 till October, 2018 (As pleaded by respondent at page 9 of reply)
4.	CR/4934/2023 Dharam Bir Sethi Vs. Vatika Ltd. DOF:30.10.2023 Reply:20.06.2024	308, Block D, 3 rd floor measuring 500 sq. ft. (page 20 of complaint)	23.08.2012 (page 18 of complaint)	TSC- Rs.22,50,000/- (as per BBA at page 20 of complaint) AP- Rs.23,19,525/- (as per BBA at page 20 of complaint)	Not Offered/ Rs.23,89,274 till October, 2018 (As pleaded by respondent at page 9 of reply)



5.	CR/4931/2023 Dharam Bir Sethi Vs. Vatika Ltd. DOF:30.10.2023 Reply:20.06.2024	306, Block D, 3 rd floor measuring 500 sq. ft. (page 20 of complaint)	23.08.2012 (page 18 of complaint)	TSC- Rs.22,50,000/- (as per BBA at page 20 of complaint) AP- Rs.23,19,525/- (as per BBA at page 20 of complaint)	Not Offered/ Rs.23,89,274 till October, 2018 (As pleaded by respondent at page 9 of reply)
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The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.
2. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.10.2018 till date (73 months) along with interest @ 18% on delay and further issue directions to the respondent to keep paying assured returns in terms of clause 12 of buyers agreement till completion of the project/receipt of OC and handing over of possession.
3. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month for a further period of three years (as per clause 12 of BBA) from completion of the project/receipt of OC along with interest @ 18% on delay, the exception being leasing it out only with the written consent of the complainants to the terms and conditions of lease transaction with the proposed lessee.
4. Direct the respondent to handover actual, physical, vacant possession of the commercial unit completed in all respects along with the grant of OC/CC.
5. Direct the respondent to execute the sale deed of the above said unit in favour of the complainant.
6. Allocate car parking space to the complainant in terms of letter dated 08.05.2012.

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

Abbreviation	Full form
DOF	Date of filing of complaint
TSC	Total sale consideration
AP	Amount paid by the allottee/s
AR	Assured Return

4. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/4930/2023 titled as "Dharam Bir Sethi V/s Vatika Limited"** are being taken into consideration for determining the rights of the allottees qua assured return, delay possession charges, physical possession and conveyance deed.

A. Unit and project related details

5. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/4930/2023 titled as "Dharam Bir Sethi V/s Vatika Limited"

Sr. No.	Particulars	Details
1.	Name of the project	"Vatika India Next City Centre", Sector-83, Gurugram
2.	Project area	10.72 acres
3.	Type of colony	Commercial Complex
4.	RERA registered/ not registered and validity status	Not Registered
5.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 valid upto 13.06.2018
6.	Name of the Licensee	M/s Trishul Industries
7.	Finally reallotted unit no.	Unit no. 307, 3rd floor, Block D admeasuring 500 sq. ft. (Page 20 of complaint)
8.	Old Unit no.	Unit no. 547, 5 th floor, Block B admeasuring 500 sq. ft. (Page 40 of complaint)
9.	Date of execution of buyer's agreement (Old Unit)	23.08.2012 (Page 18 of complaint)
10.	Letter for re-allocation of unit	31.07.2013 Allotment of New Unit (unilaterally as contended by complainant in para 7 of his pleadings at page 11 of complaint) (Page 40 of complaint)
11.	Assured Returns clause	Clause 12. Assured Return and Leasing Arrangement "Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining

		<p>units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 65 (Rupees Sixty-five only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs. 65 (Rupees Sixty-five) per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter....."</p> <p>(Emphasis supplied) (Page 32 of complaint)</p>
12.	Possession clause	<p>Clause 10 – Force Majeure ".....Subject to the aforesaid and subject to timely payment by the buyer of sale price, stamp duty and other charges due and</p>

		<p><i>payable according to the payment plan applicable to him or as demanded by the developer, the Developer contemplates to complete construction of the said Commercial Unit within 48 months of execution of this Agreement."</i></p> <p>(Emphasis supplied)</p> <p>(BBA at page 31 of complaint)</p>
13.	Due date of possession	<p>23.08.2016</p> <p>(Calculated to be 48 months from the date of execution of builder buyer agreement)</p>
14.	Total sale consideration	<p>Rs. 22,50,000/-</p> <p>(BBA at page 20 of complaint)</p>
15.	Paid up amount	<p>Rs. 23,19,525/-</p> <p>(BBA at page 20 of complaint)</p>
16.	E-mail sent by respondent to complainant confirming that project is ready and available for leasing	<p>29.02.2016</p> <p>(As pleaded by respondent at page 15 of reply)</p> <p>(Document not placed on record)</p>
17.	Letter of completion of construction sent by respondent	<p>26.03.2018</p> <p>(Page 63 of reply)</p>
18.	Assured returns paid by respondent to complainants	<p>Rs.23,89,274/- till October, 2018</p> <p>(As pleaded by respondent at page 9 of reply)</p>
19.	E-mails sent by respondent to complainants regarding stoppage of assured returns	<p>31.10.2018, 30.11.2018, 28.12.2018</p> <p>(Page 51, 52 and 55 of reply respectively)</p>
20.	E-mail sent by respondent to complainants regarding reconciliation of accounts of the complainant	<p>14.06.2019</p> <p>(Page 12 of written submissions filed by respondent)</p>
21.	Legal notice sent by complainants to respondent for payment	<p>28.08.2019</p> <p>(Page 41 of complaint)</p>

	of pending assured returns	
22.	Occupation certificate/ Completion certificate	Not obtained

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint as well as rejoinder dated 15.10.2024:

- a) That the complainants are law-abiding citizens and permanent resident of Delhi. He is the buyer/allottee of unit bearing no. 307D having 500 sq. ft., INXT City Centre situated in Sector-83, Gurugram, Haryana being developed by the respondent.
- b) That sometime in 2012, the respondent through their officials and representatives approached the complainants and offered to sell commercial units in the project, further on which they promised "guaranteed and assured return" on the money paid by the complainants upon them making a full consideration. It was assured that the respondent shall allot commercial units to the complainants, immediately upon payment and pursuant to that, he shall pay monthly assured return to the complainants.
- c) That as per the agreement, monthly assured return shall be paid to the complainants till the time the units are ready for possession and subsequently, for 3 years from the date of completion of the project and the receipt of completion certificate/occupation certificate for the project.
- d) That the complainants were induced to part with his money and made a payment of Rs.23,19,525/- to the respondent towards the sale consideration of the unit. The parties entered into a builder

buyer agreement dated 23.08.2012. As per the agreement, the respondent had to pay assured return @ Rs. 65/ sq. ft. which would total to Rs. 32,500/- per month to the complainants till the completion of the construction of the project and subsequently, for 3 years after the completion of construction and receipt of the CC/OC.

- e) That as per the agreed terms, a sum of Rs. 32,500/- was payable by the respondent to the complainants, every month for his unit. The assured return was paid by the respondent till September 2018 where-after, it has been abruptly stopped by the respondent from 01.10.2018 and nothing paid since then. Further, the project is far from completion and no OC/CC is received till date despite the categorical assurance of the builder to complete the construction in a time bound manner.
- f) That the complainants through their counsel sent a legal notice dated 28.08.2019 to the respondent. However, despite duly receiving the legal notice the respondent did not pay any heed towards the same and did not reply, leave alone paying the due amount. As per section 27 of the General Clauses Act, 1897, a notice is deemed to be served/delivered when sent by registered speed post unless the contrary is proved by the addressee.
- g) That despite the complainants numerous requests to the respondent to abide by the buyer's agreement, the respondent fails to give any sort of information / remit the assured returns to the complainants and/or complete the project or even give a firm commitment about the completion of the project.

- h) That the complainants had filed the complaint under Section 31 of the RERA Act, 2016, in July 2022 for all the 5 units purchased admeasuring 2500 sq. ft., whereby the Hon'ble Tribunal gave liberty to the complainants to file separate complaint in respect of each of the unit allotted to the complainants.
- i) The cause of action in favour of the complainants arose-
- When the respondent failed to handover the possession of the commercial unit bearing no. 307D as per the date stipulated in the builder buyer agreement.
 - When the respondent failed to make the payment of the assured return and despite the notice dated 28.08.2019 failed to honour his obligations and yet remains in default. There is hence a continuing cause of action.
 - When the respondent has till date failed to obtain CC/OC and to complete the project. The cause of action again is continuing and the respondent has yet not been able to complete the project and provide the CC/OC.
- j) That an amount of Rs.23,89,270/- was paid as assured return to the complainants from August, 2012 till September, 2018.
- C. Relief sought by the complainants:**
7. The present complaint was filed by the complainants on 30.10.2023 seeking the following reliefs:
- Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.10.2018 till date (59 months) on 500 sq. ft. i.e., Rs.19,17,500/- along with interest @ 18% on delay.*
 - Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.09.2023 till the completion of the project and receipt of*

OC/CC and thereafter, for a period of 3 years from then, along with interest @ 18% on delay.

3. Direct the respondent to handover actual, physical, vacant possession of the commercial unit bearing no. 307D, completed in all respects along with the grant of OC/CC.
4. Direct the respondent to execute the sale deed of the above said unit in favour of the complainant.
5. Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.

Thereafter, the complainants had filed an application for amendment of relief dated 15.10.2023 wherein he prayed that the relief sought clause may be read as follows:

1. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.10.2018 till date (73 months) along with interest @ 18% on delay and further issue directions to the respondent to keep paying assured returns in terms of clause 12 of buyers agreement till completion of the project/receipt of OC and handing over of possession.
2. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month for a further period of three years (as per clause 12 of BBA) from completion of the project/receipt of OC along with interest @ 18% on delay, the exception being leasing it out only with the written consent of the complainants to the terms and conditions of lease transaction with the proposed lessee.
3. Direct the respondent to handover actual, physical, vacant possession of the commercial unit bearing no. 307D, completed in all respects along with the grant of OC/CC.
4. Direct the respondent to execute the sale deed of the above said unit in favour of the complainant.
5. Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.
6. Allocate car parking space to the complainant at the rate that was prevalent at the time of execution of buyer's agreement.
7. Award compensation to the extent of Rs.20,00,000/- on account of mental agony, harassment and torture due to illegal acts and conduct of the respondent company.
8. Award litigation costs to the tune of Rs.2,00,000/- to the complainants."

8. A reply to the said application has been filed by respondent on 13.12.2024. After hearing both the parties at length, vide proceedings dated 05.02.2025 the application for amendment in relief dated 15.10.2023 was allowed to the extent of relief no. 1 to 6. Accordingly, the Authority is proceeding against the said relief(s) sought by the complainants, as under:
- I. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.10.2018 till date (73 months) along with interest @ 18% on delay and further issue directions to the respondent to keep paying assured returns in terms of clause 12 of buyers agreement till completion of the project/receipt of OC and handing over of possession.
 - II. Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month for a further period of three years (as per clause 12 of BBA) from completion of the project/receipt of OC along with interest @ 18% on delay, the exception being leasing it out only with the written consent of the complainants to the terms and conditions of lease transaction with the proposed lessee.
 - III. Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.
 - IV. Direct the respondent to handover actual, physical, vacant possession of the commercial unit completed in all respects along with the grant of OC/CC.
 - V. Direct the respondent to execute the sale deed of the above said unit in favour of the complainants.

- VI. Allocate car parking space to the complainants at the rate that was prevalent at the time of execution of buyer's agreement.
9. 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

10. The respondent contested the complaint on the following grounds:
- a) That the respondent issued communication to all its allottees of the project "INXT City Centre" from company e-mail id noreply@salesforce.com and noreply@vaticagroup.com regarding committed returns/assured returns suspension vide e-mail dated 31.10.2018. The respondent issued second communication to all allottees, through e-mail 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 the return based/ assured / committed return based sales and the respondent's proposal to reconcile accounts as of July, 2019. The respondent issued third e-mail to all the allottees on 28.12.2018 regarding stoppage of assured rentals and reconciliation of all dues by June, 2019 and issued communication regarding addendum agreement containing revised clauses excluding assured return/committed return clause alternatively giving option to allottees to shift to another project.
 - b) That the respondent on 14.06.2019, issued update to all its allottees regarding reconciliation of accounts as of 30.06.2019 and issuance

of addendum agreement for revising the clause of assured return and finally stopping the assured returns. The allottees who chose to cancel the allotment were also provided required document e-mails and were refunded investments. Thus, the respondent admittedly paid assured returns from the date of execution of BBA till September, 2018 and at the time of stoppage of assured returns in September 2018, the respondent provided timely detailed communication to all its allottees in the project, however the complainant chose to sit the filing of this complaint and now cannot be allowed the relief as prayed.

- c) That the issue regarding jurisdiction over complaint pertaining to assured return is pending before various Courts and Tribunals. One of such matters pertaining to the question of law "whether the authorities or tribunal can grant relief of assured return after the commencement of BUDS Act" is pending before the Hon'ble Punjab and Haryana High Court. In the bunch of petitions tagged with the matter of 'Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022, the Hon'ble High Court at Punjab and Haryana has restrained the respondents therein from taking any coercive steps in criminal cases registered against the respondent herein, for seeking recovery of assured return till next date of hearing.
- d) That the Uttar Pradesh Real Estate Appellate Tribunal (UPREAT) while adjudicating an appeal titled as "Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)" has held that the issue of Assured Return does not fall within the ambit of the Act of 2016 and dismissed the appeal filed by the Appellant/Allottee.

- e) Further the RERA Authority of Punjab while adjudicating upon the similar issue of assured return had taken a similar view by observing that the said issue is out of the purview of the Real Estate (Regulation and Development) Act of 2016. In the matter of 'Lalita Chauhan vs. Gupta Builders and Promoter Pvt. Ltd.' the Punjab Real Estate Regulatory Authority evidently held that the concept of Assured Return has no place in the Real Estate (Regulation and Development) Act of 2016.
- f) That the objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the Project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the Real Estate Sector and form balance amongst the Promoter, Allottee and Real Estate Agent. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the promoter and the buyer.
- g) That the Act 2016 provides for three kinds of remedies available to the complainant in the case of any dispute arisen between a promoter and buyer with respect to the development of the project. Such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. The said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for

"Compensation" for the loss occurred to the allottee, if any. However, nowhere in the said provision the Authority has been empowered with the jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns.

- h) That the true nature of the relief sought is kind of specific performance of the assured returns commitment. The relief of specific performance flows from the Specific Relief Act, 1963 and no part of the Real Estate (Regulation and Development) Act, 2016 clothes this Authority to exercise powers under Specific Relief Act, 1963. Thus, this Authority not being a civil court could not assert to itself the jurisdiction to grant specific performance of the "Assured Returns" which is a relief under the Specific Performance Act, 1963. While exercising its jurisdiction, the Authority should grant due consideration to the principle of law laid down in Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and Ors., AIR 2001 SC 3868 by a Constitution bench of the Hon'ble Supreme Court of India that "It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."
- i) That it is matter of record that there was no possession clause within the BBA. Only constructive possession of the subject unit was to be delivered. Since the respondent/promoter is still using complainant's money and occupation certificate has not been obtained till date, therefore, to safeguard the interests of the

allottees, the complainant may at best be allowed delay possession charges at the prescribed rates from 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.

- j) Therefore, considering the facts of the present case, and to ensure no prejudice is suffered by the complainants, the respondent may be directed to pay the amount of delayed possession charges at the prescribed rate for every month of delay till offer of possession plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the Rules, after deducting the amount of assured returns already paid till September, 2018.
- k) With regard to issue of physical possession, the agreed BBA between the complainant and the respondent shows that the Unit allotted to the complainant was not intended to be handed over to the complainant since it was a part of bigger floor plate and to be leased out to third parties together with such similar other units in that floor. The complainant was well aware of the fact, that the commercial unit in question was deemed to be leased out upon completion and the same was evidently mentioned and agreed by the complainant in the agreement.
- l) That it is admitted fact that OC in respect of the project where the subject unit is situated has not been obtained by the promoter till date. As on date, the conveyance deed cannot be executed in respect of the subject unit, however the respondent is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate from the competent authority. Thus, the relief

regarding execution of the conveyance deed of the allotted unit is premature and complainant's right to execution of conveyance deed would arise only after receipt of OC from the statutory authority.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

"Section 11(4) (a)

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

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as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent

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

16. 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.
17. 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 the relief sought by the complainants:

- G.I** Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month w.e.f. 01.10.2018 till date (73 months) along with interest @ 18% on delay and further issue directions to the respondent to keep paying assured returns in terms of clause 12 of buyers agreement till completion of the project/receipt of OC and handing over of possession.
- G.II** Direct the respondent to make payment on account of assured returns calculated @ Rs.65/- per sq. ft. per month on 500 sq. ft. i.e., Rs.32,500/- per month for a further period of three years (as per clause 12 of BBA) from completion of the project/receipt of OC along with interest @ 18% on delay, the exception being leasing it out only with the written consent of the complainants to the terms and conditions of lease transaction with the proposed lessee.
- G.III** Direct the respondent to pay the delay penalty charges with interest as per the RERA Act, from the due date of possession.
18. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

I. Assured Returns

19. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement dated 23.08.2012 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum 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 has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

20. 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 complainant-allottees have a right to approach the authority for redressal of his grievances by way of filing a complaint.
21. 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.
22. 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 allottees 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 complainant besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottees in terms of the builder buyer agreement dated 23.08.2012.

G.II. Delayed possession charges

23. In the present complaint, the complainants intends to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of Section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

24. A builder buyer agreement executed between the parties and the due date of completion of the project is calculated as per clause 10 of BBA i.e., 48 months from the date of execution of this agreement. The relevant clause is reproduced below:

Clause 10 - Force Majeure

".....Subject to the aforesaid and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable

according to the payment plan applicable to him or as demanded by the developer, the Developer contemplates to complete construction of the said Commercial Unit **within 48 months of execution of this Agreement.**"

25. **Admissibility of delay possession charges at prescribed rate of interest:** *(Emphasis supplied)* 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."

26. 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., 09.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. 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

construction of the project was to be completed within a stipulated time i.e., by 23.08.2016.

28. 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?
29. 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 buyer's agreement dated 23.08.2012. The assured return in this case is payable as per clause 12 of the "builder buyer agreement" wherein the promoter had agreed to pay to the complainant-allottee ₹65/- per sq. ft. on monthly basis till the completion of construction of the building and ₹65/- per sq. ft. on monthly basis after the completion of the building. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better as is encapsulated in the following table for all the complaints:

Sr. No.	Complaint no.	Assured return payable per month as per addendum agreement	Delay possession charges payable per month as per the RERA Act
1.	CR/4930/2023	₹32,500/-	₹21,456/-
2.	CR/4931/2023	₹32,500/-	₹21,456/-
3.	CR/4932/2023	₹32,500/-	₹21,456/-
4.	CR/4934/2023	₹32,500/-	₹21,456/-
5.	CR/4935/2023	₹32,500/-	₹21,456/-

30. By way of assured return, the promoter has promised that the allottee would be entitled for the specific amount of assured return till the said unit is put on lease and thereafter he shall be entitled for lease rental as agreed. The purpose of delayed possession charges under Section 18 of

the Act after due date of completion of project is served on payment of assured return. The same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher.

31. 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, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
32. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA along with interest on such unpaid assured return. As per the builder buyer agreement dated 23.08.2012, the promoter had agreed to pay to the complainant-allottee ₹65/- per sq. ft. on monthly basis till completion of construction of the building and ₹65/- per sq. ft. on monthly basis after the completion of the building. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of enactment of Act of 2019. However, the 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.

33. In the present complaint, OC/CC for the block in which unit of complainants is situated has not been received by the promoter till this date. Perusal of assured return clause mentioned in the BBA reveals that the stage of offer of possession by respondent is not dependent upon the receipt of occupation certificate. However, the Authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of ₹23,89,274/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.65/- per sq. ft. per month from the date the payment of assured return has not been made i.e. from October 2018 till date of completion of construction of building (post receipt of occupation certificate) and thereafter, Rs. 65/- per sq. ft. per month as minimum guaranteed return up to 36 months from the date of receipt of occupation certificate after the completion of the said building or till the date the said unit is put on lease, whichever is earlier. Further, the Authority declines to order payment of any amount on account of delayed possession charges as their interest has been protected by granting assured returns till completion of construction of the unit and thereafter also up to 36 months at different rate from date of completion of the said building or the said unit is put on lease, whichever is earlier.
34. Accordingly, the respondent is obligated to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from

the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.IV Direct the respondent to handover actual, physical, vacant possession of the commercial unit bearing no. 213E, completed in all respects along with the grant of OC/CC.

35. It is important to note that the complainants have failed to put forth any document to show that the said builder buyer agreement was executed under coercion. Also, no objection/protest whatsoever was made by the complainants at any point of time since the execution of the builder buyer agreement. Accordingly, in view of clause 12 of the BBA, handing over the physical possession was never the intent of the respondent rather the unit was to be leased out.

36. The authority observes that the respondent is obligated to handover the possession of the unit to the complainants in terms of the buyer's agreement dated 23.08.2012, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.

G.V Direct the respondent to execute the sale deed of the above said unit in favour of the complainants.

37. 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 favor 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 favor 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.***

38. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

G.VI Allocate car parking space to the complainant at the rate which was prevalent at the time of execution of buyer's agreement.

39. The Authority is of the considered view that since the buyer's agreement contains no clause regarding car parking, and there is no evidence of any representation or commitment made by the respondent, the Authority finds no legal or contractual basis to direct allotment of car parking space at any rate to the complainants. Therefore, the said relief sought by the complainants is declined.

H. Directions of the authority

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 01.10.2018 till the completion of construction of the building i.e., after obtaining occupation certificate from the competent authority and thereafter, ₹65/- per sq. ft. per month after the completion of construction of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of the buyer's agreement dated 23.08.2012.
- II. 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 complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
- III. The respondent is directed to handover the possession of the unit to the complainant in terms of the buyer's agreement dated 23.08.2012, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.
- IV. The respondent is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

- V. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- VI. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
9. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit, amount paid by the complainant-allottees, and amount of assured return received by the complainants is mentioned in each of the complaints.
41. The complaints stand disposed of.
42. True certified copies of this order be placed on the case file of each matter.
43. Files be consigned to registry.

Dated: 09.07.2025

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram