

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

Complaint no.	521 of 2024
Date of filing complaint	15.02.2024
First date of hearing	03.04.2024
Date of decision	30.07.2025

1. Smt. Surekha Chugh
2. Sh. Samir Pal Chugh
Both R/o: C-1/322, Ansal's Palam
Vihar, Gurugram- 122017, Haryana

Complainants**Versus**

Vatika Limited
Regd. office: Flat no. 621A, 6th Floor,
Devika Towers, 6, Nehru Place, New
Delhi - 110019
Corporate office: Vatika Triangle,
Block A, Sushant Lok, Gurgaon-122022

Respondent**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Mr. Nishant Yadav (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent

ORDER

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

provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

Sr. no.	Particulars	Details
1.	Name of the project	"Vatika Trade Centre", Gurugram (Now, "Vatika INXT City Centre", Sector-83, Gurugram)
2.	Nature of the project	Commercial colony
3.	DTCP license no.	258 of 2007 dated 19.11.2007 license migrated from commercial in residential zone to commercial plotted colony vide order dated 13.10.2022.
4.	Name of licensee	M/s Shivam Infratech Pvt. Ltd.
5.	RERA Registered/ not registered	Not Registered
6.	Old Unit no.	1730A, 17 th floor, tower A (page 31 of complaint)
	New Unit no.	509, 5 th floor, block E (page 49 of complaint)
7.	Unit admeasuring	500 sq. ft. (Super area) (page 31 of complaint)
8.	Date of buyer agreement	01.07.2010 (page 28 of complaint)
	Due date of possession	01.07.2013 In Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018) ; MANU/SC/0253/2018 Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a

		<p>reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</p> <p>In view of the above-mentioned case law, the date of signing of BBA ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 01.07.2013.</p>
9.	Addendum to the agreement (Assured returns)	01.07.2010 (page 48 of complaint)
9.	Second Addendum for deletion of assured return clause from BBA, effective from 01.07.2019	26.07.2019 (page 51 of complaint)
10.	Total sale consideration	Rs.20,00,000/- (as per BBA at page 31 of complaint)
11.	Amount paid by the complainant	Rs.20,00,000/- (as per BBA at page 31 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	Assured return clause	<p><i>"The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated offered for possession you will be paid an additional return of Rs.13/- per sq. ft. Therefore, the return payable to you shall be as follows:</i></p> <p><i>This addendum forms an integral part of the builder buyer agreement dated 01.07.2010.</i></p> <p><i>a) Till offer of possession Rs.78/- per sq. ft.</i></p> <p><i>b) After completion of the building Rs.65/- per sq. ft.</i></p> <p><i>You would be paid an assured return w.e.f. 01.07.2010 on a monthly basis before the 15th of each calendar month.</i></p> <p><i>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs.65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be applicable:</i></p>

		<p>1) If the rental is less than Rs.65/- per sq. ft., then you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which the achieved rental is less than Rs.65/- per sq. ft.</p> <p>2) If the achieved rental is higher than Rs.65/- per sq. ft., then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of the increased rentals."</p> <p>(Addendum to BBA at page 36 of complaint)</p>
15.	Clause 2 of the addendum agreement dated 26.07.2019	<p>1. This Addendum Agreement shall become effective from 1st July 2019.</p> <p>2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under Annexure 'A' (to the Letter dated 1st July 2010) through which the payments payable under clause 2 (Sale Consideration) were amended and clause 32 (Leasing arrangement) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier.</p> <p>(Page 51-52 of complaint)</p>
16.	Assured return paid by the complainants till November, 2018	<p>Rs.39,85,500/-</p> <p>(as alleged by the respondent at page 07 of reply and calculation sheet filed by respondent on 16.04.2025)</p>
17.	Letter as to completion of construction being sent by respondent to complainants	<p>26.03.2018</p> <p>(page 50 of complaint)</p>
18.	Occupation Certificate	Not Obtained
19.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions:

- a) That earlier the complainants had booked a unit with the respondent at Vatika Business Park, Sohna Road. The respondent illegally and unlawfully resold the said unit to another party. When the complainants found out about the act of the respondent they complained about the same and after numerous follow ups the respondent acknowledged their act and on mutual settlement between the parties to the present suit transferred the money to the said unit bearing no. Unit No. 509, measuring 500 sq. ft., on 5th floor, India Next City Centre, NH-8, Sector-83, Gurugram (Old Unit No.1730A, 17th Floor, India Next City Centre, NH-8, Sector-83, Gurugram) under the Committed Return Plan in the commercial complex developed by the respondent vide a Builder Buyer Agreement (BBA) dated 01.07.2010 on payment of the entire consideration amount.
- b) That, the entire sale consideration of Rs. 20,00,000/- for Unit No. 509, Fifth Floor, Tower -E, Vatika Trade Centre, NH-8, Sector-82A, Gurgaon (Original Unit No. 1730A, Seventeenth Floor, Block A, India Next City Centre, NH-8, Sector-83, Gurgaon) was paid to the respondent at the time of signing of the BBA dated 01.07.2010 and the said fact has been duly acknowledged in clause 2 of the BBA.
- c) That, as per recital D and clause 2 of the BBA, the respondent had undertaken to complete the construction of the said complex and make it ready for occupation and possession in all respects within 3 years from the BBA dated 01.07.2010 i.e., on or before 01.07.2013.
- d) That, further, under clause 2 of the BBA dated 01.07.2010, the respondent had undertaken to make monthly payments to the complainants by way of committed return as per Annexure A-Addendum to the BBA dated 26.07.2019 for the period of construction and further the respondent shall continue to pay to the complainants

the said monthly committed returns until the said unit is offered by the respondent for possession. Further, Annexure A- Addendum to BBA dated 01.07.2010 forms an integral part of the BBA.

- e) That, accordingly, as per the terms of the BBA, the respondent, as promised, continued to pay to the complainants the said assured monthly return @ Rs 78 per sq. ft for the said unit till February 2018.
- f) That, thereafter the respondent sent letter dated 26.03.2018 in respect of the said unit vide which it falsely represented that the construction work of Block E of Vatika INXT City Centre had been completed and that the building was operational and ready for occupation. That vide the said letter the respondent, relying on false and misleading claims made by it regarding the completion and occupation status, unilaterally, arbitrarily and wrongfully decreased the amount of the assured monthly returns payable under the terms of the BBA.
- g) That, thereafter from March 2018 onwards the respondent, arbitrarily and in clear breach and violation of the terms of the agreement, started paying the assured monthly return at the decreased rate i.e., @ Rs 65 per sq. ft for the said unit till July 2018. That, it is pertinent to point out here that the respondent has failed to offer possession of the said unit to the complainants till date and so it is obligated to continue to pay the assured monthly return @ Rs 78 per sq. ft as agreed. That there has been a shortfall in payment of assured monthly return @ Rs 13 per sq. ft per month for the period between March 2018 to September 2018 for the said unit.
- h) That, after September 2018 the respondent, arbitrarily and in clear breach and violation of the terms of the agreement, totally stopped making payments of the assured monthly returns to the complainants. That, the respondent was obligated to pay the assured monthly

- return @ Rs 78 per sq. ft as agreed till such time the possession of the unit is duly offered/handed over to the complainants. That there has been a total non- payment of assured monthly return @ Rs 13 per sq. ft per month since March 2018 and Rs. 78 per sq. ft from October, 2018 and the non-payment continues till date in respect of the said unit.
- i) That, the total unpaid and outstanding amount(s) due towards and payable to the complainants by the respondent on account of assured monthly returns along with compound interest with monthly rests on the said unpaid and outstanding amounts as enumerated hereinabove are only calculated till June, 2023 and thus are not fixed or final in nature. The said amounts of principal and interest due shall keep on adding and increasing till the date of actual and lawful offer/handing over of possession of the said unit by the respondent to the complainants and further till the actual date of payment/realization of such due and unpaid amounts (Principal + Interest).
- j) That, till date the respondent has failed to offer possession of the said unit to the complainants. That, despite various visits and enquiries made by the complainants, the respondent has, till date, been avoiding and evading to give any satisfactory response/reply regarding the status of the Occupation Certificate received by it in respect of the said complex from the state/competent authority. That through the research of similar cases going on in and orders made by the Haryana Real Estate Regulatory Authority against the respondent, it has come to the knowledge of the complainants that till date the respondent has failed to obtain the OC from the relevant authorities in respect of the said commercial complex because the construction works of the said complex were not completed by the respondent.

- k) That, as per Sections 11 and 17 of the Real Estate (Regulation and Development) Act, 2016, it shall be the responsibility of the promoter / builder to obtain the OC, handover the physical possession, execute a conveyance deed in favour of the allottee and also handover title deeds and other relevant documents including OC in respect of the property to the allottees. That, as mentioned hereinbefore, as per the information gathered by the complainants, the respondent has, till date, failed to obtain the OC from the relevant authorities in respect to the complex in which the said unit is situated. That this signifies that the building is not yet habitable and thus can, in no way, be deemed complete. That, before obtaining the OC, the respondent is not in a position to offer/ handover due, lawful and/or meaningful possession to the complainants.
- l) That the respondent had arbitrarily and unilaterally changed the unit number and unit details/description from that originally booked without obtaining the consent of or giving any reasons and/or sufficient cause to the complainants. The respondent simply sent a letter dated 17.09.2013 informing rather announcing to the complainants that the unit number and unit details/description have been changed from Unit No.1730A on 17th Floor Block E, Vatika Trade Centre, NH-8, Sector- 82A, Gurgaon to Unit No.509, Fifth floor Block E, India Next City Centre, NH-8, Sector-83, Gurgaon.
- m) That, the present complaint is being filed well within the limitation period. The cause of action arose on every occasion the Respondent acted in breach/violation of the terms of the BBA and other assurances made and continues till date.

C. Relief sought by the complainants:

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

- I. Direct the respondent to pay the assured monthly returns @ Rs 78/- per sq. ft as agreed from July 2010 till such time the lawful possession of the unit is duly handed over to the complainants along with interest accrued thereupon from the month of March 2018 at the rate of 2% compounded monthly along with the occupation certificate obtained by the respondent.
- II. Direct the respondent to make good the shortfall in payment of assured monthly return @Rs 13 per sq. ft per month for the period between March 2018 to September 2018 along with interest accrued thereupon for the said unit.
- III. In addition to the assured monthly returns prayed for in (I) above, direct the respondent to also pay to the complainants delayed possession charges from the due date of delivery of possession i.e. 01.07.2013 till the date of actual handing over of the lawful possession, for every month of delay at the rate of 2% compounded monthly along with the occupation certificate obtained by the respondent.
- IV. Direct the respondent to immediately resume the payments of assured monthly returns @ Rs 78/- per sq. ft and continue the same till such time the lawful possession of the said unit is duly handed over and the conveyance deed executed in favour of the complainants, and also clear all dues outstanding along with interest, without delay.
- V. Direct the respondent to hand over the lawful possession of the said unit to the complainants after obtaining the occupation certificate.
- VI. Direct the respondent to execute and register the conveyance deed of the said unit after completing of pending construction, work and receipt of occupation certificate in respect thereof.
- VII. Direct the respondent to compensate the complainants for mental agony and distress caused to him because of the misconduct of the respondent, along with costs / expenses borne for filing and pursuing this complaint.
- VIII. Impose exemplary and extraordinary monetary penalty upon the respondent that shall act as deterrence in future and act as lesson for the respondent and other such builders / developers from harassing, fleecing and cheating lakhs of innocent buyers/customers.

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

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 03.04.2024:
- a) That the complainants have got no locus standi or cause of action to file the present complaint, same being based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the BBA dated 01.07.2010 and addendum dated 26.07.2019.
 - b) That the builder buyer agreement executed between the parties on 16.06.2010 was signed between the respondent and two allottees namely Raj Kumar Khanna and Radhika Khanna. That the brief reading of the Proforma clearly reflects that the present complaint has been filed by one person Raj Kumar Khanna and the other allottee has neither been named nor details provided for them. Further the affidavit attached with complaint is on behalf of Mr. Raj Kumar Khanna and the affidavit of the other allottee is missing.
 - c) That the present complaint is not maintainable or tenable in the eyes of the law as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' on deposit schemes have been banned. The respondent company having taken no registration from the SEBI board cannot run, operate, and continue an assured return scheme. Further, enactment of BUDS read with Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being taken within the definition of 'Deposit.'

- d) That the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to the operation of law. As a matter of fact, the respondent duly paid an amount of Rs.39,85,500/- till November 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. Further as per the Securities Exchange Board of India Act, 1992 collective investment schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the 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 BUDS 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 16.08.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.

- g) That the commercial unit of the complainants were 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 clause 12 of the agreement, the said commercial space shall be deemed to be legally possessed by the complainant and the complainant could not take the physical possession. Hence, the commercial space booked by the complainants is not meant for physical possession.
- h) That in the matter of *Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani. Thus, the RERA Act, 2016 cannot deal with issues of assured return and hence the present complaint deserves to be dismissed at the very outset.
- i) That vide e-mail dated 31.10.2018, the respondent sent a communication to all its allottees regarding suspension of all return-based sales and further vide e-mail dated 30.11.2018 confirmed to the allottees that the project was ready and available for leasing. The issue regarding stoppage of assured returns and reconciliation of all accounts as of 30.06.2019 was also communicated with all the allottees to safeguard their interest. Thereafter, on 25.02.2020, the respondent issued communication to all its allottees regarding ongoing transaction and possible leasing of Block A, B, D, E and F in the project INXT City Centre.
- j) It is submitted that the complainant entered into an agreement i.e., BBA dated 01.07.2010 with respondent owing to the name, good will and reputation of the respondent. That it is a matter of record and admitted by the complainant that the respondent duly paid the assured return to the complainant till October 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even

though the respondent suffered from setback due to external circumstances, yet the Respondent managed to complete the construction and duly issued letter of completion on 26.03.2018.

- k) That the complainant has already received the payment of entire sale consideration amount in the form of assured returns and thus, nothing is due to be paid to the complainant and further, the complainant cannot seek refund on account of non-delivery of possession of the unit since the commercial unit was only intended for lease and never for physical possession. Thus, present complaint deserves to be dismissed with heavy costs.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Written submissions on behalf of the respondent:

8. The respondent had made the following additional submissions vide written submissions dated 20.06.2024 and 01.07.2025:
- a) That the complainants contend that the respondent promised to pay assured returns as per the BBA/addendum signed along with BBA, however after September 2018, the respondent stopped the payments and no further payments have since been made and seeking relief of assured returns from October 2018 onwards. Admittedly, the respondent made assured return each month in terms of the agreement till September 2018.
- b) That the complainants have already signed the addendum dated 27.08.2019 whereby the complainants agreed to complete stoppage of assured return and reconciliation of all assured return till July 2019, thus the present complaint is infructuous as the parties already agreed to stoppage of assured returns.

- c) That the issue regarding jurisdiction over complaint pertaining to assured return is pending before various courts and tribunals. Further, there is no possession clause within the BBA. Only constructive possession of the subject unit was supposed to be delivered. Since the complainants are still using the complainant's money and occupation certificate had not been obtained till date, therefore, to safeguard the interest of the allottees, the complainants may at best be allowed delay possession charges from due date of possession till the receipt of occupation certificate plus two months as per section 13(1) of the Act after adjustment of assured returns paid till September 2018.
- d) That since occupation certificate had not been obtained, the conveyance deed cannot be executed as on date however the respondent is contractually and legally obligated to register the conveyance deed upon receipt of OC from the competent authority. Thus, the relief regarding execution of conveyance deed of the allotted unit, as being premature and complainant's right to execution of conveyance deed would only rise after receipt of occupation certificate from the statutory authority.
- e) That relief pertaining to DPC is not maintainable as the unit was not meant to be handed over for possession but was designated for leasing purposes. Assured returns were paid to the complainants till September 2018, thereby fulfilling the respondent's obligation. Double jeopardy would entail if the complainants enjoy both assured returns and DPC.

F. Jurisdiction of the authority:

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

F. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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

11. 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.

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

G. Findings on the objections raised by the respondent:

G.1 Objection regarding non-payment of assured return due to implementation of BUDS Act.

13. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act

by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in CR/8001/2022 titled as "Gaurav Kaushik and Anr. Vs. Vatika Ltd." has already 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)(I)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

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

14. The respondent has raised an objection that the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing.
15. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated that-

"...there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification."

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

H. Findings on relief sought by the complainants.

- G.I Direct the respondent to pay the assured monthly returns @ Rs 78/- per sq. ft as agreed from July 2010 till such time the lawful possession of the unit is duly handed over to the complainants along with interest accrued thereupon from the month of March 2018 at the rate of 2% compounded monthly along with the occupation certificate obtained by the respondent.
 - G.II Direct the respondent to make good the shortfall in payment of assured monthly return @Rs 13 per sq. ft per month for the period between March 2018 to September 2018 along with interest accrued thereupon for the said unit.
 - G.III In addition to the assured monthly returns prayed for in (I) above, direct the respondent to also pay to the complainants delayed possession charges from the due date of delivery of possession i.e. 01.07.2013 till the date of actual handing over of the lawful possession, for every month of delay at the rate of 2% compounded monthly along with the occupation certificate obtained by the respondent.
 - G.IV Direct the respondent to immediately resume the payments of assured monthly returns @ Rs 78/- per sq. ft and continue the same till such time the lawful possession of the said unit is duly handed over and the conveyance deed executed in favour of the complainants, and also clear all dues outstanding along with interest, without delay.
16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

I. Assured returns

17. The complainants are seeking unpaid assured returns on monthly basis as per the addendum agreement 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.

18. 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-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
19. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. 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 allottees later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the agreement dated 01.07.2010.

20. Subsequently, a new Addendum was executed inter se parties on 26.07.2019 whereby complainants agreed that amounts payable under Annexure 'A' : Addendum to BBA dated 01.07.2010 upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier. The relevant clauses of the Addendum are reproduced as under:

- "1. This Addendum Agreement shall become effective from 1st July 2019.*
- 2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under under Annexure 'A' (to the Letter dated 1st July 2010) through which the payments payable under clause 2 (Sale Consideration) were amended and clause 32 (Leasing arrangement) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier..*
- 4. A fresh Clause 32 as mentioned hereinbelow replaces, substitutes and supersedes the erstwhile Clause 32 (Leasing Arrangement) of the Agreement w.e.f. 1st July 2019..."*

21. The complainant in its complaint is alleging that the respondent on 26.07.2019 got an addendum signed by the complainants and modified clause 2 and 32 of the Agreement.



22. It is worth noting that except the said contention in the complaint, the complainants have not challenged the said Addendum Agreement at any point of time and not even post the execution of the said Addendum Agreement, thus the complainants cannot raise the objection at such a belated stage. It is not a disputed fact that the aforesaid addendum was duly signed by the complainants, and its execution is admitted by both the parties. Moreover, the complainants have failed to put forth any document to show that the Addendum agreement dated 26.07.2019 was executed under protest. It is matter of fact that the unit of the complainants has not been leased out by the respondent till date. Thus, the aforesaid Addendum becomes binding on both the parties and accordingly, the respondent is liable to pay assured returns till 30.06.2019 and the same was payable within 90 days from the date of execution of addendum agreement dated 26.07.2019 being earlier.

II. Delay possession charges.

23. In the present complaint, the complainant intends to continue with the project and is 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. In the present case, the builder buyer agreement was executed on 01.07.2010. However, there is no delivery period stipulated in the agreement for completion of the project. Therefore, the due date of completion of the project is calculated as per the judgment passed by the

Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors. Versus Trevor D'Lima and Ors (12.03.2018)* wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.* In view of the above-mentioned reasoning, the date of signing of Builder buyer agreement dated 01.07.2010, ought to be taken as the date for calculating due date of completion of the project. Therefore, the due date of handing over of the possession of the unit and completion of the project comes out to be 01.07.2013.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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 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., 30.07.2025 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 complainant 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 by 01.07.2013.
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 in this case is payable as per the Agreement dated 01.07.2010 read with "Addendum Agreement dated 26.07.2019" and the respondent is liable to pay assured return to the complainant-allottees ₹78/- per sq. ft. on monthly basis till 30.06.2019. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.39,000/- per month whereas the delayed possession charges are payable approximately Rs.18,500/- per month.
30. By way of "the Agreement dated 01.07.2010" read with "Addendum Agreement dated 26.07.2019", the respondent is liable to pay assured return to the complainant-allottee ₹78/- per sq. ft. on monthly basis till 30.06.2019. The purpose of delayed possession charges 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 without prejudice to any other remedy including compensation.

31. The Authority further observes that the respondent has failed to complete the construction of the project and to obtain occupation certificate in respect of the project where the unit of the complainant is situated. As delineated hereinabove, the assured return is payable till 30.06.2019 as agreed between the parties vide "the Agreement dated 01.07.2010" read with "Addendum Agreement dated 26.07.2019". However, the liability to pay delay possession charges as per proviso to section 18(1) of the Act is still continuing and the same is payable w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority.
32. Accordingly, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 78/- per sq. ft. per month from 01.07.2010 till 30.06.2019. The respondent is directed to pay the outstanding assured return amount, if any, 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. Further, the respondent is directed to pay delay possession charges @ 11.10% p.a. on the amount paid by the complainants w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant-allottees within a period of 90 days from date of this order and interest for every month of

delay shall be paid by the promoter to the complainants before 10th of each subsequent month as per rule 16(2) of the Rules. However, it is important to note that the amount of assured returns paid by the respondent to the complainants i.e., Rs.39,85,500/- shall be adjusted/deducted from the payable amount.

G.V Direct the respondent to hand over the lawful possession of the said unit to the complainants after obtaining the occupation certificate.

33. With respect to the aforesaid relief, the authority observes that there is no clause in the entire BBA which obligates the respondent to handover physical possession of the unit to the complainant. Furthermore, as per Annexure A of the agreement dated 01.07.2010 read with Addendum Agreement dated 26.07.2019, it was agreed between the parties that on completion of the project the developer shall put the said unit on lease and the unit shall be deemed to be legally possessed by the complainants. The authority further observes that the complainants have failed to put forth any document to show that the agreement and addendum thereto was executed under protest. Also, no objection/protest whatsoever, was made by the complainants at any point of time since the execution of the BBA/addendum. Accordingly, handing over the physical possession was never the intent of the respondent rather the unit was to be leased out.

G.VI Direct the respondent to execute and register the conveyance deed of the said unit after completing of pending construction, work and receipt of occupation certificate in respect thereof.

34. With respect to the conveyance deed, clause 6 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed.
35. 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 or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

36. 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 complainant as per norms of the state government.

G.VII Direct the respondent to compensate the complainants for mental agony and distress caused to him because of the misconduct of the respondent, along with costs / expenses borne for filing and pursuing this complaint.

37. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357***), has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation &

litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions issued by the Authority:

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 78/- per sq. ft. per month from 01.07.2010 till 30.06.2019. The respondent is directed to pay the said 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(s) and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization. However, it is important to note that the amount of assured returns paid by the respondent to the complainants i.e., Rs.39,85,500/- shall be adjusted/deducted from the payable amount.
- II. Further, the respondent is directed to pay delay possession charges @ 11.10% p.a. on the amount paid by the complainant(s) w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order

by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per rule 16(2) of the rules.


- III. 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.
- IV. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- V. 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.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 30.07.2025

HARERA
GURUGRAM



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