

**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/280/2022	Ritu Chitkara V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)
2.	CR/289/2022	Neelam Jain and Naresh Jain V/s Vatika Limited	Siddhant Sharma, Adv. (Complainant) Ankur Berry, Adv. (Respondent)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of both the 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 CENTRE' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply 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:

Project Name and Location	"INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana
Nature of the project	Commercial complex
Area of the project	10.72 acres
DTCP License no.	122 of 2008 dated 14.06.2008 Valid up to 13.06.2018
RERA registered or not	Not registered
Occupation certificate	Not obtained
Offer of possession	Not offered

Heads	CR/280/2022	CR/289/2022
Complaint filed on	10.02.2022	10.02.2022
Reply filed on	04.08.2022	25.02.2022
Allotment letter	28.02.2012 (allotted to original allottee) [Page 16 of complaint]	06.02.2012 [Page 17 of complaint]
Old unit no.	207A, 2 nd floor, Block A admeasuring 750 sq. ft. in INXT City Centre [As per allotment letter dated 28.02.2012, Page 16 of complaint]	319A, 3 rd floor admeasuring 1000 sq. ft. in INXT City Centre [As per allotment letter dated 06.02.2012, Page 17 of complaint]



New unit shifted no.	109, 1 st floor, block D [Vide letter dated 25.04.2013 "Allocation of Unit number", Page 41 of complaint]	729, 7 th floor, block F [Vide letter dated 31.07.2013 "Allocation of Unit number", Page 40 of complaint]
Date of builder buyer agreement	19.01.2012 (with original allottee) [Page 17 of complaint]	06.02.2012 [Page 18 of complaint]
Endorsement of unit in favor of complainant(s)	26.06.2019 [Page 45 of complaint]	N/A
Due date of completion of project	19.01.2015 [3 years from date of execution of BBA as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.</i> (12.03.2018); MANU/SC/0253/2018]	06.02.2015 [3 years from date of execution of BBA as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.</i> (12.03.2018); MANU/SC/0253/2018]
Assured return and Leasing Arrangement clause	<u>12. ASSURED RETURN AND LEASING ARRANGEMENT</u> <i>Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay ₹ 65/- per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this</i>	<u>12. ASSURED RETURN AND LEASING ARRANGEMENT</u> <i>Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay ₹ 71.5/- per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of</i>



	<p>agreement till the completion of construction of the said Building... It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier.....</p>	<p>this agreement till the completion of construction of the said Building... It is further agreed that:</p> <p>(i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier....</p>
Date of addendum agreement w.r.t. deletion of assured return clause	<p>26.12.2019 (with complainant)</p> <p>[Page 46 of complaint]</p>	<p>22.07.2019</p> <p>[Page 42 of complaint]</p>
Clause 2 of addendum	<p>1. This Addendum Agreement shall become effective from 1st July 2019</p> <p>2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) up to 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum</p>	<p>1. This Addendum Agreement shall become effective from 1st July 2019.</p> <p>2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under clause 12 (ASSURED RETURN) & clause 12 (LEASING ARRANGEMENT) up to 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum</p>



	Agreement whichever is earlier. [Page 46 of complaint]	Agreement whichever is earlier. [Page 42 of complaint]
Total Sale Consideration	₹33,75,000/-	₹49,50,000/-
Amount paid by complainant(s)	₹33,75,000/-	₹50,77,462/-
Assured return paid till	September 2018 [Page 35 of reply]	September 2018 [Page 30 of reply]
Assured return paid	₹38,56,192/- [Page 35 of reply]	₹ 51,88,603/- [Page 30 of reply]
Relief sought	- Assured return - DPC - Physical possession - Execute conveyance deed - Litigation cost	- Assured return - DPC - Physical possession - Execute conveyance deed - Litigation cost

- 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.
- The facts of all the complaints filed by the complainant/ allottee are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/280/2022 titled as Ritu Chitkara 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 complainant(s), date of proposed handing over the possession, date of buyer's agreement etc. have been detailed in the following tabular form:

CR/280/2022 titled as Ritu Chitkara V/s Vatika Limited

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Inxt City Centre" 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 issued in favour of the original allottees i.e., Jasbinder Sobti & Charanpal Singh	28.02.2012 [Page 16 of complaint]
7.	Old unit no. and area	207A, 2 nd floor, Block A admeasuring 750 sq. ft. in INXT City Centre [As per allotment letter dated 28.02.2012, Page 16 of complaint]
	New unit shifted no.	109, 1 st floor, block D [Vide letter dated 25.04.2013 "Allocation of Unit number", Page 41 of complaint]
8.	Builder buyer's agreement executed between original allottees and the respondent on	19.01.2012 [Page 17 of complaint]
9.	Possession clause	N/A
10.	Due date of completion of project	19.01.2015



		<p><i>In Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018);</i></p> <p><i>MANU/SC/0253/2018</i> Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</p> <p>In view of the above-mentioned case law, the date of signing of BBA ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 19.01.2015.</p>
11.	Assured return clause	<p><u>12. ASSURED RETURN AND LEASING ARRANGEMENT</u></p> <p><i>Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation</i></p>



		<p><i>and use, the Developer has agreed to pay ₹ 65/- per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building... It is further agreed that:</i></p> <p><i>(i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter.</i></p> <p>[Page 32 of complaint]</p>
12.	Total consideration as per clause 1 of BBA	<p>Rs. 33,75,000/-</p> <p>[Page 19 of complaint]</p>
13.	Total amount paid by the complainant as per clause 1 of BBA	<p>Rs. 33,75,000/-</p> <p>[Page 19 of complaint]</p>
14.	Reallocation of unit vide letter dated	<p>25.04.2013</p> <p>[Page 41 of complaint]</p>



15.	Agreement to sell executed between the complainant and the original allottees	18.04.2019 [Page 42 of complaint]
16.	Assignments/Nomination letter in favour of the complainant	26.06.2019 [Page 45 of complaint]
17.	Addendum agreement executed between the complainant and respondent	26.12.2019 [Page 46 of complaint]
18.	Clause 2 of addendum agreement	<p>1. <i>This Addendum Agreement shall become effective from 1st July 2019.</i></p> <p>2. <i>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 clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier.</i></p> <p>[Page 46 of complaint]</p>
19.	Date of offer of possession to the complainant	Not offered
20.	Occupation certificate	Not obtained
21.	Assured return amount paid by the respondent w.e.f. 28.02.2012 till 30.09.2018	Rs.38,56,192/- [Page 35 of reply]

B. Facts of the complaint

7. The complainant has 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., Jasminder Sobti & Charanpal Singh booked a commercial unit bearing no. 207A admeasuring 750 sq. ft. at Vatika INXT City Centre and was confirmed vide allotment letter dated 28.02.2012. It was assured by the respondent that the project including the subject unit would be handed over by 30.09.2012. Also, a builder buyer agreement was executed for the said commercial unit on 19.01.2012 by paying the entire sale consideration i.e., ₹33,75,000/- in advance for the said unit. Clause 22 of the agreement is unfair, unjust and arbitrary in nature.
- b. That furthermore as per clause 12 of the agreement dated 19.01.2012, the respondent promised to pay assured return to the original allottee from 19.01.2012 on a monthly basis before 15th of each month, wherein till the possession an amount @ ₹65/- per sq. ft. and after completion of the building @ ₹65/- per sq. feet was to be paid to the allottee.
- c. 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. 109 on 1st Floor of Block D 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.

- d. That subsequently on 18.04.2019, the complainant purchased the subject unit from the original allottee and the same was confirmed by the respondent on 26.06.2019.
- e. Thereafter, the complainant 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. After repeated follow-ups and not getting a positive response from the respondent, the complainant visited the construction site and was shocked to see that the construction has not been completed till date. Despite respondent promising the complainant to provide them with world-class facilities, the complainant was shocked to see the incomplete construction of the project.
- f. 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 dated 19.01.2012.
- g. That with malafide intentions, the respondent on 26.12.2019 got an addendum signed by the complainant and modified clause 9, 10, 11 and 12 of the Agreement. Despite failing to provide the possession of the subject unit and failing to handover the physical possession and with intention to cheat the complainant, the addendum was



executed on the pretext that physical possession and assured returns would be given to the complainant.

- h. 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 19.01.2012, the respondent had assured the original allottee/complainant 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.
- i. That despite having paid the entire sale consideration amount in advance of ₹33,75,000/- to the respondent, there is a considerable delay of 11 years, and the respondent has failed to hand over the possession to the complainant. That the complainant is left with no other option but to file the present complaint.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - a. Direct the respondent to make payment on account of the assured return in terms of the addendum.
 - b. Direct the respondent to pay delay penalty charges with interest as per the Act.
 - c. Direct the respondent to handover the physical possession of the subject commercial unit at Vatika INXT City Centre, Gurugram.

- d. Direct the respondent to strike down the impugn 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 complainant has misdirected herself 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 as a matter of fact, the respondent duly paid ₹ 38,56,192/- till September 2018. Thereafter upon completion of the construction,

the respondent had sent a letter dated 26.03.2018 to the erstwhile allottees. The complaint has been filed by the complainant 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 complainant 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 complainant is not an 'Allottee', but purely an 'Investor', who is 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. Furthermore, as per clause 12(viii) of the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant is not meant 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 19.01.2012 with respondent company thereafter owing to the name, good will and reputation of the respondent company. That further, the construction of unit was



completed and the same was duly informed to the erstwhile allottees vide letter dated 26.03.2018.

f. 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 Chhainsa-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.

g. That the complainant is 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 complainant was sent the letter dated 26.03.2018 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 complainant and against the respondent and hence, the complaint deserves to be dismissed.

- h. That the various contentions raised by the complainant is 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 complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed.
11. Written submissions filed by the respondent and the complainant 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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I. Objection regarding maintainability of complaint on account of complainant being investor

16. The respondent objected that the complainant is an investor and not an allottee and therefore, is 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 complainant is a buyer, and has paid the entire 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 complainant, it is clear that the complainant is an allottee as the subject unit was allotted to her 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 complainant being investor is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainant.

G.I. Assured return

19. The complainant is seeking unpaid assured returns on monthly basis as per the addendum agreement at the rates mentioned therein. It is

pleaded that the respondent has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

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

the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

21. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the agreement dated 19.01.2012.
22. Subsequently, a new Addendum was executed inter se parties on 26.12.2019 whereby complainant agreed that amounts payable under clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier. The relevant clauses of the Addendum are reproduced as under:

*"1. This Addendum Agreement shall become **effective from 1st July 2019.***

2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer,



including amounts payable under clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier.

3. A fresh Clause 12 as mentioned hereinbelow replaces, substitutes and supersedes the erstwhile Clause 12 (Assured Return and Leasing Arrangement) of the Agreement w.e.f. 1st July 2019..."

(Emphasis supplied)

23. The complainant in its complaint is alleging that the respondent on 26.12.2019 got an addendum signed by the complainant and modified clause 9, 10, 11 and 12 of the Agreement.
24. It is worth noting that except the said contention in the complaint, the complainant has not challenged the said Addendum Agreement at any point of time and not even post the execution of the said Addendum Agreement, thus the complainant cannot raise the objection at such a belated stage. It is not a disputed fact that the aforesaid addendum was duly signed by the complainant and its execution is admitted by both the parties. Moreover, the complainant has failed to put forth any document to show that the Addendum agreement dated 26.12.2019 was executed under protest. It is matter of fact that the unit of the complainant has not been leased out by the respondent till date. Thus, the aforesaid Addendum becomes binding on both the parties and accordingly, the respondent is liable to pay assured returns till 30.06.2019 and the same was payable within 90 days from the date of execution of addendum agreement dated 26.12.2019 being earlier.

G.II. Delayed possession charges

25. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession

charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

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

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

26. In the present case, the builder buyer agreement was executed on 19.01.2012. However, there is no delivery period stipulated in the agreement for completion of the project. Therefore, the due date of completion of the project is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D'Lima and Ors (12.03.2018)*** wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*** In view of the above-mentioned reasoning, the date of signing of Builder buyer agreement dated 19.01.2012, ought to be taken as the date for calculating due date of completion of the project. Therefore, the due date of handing over of the possession of the unit and completion of the project comes out to be 19.01.2015:

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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 complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The construction of the project was to be completed by 19.01.2015.
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 the Agreement dated

19.01.2012 read with "Addendum Agreement dated 26.12.2019" and the respondent is liable to pay assured return to the complainant-allottee ₹65/- 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/280/2022	CR/289/2022
Assured return payable per month	₹ 48,750/-	₹ 71,500/-
Delay possession charges payable per month as per the RERA Act	₹31,218/-	₹46,966/-

32. By way of "the Agreement dated 19.01.2012" read with "Addendum Agreement dated 26.12.2019", the respondent is liable to pay assured return to the complainant-allottee ₹65/- 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 unit of the complainant is situated. As delineated hereinabove, the assured return is payable till 30.06.2019 as agreed between the parties vide "the Agreement dated 19.01.2012" read with "Addendum Agreement dated 26.12.2019".

However, the liability to pay delay possession charges as per proviso to section 18(1) of the Act is still continuing and the same is payable w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority.

34. Accordingly, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 65/- per sq. ft. per month from the date the payment of assured return has not been paid 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 complainant 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 complainant(s) w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per rule 16(2) of the rules.

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 12 of the agreement dated 19.01.2012 read with Addendum Agreement dated 26.12.2019, 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 complainant has 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 complainant 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 6 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed.
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-₹1,10,000/-.

39. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357)*, has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions 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., @ 65/- 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 complainant(s) 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 complainant(s) w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per rule 16(2) of the rules.
- 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 complainant 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