

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

Complaint no.	:	3041 of 2023
Date of complaint	:	03.07.2023
Order pronounced on:		14.07.2025

1. Anurag Kalia

2. Geeta Kalia

Both R/o: Flat no.102, First Floor, Royal Retreat Part-3,
Surajkund, Faridabad, Haryana-121009.**Complainants**

Versus

M/s Vatika One on One Private Limited

Registered office: Flat No. 621-A, 6th Floor, Devika
Towers, 6, Nehru Place, New Delhi-110019.**Respondent no.1**

M/s Vatika Limited

Registered office: Unit No. A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next,
Gurugram, Haryana-122012.**Respondent no.2****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Khush Kakra (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondents

ORDER

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

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

A. Unit and project-related details

2. The particulars of 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika One on One" at Sector- 16, Gurugram.
2.	Project area	12.13125 acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	05 of 2015 dated 06.08.2015 Valid up to 05.08.2020
5.	Rera registered/ not registered and validity status	Registered (For Vatika One on One, Phase-I) Vide no. 237 of 2017 dated 20.09.2017 Valid up to 19.09.2022
6.	Unit No.	325, 3rd Floor, Block -4 (page 44 of complaint)
7.	Unit area admeasuring (Super Area)	500 sq. ft. (page 51 of complaint)
8.	Date of buyer's agreement	04.02.2016 (page 42 of complaint)
9.	Assured return clause (as per BBA)	15 Assured returns in full down payment cases <i>"The developer may, where the buyer has paid 100% of the total sale consideration and other charges for the commercial unit, upon signing of this agreement pay Rs.151.65/- per sq. ft. super area per month by way of assured return to the buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy</i>

A.

		<p>of the developer may change from time to time where the developer may withdraw the assured return scheme."</p> <p>(Emphasis supplied)</p> <p>(page 58 of complaint)</p>
10.	Commitment return clause (as per BBA)	<p>16. LEASING AGREEMENT (OPTIONAL)</p> <p>"16.1 The developer will pay to the buyer Rs.130/- per sq. ft. super area of the said unit per month as committed return for upto three years from the date of completion of construction of the said building or the said unit is put on lease, whichever is earlier. The buyer will start receiving lease rental in respect of the said unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent-free period on account of fit-out by the lessee or any other account, then the buyer shall not be entitled for any rent during the same."</p> <p>(Emphasis supplied)</p> <p>(page 59 of complaint)</p>
11.	Lease rental clause (as per BBA)	<p>16. LEASING AGREEMENT (OPTIONAL)</p> <p>"16.5 The developer expects to lease out the said unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.130/- per sq. ft. super area per month for the first term (of whatsoever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.130/- per sq. ft. super area per month, then the developer shall pay to the buyer a one-time compensation calculated at the rate of Rs.133/- per sq. ft. super area for every one rupee drop in the lease rental below Rs.130/- per month. This provision shall not apply in case of second and subsequent lease/ lease terms of the said unit."</p>



		(Emphasis supplied) (page 59-60 of complaint)
12.	Possession clause	17 HANDING OVER POSSESSION OF THE COMMERCIAL UNIT IN CASE OF NON-LEASING ARRANGEMENT "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments." (Emphasis supplied) (page 62 of complaint)
13.	Due date of possession	04.02.2020 (Note: the due date of possession is calculated from the date of execution of buyer's agreement)
14.	Basic Sale Consideration	Rs.36,79,500/- (page 45 of complaint)
15.	Total sale consideration [inclusive of EDC & IDC only]	Rs.40,00,000/- (page 45 of complaint)
16.	Amount paid by complainant	Rs.41,48,320/- (page 45 of complaint)
17.	Assured return paid by the respondent	Till September, 2018
18.	Occupation certificate	06.09.2021 (as confirmed by both the counsel during the proceedings dated 22.08.2024 also as annexed by the respondent at page no.37 of reply)

19.	Offer of possession	Not provided either of the party
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B. Facts of the complaint:

3. The complainants have made the following submissions:

- a) That in the year 2014, the complainants were looking to purchase a commercial unit. That, in pursuant to the elaborate advertisements, assurances, representations and about the timely completion of a premium project with impeccable facilities inter-alia, monthly assured returns and believing the same to be correct and true, the complainants considered booking a unit in the project. It was represented and assured by the respondents that the project including the unit would be completed by the respondents by 04.02.2020 as per clause 17 of the builder buyer agreement.
- b) That the complainants got lured by the false pictures shown by the respondents and paid an amount of Rs.4,00,000/- towards the booking of a commercial unit in the project by way of a letter of request for allotment to the respondents and thereby the complainants were allotted a unit bearing no.325, Third Floor of Block 4.
- c) That the respondents had further lured the complainants to book the Unit in the project by assuring them that the said project would be one of its kind whereby the respondents undertook that upon furnishing an amount of 100% of the total consideration, the respondents shall pay monthly assured returns of Rs.151.65/- per sq. ft super area per month from the date of execution of the agreement till the completion of the unit. Furthermore, the respondents also assured the complainants that the leasing facility will also be made available to the complainants commencing after the completion of the unit.

- d) That the complainants got carried away by the assurances given by the respondents and executed the agreement on 04.02.2016 after making the payment of total consideration amounting to Rs.41,48,320/-. As per clause 15 of the agreement elucidates the terms and conditions of assured returns in the case of full down payment.
- e) That the complainants also agreed to avail the lease facility in accordance with clause 16 of the agreement and in that respect, the agreed terms and conditions of such availed lease facility were enumerated in annexure 1 of the agreement.
- f) That the respondents made the payment of assured return to the complainants till September 2018 as per the operating clause of the agreement. However, to the utter shock of the complainants, the respondents started making default in payment of assured returns from the month of October 2018. That the complainants started following up with the respondents through telephonic calls and emails seeking their legitimate monthly assured returns, which adds up to Rs.26,53,875/- as per clause 15 of the agreement. However, the respondents did not respond to any such issues and kept the complainants in the dark. After a silence of one long year, the respondents in the guise of the changed Real Estate laws tried to mislead the complainants despite the fact that such laws were not applicable in the case of payment of assured returns that are due to the complainants. The default continued till respondents received the occupation certificate that was on 11.09.2021.
- g) That the complainants not only felt duped and cheated for the failure of the payments of assured returns but also the false promises made to the complainants in terms of the lease facility as agreed in accordance with clause 16 of the agreement and the additional terms listed in the annexure-

1 to that very agreement. That the respondents were obligated as per the agreement to pay to the complainants, the committed returns @ of Rs.130/- from the date of completion of the unit till achieving the lease for the unit. The respondents at the outset in the month June, 2019, again tried to lure the complainants by showing a possibility of entering into an agreement for lease with Google Connect Services India Private Limited. However, this was an attempt to mislead the complainants as the respondents communicated to the complainants in the month of January 2021 that the lease agreement has been unlawfully terminated by Google Connect Services India Private Limited and that the respondents have initiated the appropriate legal actions against them. Thereby, the respondents have also defaulted in paying the committed returns to the complainants at the rate of Rs.130/- from 11.09.2021 till achieving the lease for the unit.

- h) That during the constant chase by the complainants regarding the due payments of the assured returns, the respondents acted maliciously by sharing the information about the execution of the lease agreement with Air India on 23.12.2022 and shared the terms and conditions related to that lease with the complainants. The lease agreement shared by the respondents contained arbitrary terms which were in total contrast to the agreement signed between the parties. That the respondents again failed to act in accordance with the agreement and very conveniently ignored the payment of committed returns amounting to Rs.9,98,650/- for failure on the part of the respondents to put the unit on lease from the date of completion of the unit till the execution of the lease agreement with Air India.



- i) That the respondents were obligated as per clause 16 and annexure-1 of the agreement to lease the premises at the rate of Rs.130/- per sq. ft. and that in case the achieved rental is lower than Rs.130/- then the respondents shall be refunded at the rate of Rs.133/- for every Rs. 1/- by which the achieved rental is than Rs.130/- per sq. ft. Therefore, as per the terms and conditions of the lease with Air India as shared by the respondents, the rate of the lease was fixed at Rs.102/- only per sq. ft. only. Hence, according to the above referred binding clause of the agreement, the complainants are entitled to a one-time compensation at the rate of Rs.133/- for every Rs.1/- by which achieved rental is than less Rs.130/- making the total amount of compensation due to the complainants to the value of Rs.18,62,0000/- in addition to the due committed returns of Rs.9,98,650/- for failure on the part of the respondents to put the Unit on lease as agreed in the agreement. Furthermore, the terms of the lease with Air India will cause injustice to the complainants as the lease commencement date is 19.08.2022, however, the rent commencement date is 01.03.2023. Thereafter, the terms also levy unwarranted and arbitrary charges on the complainants including but not limited to brokerage of three months plus the GST charges, one-time Escalation Cost, PMC dues and Fixed DHBVM Load charges.
- j) That the conducts of the respondents were in clear violation of Section 11(4)(a) read with Section 18(3) of the Act and this Authority has jurisdiction to deal with such case as these dues are arising out of the same contractual relationship between the complainants and the respondents.
- k) That the respondents already mounted pressure on the complainants that they had to agree to such arbitrary act of the respondents. However, the respondents, in utter disregard to the builder buyer agreement, miserably failed to pay the assured returns as per the agreement. Furthermore, at the

outset, the respondents misguided the complainants about the lease facility followed by imposing unjustifiable and arbitrary terms on the complainant in the case of the lease facility with Air India. That the respondents, since inception, had the malafide intention to defraud & dupe the complainants and it is apparent that the respondents with their ill motive have cheated the complainants by extorting their hard-earned money. Hence, the complainants seek the payment of pending assured returns and the one-time compensation related to the lease rental as agreed by the respondent in the agreement. Hence, the present complaint.

C. Relief sought by the complainants:

4. During the proceedings dated 13.02.2025, the counsel for the complainant's requested to file an application for amendment in relief sought in the complaint to include the relief w.r.t execution of conveyance deed in terms of clause 9 of the agreement and submitted a copy for amendment in relief in the registry of the Authority on 13.02.2025 after supplying a copy to the counsel for the respondent via email. Hence, the complainants have sought the following relief(s):
 - i. Direct the respondents to put the unit on lease as per the terms of the agreement dated 04.02.2016 and/ or direct the respondent promoter to handover the lawful possession if the subject unit is not put on lease.
 - ii. Direct the respondent to execute the conveyance deed in favour of the complainant in terms of Clause 9 of agreement.
 - iii. Direct the respondents to pay monthly assured returns at the rate of Rs.151.65/- per sq. ft. super area per month to the complainants from 01.10.2018 till 11.09.2021.
 - iv. Direct the respondents to pay committed/ assured returns at the rate of Rs.130/- per sq. ft. super area per month to the complainants from 11.09.2021 till 23.12.2022 for failure to lease out the unit.
 - v. Direct the respondents to pay interest as prescribed by law on the total outstanding payment towards the assured returns to date.

- vi. Direct the respondent to pay the one-time compensation in conformity with the agreement at the agreed rate of Rs.133/- for every Rs.1/- by which achieved rental is than less Rs.130/- per sq. ft.
 - vii. Direct the respondents to not levy any other cost on the complainants for the purpose of lease of the unit with AIR India and act in conformity with the agreement.
 - viii. Direct the respondents to pay a sum of Rs.5,00,000/- to the complainants towards compensation for mental agony caused by the respondent.
 - ix. Direct the respondents to pay a sum of Rs.2,00,000/- to the complainants towards litigation costs; and
 - x. Any other relief(s) as the Hon'ble Authority may deems fit.
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 respondents.

6. The respondents have contested the complaint on the following grounds:
- 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 04.02.2016.
 - b) That the construction of the project has already been completed. That the respondent abiding by the terms of BBA dated 04.02.2016, duly, completed the construction of the building. Further, the project Vatika One on One has already received the occupation certificate on 06.09.2021. That the complainants claimed assured returns for the time period between October, 2018 to September, 2021 cannot be allowed as the cause of action, if any, arose way back in 2018 and the complainant claim for reliefs out of alleged cause of action cannot be entertained by this Authority in 2023. The complaint of the complainants ought to be dismissed as it suffers from delay.

- 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' or any 'Committed Returns' on the 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, the enactment of BUDS read with the 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. 22,74,750/-till September 2018.
- e) That as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the Assured Return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and

the respondent cannot be made to run a scheme which has become infructuous by law.

- f) That further the Hon'ble High Court of Punjab & Haryana in *CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors."*, took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 20.03.2024. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.
- g) That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter as any order violative of the upcoming judgment of the Hon'ble High

Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.

- h) That the commercial unit of the complainants was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legal possessed by the complainant. Hence, the commercial space booked by the complainants is not for physical possession.
- i) That the complainant is seeking the 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.
- j) The present complaint of the complainant's has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation

preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- k) That in the matter titled as *Anoop Kumar Rath versus M/s Sheth Infraworld Pvt. Ltd.* in Appeal no. AT00600000010822 vide order dated 30.08.2019, the Maharashtra Appellate Tribunal while adjudicating points in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of the RERA Act, 2016.
- l) That the entire case of the complainant's is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainants deserves to be dismissed with heavy costs. That none of the relief as prayed for by the complainants are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and written submissions made by the parties.

E. Written submission made by both the parties:

9. The complainants have filed the written submission on 06.09.2024 and the respondents have filed the written submission on 06.02.2025 & 21.05.2025.

1A

No additional facts apart from the complaint and submissions has been stated in the written submission.

F. Jurisdiction of the authority:

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

F. I Territorial jurisdiction

11. 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.

F. II Subject matter jurisdiction

12. 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.

13. 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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the objections raised by the respondents:**G.I Objection regarding maintainability of complaint on account of complainant being investor.**

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

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."

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

H. Findings on relief sought by the complainant.

H.I Direct the respondents to put the unit on lease as per the terms of the agreement dated 04.02.2016 and/ or direct the respondent promoter to handover the lawful possession if the subject unit is not put on lease.

19. The complainants have contended that the respondent may be directed to handover the lawful possession to the complainants, if the said unit is not put on lease.

20. During the proceedings dated 15.05.2025, the counsel for the respondent states that the after receipt of occupation certificate, the unit of the complainants has been leased out to AIR India. Further, during proceedings dated 14.07.2025, it is confirmed by counsel for both the parties that the unit is put on 2nd lease. proxy counsels for both the parties. It is also confirmed

that the possession of the subject unit is of virtual possession only and not for physical possession. Hence, no specific direction for the same can be given.

- H.II Direct the respondents to pay monthly assured returns at the rate of Rs.151.65/- per sq. ft. super area per month to the complainants from 01.10.2018 till 11.09.2021.
- H.III Direct the respondents to pay committed/ assured returns at the rate of Rs.130/- per sq. ft. super area per month to the complainants from 11.09.2021 till 23.12.2022 for failure to lease out the unit.
- H.IV Direct the respondents to pay interest as prescribed by law on the total outstanding payment towards the assured returns to date.
- H.V Any other relief(s) as the Authority may deems fit.

21. The above-mentioned reliefs sought by the complainants are being taken together as the finding in one relief will definitely affect the result of the other reliefs and the same are interconnected.

22. The complainant in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

23. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start

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

24. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement, then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can

be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the **Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

25. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. *advance received in connection with consideration of an immovable*

property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.

26. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
27. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as **Nikhil Mehta, Pioneer Urban Land and Infrastructure** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case **Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including **Prateek Srivastava & Namita**

Mehta VS M/s Vatika Limited (RERA-GRG-660-2021) as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

28. 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 complainant besides initiating penal proceedings. So, the amount paid by the complainant 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.
29. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 04.02.2016, As per clause 17 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 04.02.2020.
30. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement. The rate at which assured return has been committed by the promoter is Rs.151.65/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of the building and Rs.130/- per sq. ft. per month as committed return for up to three years from the date of completion of the building or the said unit is put on lease whichever is earlier.

31. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of buyer's agreement along with interest on such unpaid assured return. As per clause 15 of buyer's agreement dated 04.02.2016, the promoter had agreed to pay to the complainants-allottees Rs.151.65/- per sq. ft. from the date of execution of this agreement till completion of the building and thereafter, as per clause 16.1 of buyer's agreement dated 04.02.2016, the promoter had further agreed to pay to the complainants-allottees Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of the building or the said unit is put on lease, whichever is earlier. 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 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.
32. In the present complaint, OC for the block in which unit of complainants is situated has been received by the promoter on 06.09.2021. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project
33. Therefore, considering the facts of the present case, the respondents are directed to pay the amount of assured return at the agreed rate i.e., @Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building, i.e., till the date of receipt of occupation certificate on 06.09.2021, and

thereafter, Rs.130/- per sq. ft. per month as committed return up to 3 years from the date of completion of the building (i.e., the date on which the promoter has obtained the occupation certificate on 06.09.2021) or the said unit is put on lease, whichever is earlier.

34. The respondents are directed to pay the outstanding accrued assured return amount 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.

H.VI Direct the respondents to not levy any other cost on the complainants for the purpose of lease of the unit with AIR India and act in conformity with the agreement.

35. The complainants are seeking a relief w.r.t restrain the respondent to not to levy any other cost for the purpose of lease of the unit with AIR India. However, the complainants have neither placed any document on record to substantiate the claim of the complainant nor pressed by the complainant's counsel during the arguments in the passage of hearing. Thus, in view of the above, the said reliefs sought by the complainant are declined.

H.VII Direct the respondent to execute the conveyance deed in favour of the complainant in terms of Clause 9 of agreement.

36. 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 occupation certificate in respect of the project where the subject unit is situated has been obtained by the respondents/ promoter on 06.09.2021. Thus, the respondents are 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 respondents shall execute the conveyance deed of the allotted unit upon payment of requisite stamp duty and other outstanding dues, if any, by the complainants as per norms of the state government.

H.VIII Direct the respondent to pay the one-time compensation in conformity with the agreement at the agreed rate of Rs.133/- for every Rs.1/- by which achieved rental is than less Rs.130/- per sq. ft.

H.IX Direct the respondents to pay a sum of Rs.5,00,000/- to the complainants towards compensation for mental agony caused by the respondent.

H.X Direct the respondents to pay a sum of Rs.2,00,000/- to the complainants towards litigation costs; and

38. The complainants are seeking above mentioned relief's w.r.t compensation and litigation costs. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and litigation cost.

I. Directions by the Authority:

39. 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 respondents are directed to pay the amount of assured return at the agreed rate i.e., @ Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building (i.e., 06.09.2021) and thereafter, @ Rs.130/-

per sq. ft. per month as committed return up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier in terms of the BBA dated 04.02.2016.


- ii. The respondents are directed to pay the outstanding accrued assured return amount and committed return 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.
- iii. The respondents/ promoter is directed to execute the registered conveyance deed in favor of the complainants-allottees in terms of Section 17(1) of the Act of 2016, on payment of stamp duty and registration charges as applicable.
- iv. The respondents shall not charge anything from the complainants which is not part of the buyer's agreement.

40. Complaint as well as applications, if any, stands disposed off accordingly.

41. File be consigned to registry.

Dated: 14.07.2025

HARERA
GURUGRAM


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