

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

**Date of decision:** 04.04.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/353/2022	Geeta Nayyar & Ritika Nayyar V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)
2.	CR/1122/2022	Pratibha Khan & Afzal Ahmed Khan V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)
3.	CR/1123/2022	Pratibha Khan & Afzal Ahmed Khan V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)
4.	CR/1124/2022	Pratibha Khan & Afzal Ahmed Khan V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)

**CORAM:**

Shri. Arun Kumar

**Chairperson**

**ORDER**

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

<b>Project Name and Location</b>	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.
<b>Nature of the project</b>	Commercial complex
<b>Area of the project</b>	10.72 acres
<b>DTCP License no.</b>	122 of 2008 dated 14.06.2008 Valid up to 13.06.2018
<b>RERA registered or not</b>	Not registered
<b>Possession clause 2 of BBA</b>	The Developer will complete the construction of the said complex within <b>three (3) years from the date of execution of this agreement...</b>



<b>Assured return clause</b>	<i>The broad terms of assured return are as under A) Till offer of possession: Rs. 71.50/- per sq. ft. B) After Completion of the building: Rs. 65/- per sq. ft. You would be paid an assured return w.e.f. 04.04.2011 on a monthly basis before the 15th of each calendar month.</i>
<b>Occupation certificate</b>	Not obtained
<b>Offer of possession</b>	Not offered

Comp no.	CR/353/2022	CR/1122/2022	CR/1123/2022	CR/1124/2022
Allotment letter w.r.t. allotment of unit in Vatika Trade Centre	17.08.2011 (allotted to original allottee) [Page 17 of complaint]	08.01.2010 [Page 17 of complaint]	18.08.2011 [Page 17 of complaint]	12.08.2011 [Page 17 of complaint]
Unit no. in Vatika Trade Centre	253A, 2 <sup>nd</sup> floor, Tower A [Page 22 of complaint]	1127, 11 <sup>th</sup> floor, Tower A [Page 21 of complaint]	478, 4 <sup>th</sup> floor, Tower A [Page 21 of complaint]	312A, 3A floor, Tower A [Page 21 of complaint]
Date of builder buyer agreement w.r.t. allotment of unit in Vatika Trade Centre	17.08.2011 (with original allottee) [Page 19 of complaint]	08.01.2010 [Page 18 of complaint]	18.08.2011 [Page 18 of complaint]	12.08.2011 [Page 18 of complaint]
Date of addendum to the agreement w.r.t assured return	17.08.2011 (with original allottee) [Page 38 of complaint]	08.01.2010 [Page 37 of complaint]	18.08.2011 [Page 35 of complaint]	12.08.2011 [Page 37 of complaint]
Allocation of unit in INXT City Centre	25.04.2013 (in favour of original allottee) [Page 39 of complaint]	N/A	N/A	08.12.2011 [Page 38 of complaint]
Endorsement of unit in favor complainant(s)	16.09.2013 [Page 46 of complaint]	N/A	N/A	N/A



Unit no. (Present Unit)	527, 5 <sup>th</sup> floor, block F admeasuring 500 sq. ft. [Page 45 of complaint]	107, 1 <sup>st</sup> Floor, Block E admeasuring 500 sq. ft. [Page 38 of complaint]	142, 1 <sup>st</sup> Floor, Block E admeasuring 500 sq. ft. [Page 40 of complaint]	726, Block F admeasuring 500 sq. ft. [Additional documents placed by the respondent]
Due date of completion of project	17.08.2014	08.01.2013	18.08.2014	12.08.2014
Date of addendum to the agreement w.r.t. INXT	Undated (with original allottee) [Page 47 of complaint]	N/A	Undated [Page 37 of complaint]	Undated [Page 39 of complaint]
Date of addendum agreement w.r.t. deletion of assured return clause	06.08.2019 (with complainant) [Page 50 of complaint]	27.08.2019 [Page 38 of complaint]	27.08.2019 [Page 40 of complaint]	27.08.2019 [Page 42 of complaint]
Total Sale Consideration	₹21,93,750/-	₹27,00,000/-	₹21,93,750/-	₹21,93,750/-
Amount paid by complainants	₹21,93,750/-	₹27,00,000/-	₹21,93,750/-	₹21,93,750/-
Assured return paid till	September 2018 [Page 39 of reply]	March 2019 [Add. Doc. Filed by respondent]	March 2019 [Add. Doc. Filed by respondent]	March 2019 [Add. Doc. Filed by respondent]
Assured return paid	₹27,79,151/- [Page 39 of reply]	₹34,96,903/- [Add. Doc. Filed by respondent]	₹34,96,903/- [Add. Doc. Filed by respondent]	₹34,96,903/- [Add. Doc. Filed by respondent]
Relief sought	- Assured return - DPC - Physical possession - Strike down arbitrary clauses of BBA - Execute conveyance deed	- Assured return - DPC - Physical possession - Strike down arbitrary clauses of BBA - Execute conveyance deed	- Assured return - DPC - Physical possession - Strike down arbitrary clauses of BBA - Execute conveyance deed	- Assured return - DPC - Physical possession - Strike down arbitrary clauses of BBA - Execute conveyance deed

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the

promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/353/2022 titled as Geeta Nayyar & Ritika Nayyar V/s Vatika Limited*** are being taken into consideration for determining the rights of the allottees qua assured return, delay possession charges, physical possession and conveyance deed.

**A. Unit and project related details**

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

***CR/353/2022 titled as Geeta Nayyar & Ritika Nayyar V/s  
Vatika Limited***

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Inxt City Center" at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.72 acres
4.	DTCP License	122 of 2008 dated 14.06.2008
	valid upto	13.06.2018
5.	RERA registered/ not registered	Not registered

6.	Allotment letter in favour of original allottee w.r.t. allotment of unit in Vatika Trade Centre	17.08.2011  [Page 17 of complaint]
7.	Date of builder buyer agreement with the original allottee w.r.t. allotment of unit in Vatika Trade Centre	17.08.2011  [Page 19 of complaint]
8.	Time period for completion of the project as per clause 2 of BBA	<p><i>The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs refer annexure-A (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</i></p> <p>[Page 22 of complaint]</p>
9.	Due date of completion of the project	17.08.2014
10.	Date of addendum to the agreement w.r.t assured return	17.08.2011  [Page 38 of complaint]
11.	Assured return clause	<p align="center"><b>ANNEXURE A</b>  <b>ADDENDUM TO THE AGREEMENT</b>  <b>DATED 17.08.2011</b></p> <p>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq.</p>



		<p>ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 17.08.2011</p> <p>A. Till Completion of the building: Rs. 71.50/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 17.08.2011 on a monthly basis before the 15<sup>th</sup> of each calendar month.</p> <p>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 payable.</p> <p>1. If the rental is less then Rs. 65/- per sq. ft. then you shall be refunded @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less then 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. (Rupees One Hundred Twenty only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p>
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		[Page 38 of complaint]
12.	Allocation of unit in INXT City Centre	25.04.2013 (in favour of original allottee) [Page 39 of complaint]
13.	Endorsement of unit in favor complainant(s)	16.09.2013 [Page 46 of complaint]
14.	Unit no.	527, 5 <sup>th</sup> floor, block F admeasuring 500 sq. ft. [Page 45 of complaint]
15.	Date of addendum to the agreement executed with original allottee w.r.t. Vatika INXT City Centre	Undated [Page 47 of complaint]
16.	Date of addendum agreement executed with complainants w.r.t. deletion of assured return clause	06.08.2019 [Page 50 of complaint]
17.	Total Sale Consideration	₹21,93,750/- [Page 22 of complaint]
18.	Paid up amount as per BBA	₹21,93,750/- [Page 22 of complaint]
19.	Assured return paid till	September 2018 [Page 39 of reply]
20.	Assured return paid	₹27,79,151/- [Page 39 of reply]

#### **B. Facts of the complaint**

7. The complainants have submitted as under:

- a. That pursuant to advertisements, assurances, promises and representations made by the respondent in the brochure circulated by them about the timely completion of the project with perfect facilities and believing the same, the original allottee i.e., Archana Gulati booked a commercial unit at Vatika Trade Center, Gurgaon. It



was assured by the respondent that the project including the subject unit would be handed over possession by 30.09.2012.

- b. That the booking of the commercial unit was confirmed to the original allottee vide allotment letter dated 17.08.2011. Thereafter, a builder buyer agreement was executed for the commercial unit no. 253A admeasuring 500 Sq. Ft (Super Area) at Vatika Trade Center, Gurgaon on 17.08.2011 by paying the entire sale consideration i.e., ₹21,93,750/- in advance for the said unit. Clause 32 of the agreement and clause 1 and 2 of the addendum dated 17.08.2011 signed and executed between the parties are unfair, unjust and arbitrary in nature.
- c. That furthermore as per the addendum agreement dated 17.08.2011, the respondent promised an assured return to the original allottee from 17.08.2011 on a monthly basis before 15<sup>th</sup> of each month, wherein till the possession an amount @ ₹71.50 per sq. ft. and after completion of the building @ ₹65/- per sq. feet was to be paid to the allottee.
- d. That a letter dated 25.04.2013 was sent by the respondent to the original allottee, which stated "Allocation of the Unit Number INXT City Centre". That the respondent allotted a new unit no. 527 on 5th Floor of Block F at Vatika INXT City Centre, Gurugram. That such act of the respondent was arbitrary and in contravention to various provisions of the BBA and other agreements.
- e. That the original allottee sold the said property to the complainants vide agreement to sell dated 21.08.2013. That respondent sent a letter dated 16.09.2013 wherein the respondent acknowledged the

transfer of rights and benefits to the complainants from the original allottee as per the builder buyer agreement and other documents.

- f. Thereafter, the complainants made effort to seek updates on the allotted unit and the status of the construction at the site, but due to gross negligence of the respondent, there was no satisfactory response from them.
- g. After repeated follow-ups and not getting a positive response from the respondent, the complainants visited the construction site and were shocked to see that the construction has not been completed till date. Despite respondent promising the complainants to provide them with world-class facilities, the complainants were shocked to see the incomplete construction of the project.
- h. That the respondent violated the terms and conditions of builder buyer agreement by not executing the sale deed of the booked/allotted unit, not handing over the physical possession of the booked/allotted unit and not providing with the payments on account of assured return as per clause 1 and 2 of the builder buyer agreement and addendum dated 17.08.2011.
- i. That with malafide intentions, the respondent on 06.08.2019 got an addendum signed by the complainants and modified clause 32 of the Agreement. That despite failing to provide the possession of the subject unit and failing to handover the physical possession and with intention to cheat the complainants, the addendum was executed on the pretext that physical possession and assured returns would be given to the complainants.

- j. That till date the respondent has failed to register the project with the Authority and has violated the provisions of section 3 and 4 of the Act and are liable to be punished under section 59 of the Act. That it is clear from the intentions of the respondent that they are not inclined to complete the said project and have failed to acknowledge the terms and conditions mentioned in the clauses of the agreement. That at the time of execution of the agreement dated 17.08.2011, the respondent had assured the original allottee/complainants that they have taken necessary approvals from the competent authorities to commence the construction work of the project. However, till date the construction remains incomplete.
- k. That despite having paid the entire sale consideration amount in advance of ₹21,93,750/- to the respondent, there is a considerable delay of 11 years and the respondent has failed to hand over the possession to the complainants. That the complainants are left with no other option but to file the present complaint.

**C. Relief sought by the complainants:**

8. The complainants have sought following relief(s):
- Direct the respondent to make payment on account of the assured return in terms of the addendum.
  - Direct the respondent to pay delay penalty charges with interest as per the Act.
  - Direct the respondent to handover the physical possession of the subject commercial unit at Vatika INXT City Centre, Gurugram.
  - Direct the respondent to strike down the impugned clauses under BBA and addendum.

- e. Direct the respondent to execute sale deed of the above-mentioned booked unit in favour of the complainant.
  - f. Grant the cost of litigation of Rs. 1,10,000/-.
9. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

10. The respondent has contested the complaint on the following grounds:
- a. That the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by them cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration cannot run, operate, continue an assured return scheme. Thus, the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus, the relief prayed in the present complaint cannot survive due to operation of law.
  - b. That the complainants enjoyed the monthly returns till September 2018. That the complaint has been filed by the complainants just to harass the respondent and to gain the unjust enrichment. It is

pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants requires detailed deliberation by leading the evidence and cross-examination, thus only the Civil Court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.

- c. That the present complaint is not maintainable before the Hon'ble Authority as it is apparent from the prayers sought in the complaint. Further, the complainants are not 'Allottee', but purely are 'Investor', who are only seeking physical possession/delay possession charges from the respondent, by way of present complaint, which is not maintainable as the unit is not meant for personal use rather it is meant for earning rental income. The commercial unit of the complainants are 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 32.1(d) of the agreement, the said commercial space shall be deemed to be legally possessed by the complainants. Hence, the commercial space booked by the complainants are not meant for physical possession. Before buying the property from the erstwhile allottees, the complainants were aware of the status of the project and the fact that the commercial unit was only intended for lease and never for physical possession.
- d. That further in the matter of *Bharam Singh & Ors. vs. Venetian LDF Projects LLP* (Complaint No. 175 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram had decided not to entertain any matter related to assured returns.



- e. That the erstwhile allottees entered into an agreement i.e., builder buyers' agreement dated 17.08.2011 with respondent company thereafter owing to the name, good will and reputation of the respondent company. The complainants purchased the unit from the erstwhile allottees on 16.09.2013. That further, the construction of unit was completed and the same was duly informed to the complainants vide letter dated 27.03.2018. That due to external circumstance which were not in control of the respondent, minor timeline alterations occurred in completion of the project. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction.
- f. That thereafter on 06.08.2019, the complainants also got an addendum signed and executed. The execution of the addendum is duly admitted by the complainants. In terms of Addendum dated 06.08.2019, the complainants agreed that as on 01.07.2019, "Annexure A, Addendum to the Agreement dated 17.08.2011" where assured return was promised was agreed to be deleted and fresh clause 32 in the addendum itself was to be read as replaced clause 32 of BBA. Clause 3 of the addendum states that 'Annexure 'A' (Addendum to the Agreement dated 17.08.2011) to Clause 2 (Sale Consideration) of BBA stands deleted'.
- g. That the respondent company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:



- Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar **Gas Pipeline** by Gas Authority of India Limited (GAIL) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of independent floors.
  - Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely;
  - **Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water.**
  - Delay in removal/ re-routing of **defunct High-Tension Line of 66KVA** in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
  - Total and partial **ban on construction** due to the directives issued by the National Green Tribunal during various times since 2015.
  - The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
  - The several stretches of total and partial construction **restrictions** have led to **significant loss of productivity in construction** of the project. The respondent has also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- h. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. It is pertinent to submit that the complainants were sent the letter dated 27.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has

arisen till date in favour of the complainants and against the respondent and hence, the complaint deserves to be dismissed.

- i. That the various contentions raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted 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.
11. Written submissions filed by the respondent and the complainants are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

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

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E. II Subject-matter jurisdiction**

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

***"Section 11(4) (a)***

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

***Section 34-Functions of the Authority:***

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

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

### **F. Findings on the objections raised by the respondent**

#### **F.I. Objection regarding maintainability of complaint on account of complainants being investor**

16. The respondent objected that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act.
17. The authority observes 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 buyer's agreement, it is revealed that the complainants are buyer, 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"*

18. 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 clear that the complainants are allottees as the subject unit was allotted to them by the promoter upon payment of the entire sale consideration. 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 complainants being investor are not entitled to protection of this Act stands rejected.

**G. Findings on the relief sought by the complainant.**

**G.I. Assured return**

19. 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)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

20. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainants-allottees have a right to approach the authority for redressal of their grievances by way of filing a complaint.
21. Further, the MOU/agreement defines the builder buyer relationship. it can be said that the MOU/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 complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the addendum agreement dated 17.08.2011.

22. Subsequently, a new Addendum was executed inter se parties on 06.08.2019 whereby complainants agreed that the last para of clause 2 of BBA dated 17.08.2011, assured return clauses as per "Annexure 'A', Addendum to the Agreement dated 17.08.2011" stands deleted and further, clause 32 of the BBA dated 17.08.2011 stands substituted. In terms of the said addendum, the respondent is liable to pay assured return till 01.07.2019 and the same is payable at the time of leasing of the Unit or within 90 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 1<sup>st</sup> 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 **Annexure 'A' (Addendum to the agreement, dated 17th August 2011) to Clause 2 (Sale Consideration) and Clause 32 (Leasing Arrangement)** upto **30<sup>th</sup> 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.

3. **Annexure 'A' (Addendum to the agreement, dated 17th August 2011) to Clause 2 (Sale Consideration)** of the Builder Buyer agreement stands deleted.
4. A fresh **Clause 32** as mentioned herein below replaces, substitutes and supersedes the erstwhile **Clause 32 "Leasing Arrangement"** of the Agreement w.e.f. 1st July 2019."  
*(Emphasis supplied)*

23. On perusal of the case file, it is revealed that emails dated 31.05.2020 and 20.10.2021 had been sent by the complainants (in CR/1122/2022, CR/1123/2022 & CR/1124/2022) to the respondent regarding payment of outstanding assured return before 07.06.2020. The relevant part of emails is reiterated as under:

**"31.05.2020**

*Also, as per latest guidelines, I am sure your offices are functional now. It is our urgent request to clear our dues before June 7, 2020. Else we are not bound to honour the addendum since our signatures were taken on the pretext of a false promise with an aim to do forgery towards us."*

**"20.12.2021**

*The dues are pending since 27<sup>th</sup> November 2019. Kindly issue a PDC on current date and courier the same to us. Else treat this addendum Null and Void and old agreement will be effective immediately. The last date for you to re-consile is June 07, 2020."*

24. It is worth noting that vide aforesaid two emails, the complainants had requested the respondent to pay assured return beyond the agreed date (i.e., 30.06.2019) as per addendum dated 06.08.2019. Further, the said emails were sent by the complainants post the execution of the Addendum Agreement, thus the complainants cannot raise the objection of documents being forged 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 06.08.2019 was executed under protest. It is matter of fact that the unit of the complainants are not 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 06.08.2019 being earlier.

#### **G.II. Delayed possession charges**

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

***"Section 18: - Return of amount and compensation***

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

***.....***

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

26. A builder buyer agreement executed between the parties and the due date of completion of the project is calculated as per clause 2 of BBA i.e., 3 years from the date of execution of this agreement. The relevant clause is reproduced below:

***"The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun***

*in completion of the said complex the developer shall continue to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession."*

27. **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"*

28. 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., 04.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
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 construction of the project was to be completed by 17.08.2014.
30. 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?

31. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per "Annexure A, Addendum Agreement dated 17.08.2011" read with "Addendum Agreement dated 06.08.2019" and the respondent is liable to pay assured return to the complainants allottee ₹71.50/- 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 as is encapsulated in the following table for all the complaints:

Complaint no.	CR/353/2022	CR/1122/2022	CR/1123/2022	CR/1124/2022
Assured return payable per month	₹ 35,750/-	₹ 35,750/-	₹ 35,750/-	₹ 35,750/-
Delay possession charges payable per month as per the RERA Act	₹20,292/-	₹24,975/-	₹20,292/-	₹20,292/-

32. By way of "Annexure A, Addendum Agreement dated 17.08.2011" read with "Addendum Agreement dated 06.08.2019", the respondent is liable to pay assured return to the complainants allottee ₹71.50/- 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.

33. 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 units of the complainants are situated. As delineated hereinabove, the assured return is payable till 30.06.2019 as agreed between the parties vide Addendum Agreement. 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.
34. Accordingly, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid 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(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 allottee(s) before 10<sup>th</sup> of each subsequent month as per rule 16(2) of the rules.

### **G.III. Possession**

### **G.IV. To direct the respondent to strike down the impugn clauses under BBA and addendum**

35. With respect to the aforesaid reliefs, 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 clause 32 of the agreement dated 17.08.2011 read with Addendum Agreement dated 06.08.2019, 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 complainant. 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.V. Conveyance deed**

36. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
37. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*“17. Transfer of title.-*



*(1). The promoter shall execute a registered conveyance deed in 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."*

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

**G. VI. Litigation cost-₹1,00,000/-.**

39. In the above-mentioned relief, the complainants 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.

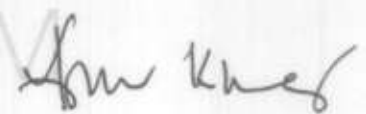
**H. Directions of the authority:**

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

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid 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.
- b. 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(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

- allottee(s) before 10<sup>th</sup> of each subsequent month as per rule 16(2) of the rules.
- c. 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 complainant as per norms of the state government.
  - d. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
  - e. 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.
41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit, amount paid by the complainant(s)-allottee and amount of assured return received by the complainant(s) is mentioned in each of the complaints.
42. The complaints as well as applications, if any, stand disposed of.
43. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.

**Dated:** 04.04.2025



**(Arun Kumar)**  
Chairman  
Haryana Real Estate Regulatory  
Authority, Gurugram