



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

Complaint no. : 2093 of 2023
Date of filing of complaint : 06.10.2023
Date of decision : 07.03.2025

Smt. Shobha Rajlluxmi Singh

(Through S.P.A holder Sh. Prashant Kumar Singh)

Regd. Address at: 164-A, Raisan Dakshini-5,
Haldaur, Bijnor, Uttar Pradesh-246726

Complainant

Versus

M/s. Vatika Limited

Regd. office: Unit no. A-002, INXT City
Centre, Ground Floor, Block-A, Sector-83,
Gurugram-122012.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Ashu Ralhan

Shri Venket Rao & Gunjan Kumar

Counsel for complainant
Counsel for 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Inxt City Center" at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.72 acres
4.	DTCP License	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2018
5.	RERA registered/not registered	Not registered
6.	Date of execution of builder buyer's agreement	12.03.2011 [Page 29 of complaint]
7.	Earlier allotted unit no.	350, 3 rd Floor, Tower A [Page 32 of complaint]
8.	New unit no.	908, 9 th Floor, Block F [Vide Allocation of Unit Number in INXT City Centre, Page 47 of complaint]
9.	Unit area	750 sq. ft. [Page 47 of complaint]
10.	Addendum agreement w.r.t. assured return	12.03.2011 [Page 46 of complaint]
11.	Total consideration	Rs. 37,50,000/- [Page 32 of complaint]
12.	Total amount paid by the complainants	Rs. 37,50,000/- [Page 32 of complaint]
13.	Possession clause	2. The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. [Page 32 of complainta1]
14.	Due date of possession	12.03.2014
15.	Assured return clause	ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 12.03.2011



The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer Agreement dated 12.03.2011

A. Till offer of possession: Rs. 71.50/- per sq. ft.

B. After Completion of the building: Rs. 65/- per sq. ft.

You would be paid an assured return w.e.f. 12.03.2011 on a monthly basis before the 15th of each calendar month.

The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.

1. If the rental is less than Rs. 65/- per sq. ft. then you shall be refunded @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft.

2. If the achieved rental is higher than Rs. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.



		[Page 28 of complaint]
16.	Date of offer of possession to the complainants	Not offered
17.	Occupation certificate	Not obtained
18.	Assured return amount paid by the respondent w.e.f. 07.03.2011 till 30.09.2018	Rs.47,83,476/- [Annexure R-3 on page 52 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That the complainant is a senior citizen aged about 73 years and is suffering from various health problems. Hence, the present complaint is filed by SPA (Special power of Attorney) holder of the complaint, Shri Prashant Singh, who is also the husband of the complainant.
 - ii. That in 2011, the respondent issued an advertisement announcing a proposal for a commercial space in their upcoming commercial colony, "Vatika Trade Centre" at Gurgaon, Haryana with a committed return plan. Based on various representations and assurances made by the respondent regarding the benefits of booking a commercial unit in the project, such as committed assured returns, timely possession, etc., the complainant decided to purchase a commercial unit in the said project. Accordingly, the complainant was allotted a unit bearing no.350 admeasuring 750 Sq. ft. located on the 3rd floor, tower no. A of the project. The total price consideration of the unit was Rs.37,50,000/- which was duly paid by the complainant vide cheque dated 08.03.2011 at the time of signing the builder buyer agreement dated 12.03.2011. That BBA dated 12.03.2011 also contained an annexure, namely "ANNEXURE A", which has been titled addendum to the BBA dated 12.03.2011.
 - iii. That the aforementioned Addendum further states that the respondent shall lease the premises @ Rs.65/- per sq. ft, and in terms of clause



32.2(a) of the BBA, the respondent was liable to pay the complainant rent @ Rs.65/- per sq. ft., for the first 36 months after the date of completion of the project or till the date the unit is put on lease, whichever is earlier.

- iv. Further, the respondent declares in the BBA dated 12.03.2011 that the respondent will complete the construction of the project and make it ready for occupation and possession in all respects, on or before the expiry of 3 years from the date of execution of this agreement. Therefore, the due date of possession comes out to be 12.03.2014. However, till date the respondent has not completed the project and neither have they received the "Occupation Certificate" for its project. Therefore, the respondent is liable to pay the delayed possession interest on account of delay caused in completion of the project from the deemed date of possession till the receipt of the occupation certificate/possession by the respondent. As per the Addendum to the BBA dated 12.03.2011, the complainant for almost 3 years had duly received the assured return for the unit no. 350 @ Rs.71.5/- per sq. ft, which amounts to a sum of Rs. 53,625/- per month.
- v. However, the allotment of unit no.350 was relocated by the respondent to their other project INXT CITY CENTRE vide letter dated 31.07.2013, and informed the complainant that the rights, interest, lien, charge has been shifted from unit no. 350 on the third floor of the project to unit no.908, admeasuring 750 Sq. ft., on the 9th floor of block-F in India Next City Centre, NH-8, Sector-83, Gurgaon. Respondent in the same letter further stated that other terms and conditions of the builder buyer agreement shall remain the same unless specifically amended in writing.



- vi. That the Complainant who was reasonably waiting for the delivery of the possession for the unit from the Respondent, in terms of the BBA dated 12.03.2011, instead received a letter dated 12.03.2018, with its subject as "commitment for the unit no.908, at Vatika INXT City Centre Block F, Gurugram", along with the cheque details of monthly assured return @65 Sq. Ft. amounting to Rs. 48,750/-, against the Unit no. 908 for February, 2018, stating that the construction of Vatika INXT City Centre block-F has been completed and that the area has been offered for leasing. The letter further stated that in terms of the allotment letter/builder buyer agreement, you/the Complainant shall receive the assured rentals @65 per sq. ft. per month against the Unit from 01.03.2018.
- vii. That it is pertinent to mention herein that the letter dated 12.03.2018 was neither an occupation certificate nor a possession letter, therefore, as per the Addendum to the BBA dated 12.03.2011 of the Unit, the Respondent is bound and liable to pay the assured monthly return @ Rs.71.5/- sq. ft. to the complainant till the time of offering the possession, and not @ Rs.65/- sq. ft, which the respondent has reduced. The respondent, instead of offering the possession of the unit to the complainant or occupation certificate, have illegally invoked the clause of letting out the unit and started paying the assured rental @ Rs.65/- per sq. ft. But, when the respondent stopped the assured monthly return payments, the complainant sent several reminders, made phone calls and even sent letters to the respondent on several occasions to enquire about the outstanding rental payments against the complainant's units. The last reminder letter was sent by the complainant on 06.06.2022 to the respondent but till date the respondent is unable to give any satisfactory response to the



complainant and all the requests of the complainant have fallen into deaf ears.

- viii. It is pertinent to mention here that the relief of the complainant is supported by the judgement passed by this Hon'ble Authority in complaint no. 5077 of 2021, titled "*HANITA KAUSHAL VS. VATIKA LIMITED*" decided on 05.04.2022.
- ix. That the respondent has not registered its project, i.e., "Vatika INXT City Centre" with the Hon'ble Authority which contravenes the provisions of section 3 of Act. The project of the respondent can be termed as an "on-going project" since the respondent does not have the completion certificate, and is thus liable to get the project registered under Act. However, the respondent has failed to register the project under Act.
- x. That on the basis of the above it can be concluded that the respondent is still unable to hand over the possession even after a delay of many years. By falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession and timely payments of assured returns, the complainant has been subjected to unethical/unfair trade practice as well as harassment in the guise of a biased BBA dated 12.03.2011. The above said acts of the respondent clearly reveal that the respondent has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such acts and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainant. Due to the non-delivery of possession of the unit, the cause of action is in favor of the complainant and against the respondent and the same still subsists.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
 - a. Direct the Respondent to deliver the possession to the complainant.
 - b. Direct the Respondent to pay the delayed possession charges for every month of delay from the deemed date of possession i.e., from 15.07.2013 till the actual offer of possession after receiving the Occupation Certificate.
 - c. Direct the Respondent to pay the committed assured return as per Annexure-'A' of the addendum to the BBA dated 12.03.2011, till the possession is offered to the complainant.
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) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
 - i. That the complaint under reply is not maintainable as the Complainant herein has filed the present complaint under 'CRA – II for Refund' format but to the contrary has sought the relief of possession, payment for the arrears of assured return along with other reliefs. For fair adjudication the complaint filed by the Complainant ought to be dismissed for not being filed under the prescribed format as prescribed by the Ld. Authority under the regulations. That in the interest of justice the complainant herein may not be allowed to enjoy special status as compared to other complainant and should have filed proper complaint in prescribed format as followed by other allottee(s).



- ii. That in the year 2011, the Complainant being in search of investment opportunities learned about the project launched by the respondent titled as **"Vatika Trade Centre"** (*herein referred to as 'Erstwhile Project'*) at Sector 83, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- iii. That after having dire interest in the project constructed by the respondent, the complainant booked a unit vide Application Form dated 08.03.2011, under the assured return scheme, on her own judgement and investigation. It may be noted, that the Complainant was aware of the status of the project and thus invested in the project of the respondent without any protest or demur, to make steady monthly returns upon own judgment and investigation. On 12.03.2011, respondent vide Allotment Letter allotted a unit bearing no. 350, admeasuring 750 Sq. ft. at 3rd floor to the complainant. Thereafter, on the same day, the Builder Buyer Agreement dated 12.03.2011 was executed between the complainant and the respondent for the erstwhile unit, for a total sale consideration of Rs.37,50,000/- in the erstwhile project. However, upon knowing the assured return scheme, the complainant upon own will paid entire amount of Rs.37,50,000/- for making steady monthly returns. Subsequently, an Addendum to Agreement was also executed between the complainant and the respondent, wherein, the respondent assured to provide assured return of Rs.71.5/- per sq. ft till the completion of the building and Rs. 65/- per sq. ft., after completion of building for thirty-six months or till

the unit is put on lease, whichever is earlier. The said Addendum has to be read with Clause 32.2 of the Agreement.

- iv. That in meanwhile, the complainant learned about the project titled as INXT City Centre, situated at NH-8, Sector-83, Gurgaon, and approached the respondent to shift the unit of the complainant in the said project. The respondent agreed and shifted the unit of the complainant to the INXT City Centre, Sector-83, Gurgaon. Thereafter the respondent vide letter dated 31.07.2013, allocated a new unit to the complainant and re-allotted another unit bearing no. 908, 9th Floor, Block 'F' admeasuring 750 Sq. Ft. against the erstwhile unit, in the project INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favour of the complainant.
- v. That the respondent had always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project. However, the respondent herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019 and other prevailing laws. In this regard the Respondent had sent emails dated 31.10.2018 and 30.11.2018 to its customers and apprised them that the respondent has suspended assured return-based sale and the respondent will not be in a position to pay any returns in future due to amendments/change in laws. The delay is caused in the payment was bonafide and purely out of the control of the respondent
- vi. That the complainant was well aware of the fact that the commercial unit in question was deemed to be leased out upon completion and the same was evidently mentioned and agreed by the complainant in the agreement dated 12.03.2011. The unit in question was deemed to be leased out upon completion. It is imperative to note, that the complainant had mutually agreed and acknowledged that upon



completion for the said unit, the same shall be leased out at a rate as mutually decided among the parties. The agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". Thus, it can be concluded beyond any reasonable doubt that the complainant is not a "Allottee" but investor who has invested the money for making steady monthly returns.

- vii. That the objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- viii. That the allotment of the said commercial unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with other commercial space unit on lease and does not have "Possession Clauses", for physical possession.
- ix. That the complainants have misguided themselves in filing the present complaint before the wrong forum. That the complainants are praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. Authority has been entrusted with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three 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. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the Act. 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 by the allottee. Nowhere in the said provision, the Ld. Authority has been entrusted with jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns. Therefore, the present complaint is filed with grave illegalities and the same is liable to be dismissed at the very outset and the complainants shall be directed to pursue her complaint before the civil court for any dispute arises from the agreement pertaining to assured returns.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has territorial and 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, 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

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

Section 11

.....

(4) The promoter shall-

(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 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 objection raised by the respondent

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

12. The respondent took a stand that the complainant is investor and not consumer and therefore, the complainant is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act.
13. The Authority is of the view 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 BBA, it is revealed that the complainant is buyer, and has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:



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

14. 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 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 allottee 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

15. The complainant is seeking unpaid assured return on monthly basis as per addendum to builder buyer agreement dated 12.03.2011 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum to builder buyer 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.

16. 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.
17. 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 defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
18. 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. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the addendum agreement dated 12.03.2011.

G.II Delay possession charges

19. 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"*

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

*"The Developer will complete the construction of the said complex within **three (3) years from the date of execution of this agreement.** Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs refer annexure-A (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession."*

21. **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."

22. 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., 07.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. 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. As per the agreement executed between the parties on 12.03.2011, the possession of the subject unit was to be delivered within stipulated time i.e., 12.03.2014.
24. 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?

25. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the addendum to the agreement dated 12.03.2011. The assured return in this case is payable as per "addendum agreement" wherein the promoter had agreed to pay to the complainant-allottee ₹71.50/- per sq. ft. on monthly basis till offer of possession and ₹65/- per sq. ft. on monthly basis after the completion of the building. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs. 53,625/- per month whereas the delayed possession charges are payable approximately Rs. 34,687/- per month.
26. By way of assured return, the promoter has promised that the allottee would be entitled for the specific amount of assured return till the said unit is put on lease and thereafter he shall be entitled for lease rental as agreed. The purpose of delayed possession charges under section 18 of the Act 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.
27. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession, then the allottees shall be entitled to assured return or



delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

28. 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 BBA and addendum executed thereto along with interest on such unpaid assured return. As per addendum agreement dated 12.03.2011, the promoter had agreed to pay to the complainant-allottee ₹71.50/- per sq. ft. on monthly basis till offer of possession and ₹65/- per sq. ft. on monthly basis after the completion of the building. 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 enactment of Act of 2019. But the 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.
29. In the present complaint, the OC/CC for that block where the unit of the complainant is situated has not been received by the promoter till this date. Perusal of assured return clause mentioned in Addendum to BBA reveals that the stage of offer of possession by respondent is not dependent upon the receipt of occupation certificate. However, the Authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of Rs. 47,83,476/- to the complainant as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @Rs.71.50/- per sq. ft. per month

from the date the payment of assured return has not been made i.e., from October 2018 till date of valid offer of possession (post receipt of occupation certificate after completion of the building) and thereafter, Rs.65/- per sq. ft. per month as minimum guaranteed return up to 36 months from the date of receipt of occupation certificate after the completion of the said building or till the date the said unit is put on lease, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA. The respondent is directed to pay outstanding accrued assured return amount till date 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.III Possession

30. With respect to the aforesaid reliefs, the authority observes that there is no clause in the entire BBA/Addendum which obligates the respondent to handover physical possession of the allotted unit to the complainant. Furthermore, as per clause 32 of the BBA and addendum to the BBA, it was mutually agreed between the parties that on completion of the project, the respondent-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 said builder buyer agreement and Addendum thereto was executed under coercion. Also, no objection/protest whatsoever was made by the complainant at any point of time since the execution of the BBA/Addendum. Accordingly, in view of clause 32 of the BBA, handing over the physical possession was never the intent of the respondent rather the unit was to be leased out.

H. Directions of the authority

31. 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 pending amount of assured return at the agreed rate i.e., @ 71.50/- per sq. ft. per month (Rs.53,625/-) from the date the payment of assured return has not been made i.e., October, 2018 till the date of completion of construction of the project, after obtaining occupation certificate from the competent authority and thereafter, ₹65/- per sq. ft. per month (Rs.48,750/-) as committed return up to 3 years from the date of completion of construction of the said building or till the date the said unit is put on lease, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA. 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 the builder buyer agreement and addendum agreement dated 12.03.2011.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date 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.
- c. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.



d. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3 of the Act of 2016. The promoter has prima facie violated the above provision of the Act, 2016 and is liable to be proceeded against under section 59 of the Act, 2016. The Planning branch of the Authority is directed to initiate action against the promoter in this regard.

32. Complaint stands disposed of.

33. File be consigned to registry.

Dated: 07.03.2025

(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram