

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

Complaint no.	247 of 2024
Date of filing complaint	25.01.2024
First date of hearing	06.03.2024
Date of decision	21.05.2025

Centaurus Consulting through Anurag Sharma,
Partner

Resident of: B-1343, Palam Vihar, Gurugram,
Haryana- 122017

Complainant

Versus

1. Vatika One on One Private Limited

2. Vatika Limited

Both having their Regd. Office at: Flat no.
621A, 6th Floor, Devika Towers, 6, Nehru Place,
New Delhi - 110019

Respondents**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Mr. Anurag Sharma

Complainant

Mr. Venket Rao (Advocate)

Respondent**ORDER**

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

provisions of the Act or the rules and regulations made 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:

S.no.	Particulars	Details
1.	Name of the project	"Vatika One on One", Sector 16, Gurugram
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.12125 acres
4.	DTCP License no. and validity status	License no. 05 of 2015 dated 06.08.2015 valid upto 05.08.2020.
5.	Registered/ not registered	Registration no. 237 of 2017 dated 20.09.2017 valid upto 19.09.2022
6.	Allotment letter	12.09.2016 (page of complaint)
7.	Date of builder buyer agreement	26.09.2016 (page 25 of complaint)
8.	Unit no.	449, 4 th floor, block 3 admeasuring 500 sq. ft. (page 28 of complaint)
9.	Provision regarding assured return	Clause 15. Assured Return in full down payment cases "The Developer may, where the Buyer has 70% of the total sale consideration and other charges for the Commercial unit, upon signing of this Agreement pay Rs. 130/- per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme."

		(BBA dated 26.09.2016 at page 42 of complaint)
10.	Due date of possession	26.03.2021 (26.09.2020 plus grace period of 6 months in lieu of Covid-19) Clause 17 of the BBA <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments."</i>
11.	Basic sale consideration	Rs. 38,04,500/- (Page no. 29 of complaint)
12.	Paid up amount	Rs. 37,43,907/- (Page 57 of complaint)
13.	E-mail regarding execution of lease deed	Undated (Page no. 60 and 61 of complaint)
14.	Occupation certificate	06.09.2021 (page 48 of reply)
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions:

- a) That the respondents are very well known and established developers of real estate projects in Gurugram and other nearby places. The respondent no.1 had launched a commercial project in the name and title of " Vatika One on One" in Sector 16, Gurugram. The complainant having come to know about the project through the marketing executives and partners of the respondents and considering the then prevailing reputation of the respondents was lured to invest in the said project being promoted by them. Accordingly, the complainant applied for

- allotment of a commercial unit on 06.09.2016 along with a cheque of Rs. 2,00,000/- dated 01.09.2016 (No, 189927) in favour of Vatika One on One Pvt Ltd.
- b) That based on the complainant's application, the respondents made allotment of unit no.449, 4th floor, admeasuring 500 sq. feet in Block 3 of the project at the total sales consideration of Rs. 41,25,000/- including EDC and IDC vide allotment letter no. 16/09/0272381/449/12092016 dated 12.09.2016 under 70:30 payment plan with assured return option.
- c) That the complainant made two other payments of Rs.26,87,500/- vide cheque no. 189929 and Rs.1,29,938 vide cheque no. 189930 both dated 06.09.2016 to M/s Vatika One on One Pvt Ltd. against the allotment of the above-mentioned unit in the said project. These two payments along with the payment made vide cheque no 189927 dated the 01.09.2016 constituted 70% of the total sale consideration and applicable service tax. The balance 30% was payable on offer of possession post completion of the building. The complainant thus fulfilled its full financial commitment to the respondents as was mutually agreed.
- d) That a builder buyer agreement (BBA) between the complainant and respondent no.1 with respondent no.2 as the confirming party was executed on 26.09.2016. The allotment letter dated the 12.09.2016 and the BBA entered between the complainant and the respondents clearly stipulated the commitment and obligation of the respondents to make payment of the assured return at the rate of Rs.130/- per square foot per month to the complainant until the completion of construction of the building. Further, it was also clearly stipulated that after completion of construction of the said building, the respondents will pay committed Return of Rs.130/- per square feet per month up to 3 years from the

- date of completion of construction of the said building or till the said unit is put on lease, whichever is earlier. These commitments and obligations of the respondents have been clearly and unambiguously stated both in the allotment letter and the clauses 15 and 16.1 of BBA.
- e) That as per the above stated agreed terms the respondents made payments of assured return to the complainant from the date of signing of the BBA till September 2018. Thereafter, the respondent(s) abruptly and for no valid reason stopped making payment of the assured return in contravention of the explicitly stated provisions of BBA and allotment letter to pay assured return to the complainant. The complainant personally approached the executives of the respondents to restore payment of assured return and also sent written communication to this effect which were ignored by the respondents and did not yield the desired result. The total accumulated amount of Rs.22,88,000/- is pending on account of assured return (till the date of completion of the building) which the respondent is obligated to pay to the complainant along with applicable interest for delay in payment.
- f) That the complainant has come to know that the building received the occupancy certificate (OC) on 06.09.2021. As per clause 16.1 of the BBA, the respondents are obligated to make payments of committed return from the date of occupancy certificate up to a maximum of 3 years or the signing of lease of the unit, whichever is earlier. The total liability of the respondents to pay the committed return till the Lease commencement date i.e., 16.10.2023 amounts to Rs.16,44,500/- without interest. The total sale consideration of the unit is also linked to the rent at which the unit is leased by the respondents as stated in Annexure-1 to the BBA.
- g) That the respondents have informed the complainant by e-mail dated 23.11.2023 that the said building has been leased at the rate of Rs.102/-

per square feet per month. As per the BBA the respondent has assured the complainant a Rent of Rs.130/- per square feet of super area per month on which the premises will be leased. It is also inter-alia stated that ' In case the Lease is done below the promised rent of Rs130/- per square feet per month, the respondent will refund the complainant Rs.133/- per square feet for every Re1/- of the reduced rent'. As, the promised rent was Rs.130/- per square feet per month and the actual rent achieved is Rs102/- per square feet per month: hence there is a short fall of Rs28/- .Therefore, the refund Amount on this count shall be $133 \times 28 \times 500$, totalling to Rs18,62,000/-, which the respondents are obligated to refund to the complainant.

C. Relief sought by the complainants:

4. The complainant has sought the following relief(s):
 - I. Direct the respondent to make payment of accumulated assured return of Rs.22,88,000/- along with interest for delayed payments as per provisions of BBA and allotment letter.
 - II. Direct the respondent to make payment of accumulated committed return of Rs.16,44,500/- along with interest for delayed payments as per provisions of BBA and allotment letter.
 - III. Direct the respondent to refund Rs.18,62,000/- on account of achieved rent being less than that was assured as per provisions of BBA and allotment letter.
 - IV. Direct the respondent to pay or transfer any amount received or receivable by respondent on behalf of complainant for said unit towards security, lease rent or otherwise without any hindrance or delay or deduction.
 - V. Direct the respondent to execute a conveyance deed.
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 24.04.2024:

- a) That complainant booked the unit with respondent no. 1 for investment purposes. The said complainant herein is not an "allottee", but an investor as the complainant approached the respondent no.1 with an investment opportunity in the form of a steady rental income from the commercial units.
- b) That after having dire interest in the commercial project constructed by the respondent no.1, the complainant vide application form dated 06.09.2016 booked the unit, under the assured return scheme, upon own judgement and investigation.
- c) That on 12.09.2016, the respondent vide allotment letter allotted a unit bearing no. 449, 4th floor, Block 3 admeasuring 500 Sq. ft. to complainant. Further, upon knowing the assured return scheme, the complainant upon own will, paid 70% of amount of Rs. 30,17,438/- to the respondent for making steady monthly returns.
- d) That a builder buyer agreement dated 26.09.2016 was executed between the complainant and the respondents for a basic sale consideration of Rs. 38,04,500/- in the project. Respondent no. 2 was just a confirming party in the said agreement and the rights, interest in land has been acquired by the respondent no.1.
- e) That as per clause 16 of the agreement, the unit was supposed to be leased out upon the completion and in case the complainant opts to not lease the unit then as per provision of clause 17, the unit was proposed to be handed over within an estimated period of 48 months from the date of execution of agreement. In the present complaint, it is an admitted fact that the Complainant had already opted for leasing out and authorized the respondent no.1 to lease out the unit.

- f) That as per provision of clause 16 read with clause 16.8, unit in question were in deemed legal possession but the complainant was not entitled to claim the physical possession of the said unit as it is on lease.
- g) That the complainant herein had authorized respondent no. 1 to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of respondent no.1 i.e., due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in industrial, construction and business area even in 2019. The respondent had suffered due to the effect of demonetization and implementation of the GST. Further, other reasons are as under:

Sr. No	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 - 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 - Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018- 12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)

8.	Environment Pollution (Prevention & Control Authority)- EPCA- Dr.Bhure Lal, Chairman	Complete Ban	01.11.2019 - 05.11.2019 (5 days)
9.	Supreme Court - 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 - 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India - Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021,	3 months
TOTAL			1.7 years (approx.)

- h) That the delay caused due to unforeseen circumstances, which shall be considered and calculated, before determination of date of completion of building. That after considering the above delay, the date of completion of building has to be extended by approximately 1.7 years.
- i) That despite these obstructions, the respondent was able to complete construction and obtain occupation certificate from concerned authority on 06.09.2021. It is pertinent to mention herein that as per clause 15 and clause 16 of the Agreement, the respondent no.1 was obligated to pay the assured return to the complainants, wherein the respondent assured to provide assured return of Rs. 130/- per sq. ft till the completion of the construction and Rs. 130/- per sq. ft., after completion of construction for three years or till the unit is put on lease, whichever is earlier.
- j) That respondent no.1 herein was committed to complete construction of the project and subsequently lease out the same as agreed under the agreement. However, the respondent in due compliance of the terms of the agreement has paid assured return up till September, 2018.

- k) That complainant has received an amount of Rs. 16,07,666.7/- as assured return from date of allotment upto September, 2018. The respondent was determined to fulfil its obligations as per the agreement and was able to execute a lease agreement with Air India Ltd on 16.10.2023 for Block 3, wherein the subject unit of the complainant is situated, which was duly intimated to the complainant vide email.
- l) That a reading of the entire complaint on a demurrer reveals that the true nature of the relief sought is specific performance of the assured returns commitment. The relief of specific performance flows from the Specific Relief Act, 1963 and no part of the RERA Act, 2016 clothes this Authority to exercise powers under Specific Relief Act, 1963.
- m) That the complainants are praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Authority has been dressed in. That from the bare perusal of the RERA Act, it is clear that the said Act provides for 3 kinds of remedies in case of any dispute arise between a builder and buyer with respect to the development of the project as per the Agreement. Such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred to the allottee, if any.
- n) That the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took cognizance in respect of the Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana from taking coercive steps in criminal cases registered against company for seeking recovery against deposits till the next date of hearing.

- o) That the respondent cannot pay "Assured Returns" to the complainants by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposits under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. None of the promotional offers qualify under Deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act and the anomaly in the definition thereof, company may be exposed to severe penalties and hence, the respondent had no other alternative but to stop payment of any return etc.
- p) That the said agreement was of the nature of an "Investment Agreement". The same does not stipulate about possession, in fact it clearly specified and as mutually agreed by the complainants.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.
- E. Jurisdiction of the authority:**
8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E. I Territorial jurisdiction**
9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by 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 the complainants being investors.**

12. The respondent took a stand that the complainants are investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyers, and he has paid a sum of Rs.1,34,73,850/- to the promoter towards purchase of a 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;"

13. 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 complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottees being investor are not entitled to protection of this Act also stands rejected.

F. II Objection regarding non-payment of assured return due to implementation of BUDS Act.

14. 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.

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

15. 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.

16. 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.

F.IV Objection regarding delay in project due to force majeure circumstances.

17. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of Covid-19 etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The memorandum of

understanding was executed between the parties on 15.12.2012 and the due date to complete the construction comes to 15.12.2015 as per the "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018*" and the events taking place such as orders of NGT in NCR on account of the environmental conditions, demonetization, GST are for short duration, which does not made any impact of the construction of the developer, adverse effects of Covid-19 etc. and others force majeure circumstances which occurred after the due date of completion. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

F.V Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

18. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

19. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 26.09.2020. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in

which the subject unit is being allotted to the complainants is 26.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 26.03.2021.

G. Findings on relief sought by the complainants.

G.I Direct the respondent to make payment of accumulated assured return of Rs.22,88,000/- along with interest for delayed payments as per provisions of BBA and allotment letter.

G.II Direct the respondent to make payment of accumulated committed return of Rs.16,44,500/- along with interest for delayed payments as per provisions of BBA and allotment letter.

G.III Direct the respondent to refund Rs.18,62,000/- on account of achieved rent being less than that was assured as per provisions of BBA and allotment letter.

G.IV Direct the respondent to pay or transfer any amount received or receivable by respondent on behalf of complainant for said unit towards security, lease rent or otherwise without any hindrance or delay or deduction.

20. 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.

21. The factual matrix of the case reveals that a builder buyer agreement was executed between the parties on 26.09.2016 and a unit no. 449, 4th floor, block 3, admeasuring 500 sq. ft. was allotted to the complainant. The complainant has paid an amount of Rs.37,43,907/- against the sale consideration of Rs.38,04,500/-. Clause 15 of the buyer's agreement provided for payment of assured returns to the complainant @ Rs.130/- per sq. ft. per month till completion of the project and thereafter, @ Rs.130/- per sq. ft. per month from the date of completion of construction of said unit for upto 3 years or till the said unit is put on lease, whichever is earlier.

22. The complainant in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.
23. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union*

of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

24. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement, then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. This project is already registered with the Authority bearing No. 237 of 2017 dated 20.09.2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the ***Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)*** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being

executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

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

- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

26. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

27. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the

builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as *Nikhil Mehta, Pioneer Urban Land and Infrastructure* which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case *Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)* where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)* as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

28. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.

29. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement was executed between the parties on 26.09.2016 and as per clause 17 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 26.03.2021.
30. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement. The rate at which assured return has been committed by the promoter is Rs.130/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of construction of the building and Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of the construction of the building or the said unit is put on lease whichever is earlier.
31. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of buyer's agreement along with interest on such unpaid assured return. As per buyer's agreement dated 26.09.2016, the promoter had agreed to pay to the complainant-allottee Rs.130/- per sq. ft. from the date of execution of this agreement till completion of construction of the building and Rs.130/- per sq. ft. per month as committed return for upto three years from the date of completion of the construction of the building or the said unit is put on lease, whichever is earlier. It is matter of record that the amount of assured return was paid by the respondent promoter till September, 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated

Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

32. In the present complaint, OC for the block in which unit of complainant is situated has been received by the promoter on 06.09.2021. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project.
33. Therefore, considering the facts of the present case, the respondent is obligated to pay the amount of assured return at the agreed rate i.e., @ Rs. 130/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building, i.e., till the date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs. 130/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building i.e., 06.09.2024 in terms of the BBA dated 05.11.2016 since there is no document place on record with respect to leasing of the said unit. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of Annexure 1 of the builder buyer agreement dated 26.09.2016.
34. The respondent is further obligated to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.VI Direct the respondent to execute 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 been obtained by the respondent promoter from the competent authority on 06.09.2021. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order.

H. Directions issued by the Authority:

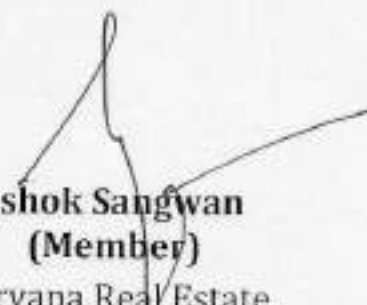
37. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.130/- per sq. ft. per month from the date payment of assured return has not been made i.e. from October 2018 till the date of

completion of construction of project, i.e., till date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs. 130/- per sq. ft. per month as committed return up to 3 years from date of completion of construction of the said building or till the date the said unit is put on lease, whichever is earlier. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of Annexure 1 of the builder buyer agreement dated 26.09.2016.

- II. The respondent is directed to pay the above outstanding accrued assured return amount till date along with interest rate of 9.10% per annum within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would become payable with interest @ 9.10% p.a. till the date of actual realization.
 - III. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
 - IV. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
38. Complaint stands disposed of.
39. File be consigned to the Registry.

Dated: 21.05.2025



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