

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

Complaint no.: 6077 of 2022
Date of filing complaint : 01.09.2022
First date of hearing 17.11.2022
Date of decision 21.02.2025

Vandana Khattar

R/o: J-37, 2nd Floor, Lajpat Nagar-3,
New Delhi-110024

Complainant

Versus

Vatika Limited

Regd. office: Flat no. 621A, 6th Floor,
Devika Towers, 6, Nehru Place,
New Delhi-110019.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Harshit Goyal (Advocate)

Complainant

Ms. Ankur Berry (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 thereunder 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 complainant, 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 Inxt City Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	Project area	10.718 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	RERA Registered/ not registered	Not Registered
6.	Date of builder buyer agreement executed between the original allottee and the respondent	15.07.2010 [Page 18 of complaint]
7.	Endorsement in favour of the complainant	30.07.2015 [Page 37 of complaint]
8.	Assignment letter in favour of the complainant	06.08.2015 [Page 42 of complaint]
9.	Unit no. (Old)	1806, 18 th floor, Tower A admeasuring 500 sq. ft. in Vatika Trade Centre [As per BBA dated 15.07.2010 at pg. 21 of complaint]
10.	New unit no.	511, 5 th floor, block-C admeasuring 500 sq. ft. in India Next City Centre [Vide Allocation of unit letter dt. 31.07.2013 which categorically mentions that the builder buyer agreement shall stand amended with respect to the Unit no.] [Page 40 of complaint]
11.	Allocation of unit (Relocation from Vatika Trade Centre to INXT City Centre)	31.07.2013 [Page 40 of complaint]
12.	Possession clause	2. The developer will complete the construction of the said complex within three (3) years from the date of execution of this

		<p>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.</p> <p>[Page 21 of complaint]</p>
13.	Due date of Possession	15.07.2013
14.	Date of addendum to the buyer's agreement	15.07.2010 [Page 36 of complaint]
15.	Assured return clause	<p style="text-align: center;">ANNEXURE A</p> <p style="text-align: center;">ADDENDUM TO THE AGREEMENT DATED 15.07.2010</p> <p>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:</p> <p>This addendum forms an integral part of the builder buyer agreement dated 15.07.2010.</p> <p>A. Till completion of the building: Rs.71.50/- per sq. ft.</p> <p>B. After completion of the building: Rs.65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 15.07.2010 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs.65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be applicable:</p> <p>1) If the rental is less than Rs.65/- per sq. ft., than you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which the achieved rental is less than Rs.65/- per sq. ft.</p>

		<p>2) <i>If the achieved rental is higher than Rs.65/- per sq. ft., than 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of the increased rentals."</i></p> <p>(Addendum to BBA at page 36 of complaint)</p>
16.	Total sale consideration	<p>₹ 27,50,000/-</p> <p>[Page 21 of complaint]</p>
17.	Paid up amount as per receipt	<p>₹ 28,83,888/-</p> <p>[Page 50 of reply]</p>
18.	Offer of possession	Not offered
19.	Occupation certificate	Not obtained
20.	Assured return paid till 01.10.2018	<p>₹34,84,000/-</p> <p>[₹32,89,000/- till completion + ₹1,95,000/- Post completion]</p> <p>[Page 50 of reply]</p>

B. Facts of the complaint:

3. The complainant has made the following submissions:

- i. That the builder buyer agreement was duly executed between the original allottees and the respondent on 15.07.2010 in respect of unit no.1806 on 18th floor, tower-A admeasuring 500 sq. ft super area. The builder buyer agreement was successfully transferred in favour of complainant vide endorsement certificate dated 30.07.2015. The respondent also issued transfer letter dated 06.08.2015 in favour of complainant. Further, as per Addendum to the builder buyer agreement dated 15.07.2010, the respondent was liable to pay assured return of Rs.71.50/- per sq. ft. per month from the date of 15.07.2010 till the date of offer of possession of the booked unit.
- ii. That the respondent issued a letter dated 31.07.2013 informing change from allotted unit no. 1806 on 18th floor, tower A to newly allocated unit no. 511 on 5th floor of block C, at real estate project INXT City Centre, Gurugram.

- iii. That the respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date and also failed to pay pending promised assured return from the month of June, 2018
- iv. That as per clause 32.2 of the builder buyer agreement dated 15.07.2010 and addendum to the builder buyer agreement dated 15.07.2010, in the event the developer being unable to finalize lease, the respondent was also liable to pay assured return of Rs.65/- per sq. ft. per month as minimum guaranteed rent for first 36 months from the date of completion of project or till the date the said unit is put to lease whichever is earlier.
- v. That as per clause 2 of the builder buyer agreement dated 15.07.2010, the respondent company was liable to deliver possession of the booked unit within a period of 3 years from the date of execution of agreement. Therefore, the due date of possession was 15.07.2013. The respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date.
- vi. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent in order to allure the complainant. However, the respondent has failed to abide all the obligations under the builder buyer agreement duly executed between both the present parties. Hence, this complaint.

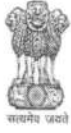
C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
 - i. Direct the respondent to pay pending assured monthly return of Rs.71.50/- per sq. ft. pending from the month of June 2018 along with interest to the complainant.

- ii. Direct the respondent to pay a delay possession charges from due date of 15.07.2013 till date of offer of possession along with occupation certificate.
 - iii. Direct the respondent to execute and register conveyance deed as per the agreed terms.
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 15.05.2023 and written submission dated 25.07.2024:
- i. That in the year 2010, Mrs. Subhash Sharma and Mr. Hari Chand (hereinafter referred to as "Erstwhile Investors"), learned about the commercial project launched by the respondent under the name and title 'Vatika Trade Centre' (now, Vatika INTX City Centre) ("Project"). After having an interest in the commercial project being developed by the respondent, the Erstwhile Investors tentatively booked a unit bearing no. 1806, 18th Floor, Tower A tentatively admeasuring 500 sq. ft. for an amount of Rs. 27,50,000/- on free will and consent, without any demur whatsoever.
 - ii. The respondent vide allotment letter dated 06.05.2010, allotted a unit bearing no. 1806(A), 18th Floor, Tower 'A' admeasuring to area of 500 sq. ft. in the earlier project. On the same day, 15.07.2010, a Builder Buyer Agreement along with Annexure A - addendum dated 15.07.2010 (herein referred to as 'Agreement') were executed between the Erstwhile Investors and the Respondent for the unit allotted in the project.
 - iii. That the unit of the Erstwhile Investors was tentative and subject to change, as was categorically agreed between the parties in terms of the ✓



Agreement. Consequently, a unit no. 511 on 5th floor, C Block admeasuring 500 sq. ft. ("Unit") was allotted vide letter dated 31.07.2013. The said letter categorically mentioned that the builder buyer agreement shall stand amended with respect to the unit number. That it is a matter of fact and record that the Erstwhile Investors had duly, willingly and happily accepted the same.

- iv. That thereafter, the Erstwhile Investors requested to transfer their rights in relation to the unit. Acceding to the request of the complainant and the Erstwhile Investor, the unit was endorsed to the complainant herein on 06.08.2015.
- v. The complainant is trying to mislead this Hon'ble court by concealing facts which are detrimental to this complaint at hand. That the Agreement executed between the parties on 15.07.2010 was in the form of an "Investment Agreement". Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession.
- vi. That the present complaint is not maintainable and the complainant herein has no locus standi. The complainant merely seeks to earn profits. The complainant is a subsequent buyer of the property who executed a transaction with respect to the unit. It is a matter of fact and record that the Respondent was not a party to the Sale Agreement executed between the Erstwhile Investor and the Complainant and hence, no obligation of the respondent can be bound by the same.
- vii. That in any case whatsoever, the aspect of leasing of the unit and the investment of the Complainant cannot be dealt with by this Hon'ble Authority. Regardless, at the utmost bonafide, the Authority is most humbly appraised by the fact that the respondent had been rightly ✓

obliging with the payments of committed returns to be made by it. In spite after paying the committed returns, the respondent was committed to complete the construction of the project but the same was subject to various obstacles in midway of the completion of the project which were beyond the control of the respondent.

- viii. That the respondent was always prompt in making the payment of assured returns as agreed under the agreement. It is not out of the place to mention that the respondent herein had been paying the committed return of Rs. 71.5/- per sq. ft. for every month to the complainant without any delay since 15.07.2010 till 31.03.2018 and after the completion of the project/operationalization of the building, the returns of Rs. 65/- per sq. ft. were paid from 01.04.2018 to 1.10.2018. As on 30.09.2018, the complainant herein had already received an amount of ₹ 34,84,000/- as assured return as agreed by the respondent under the aforesaid agreement. However, post September 2018, the respondent could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same.
- ix. That in the given facts and circumstances, it is most humbly submitted that the Respondent had rightly stopped making the payment, and in any case whatsoever, the present Complaint cannot be entertained by this Authority.
- x. That the complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction of the Ld. Authority. 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 between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. ✓

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. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has jurisdiction to grant "Assured Returns".

- xi. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act]. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme". Thus, the respondent is barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". In this regard, it is most humbly submitted that Issue regarding Assured Return is pending adjudication before the Hon'ble Punjab and Haryana High Court and Hon'ble Haryana Real Estate Appellate Tribunal.
- xii. That the project was obstructed due to reasons beyond the control of the respondent due to various orders/directions passed by NGT (orders dated 07.04.2015, 19.07.2016, 08.11.2016, 09.11.2017, 17.11.2017, 24.07.2019); order dated 07.11.2017 passed by Environment Pollution (Prevention and Control) Authority; order dated 29.10.2018 by Haryana State Pollution Control Board, Panchkula; order dated 11.10.2019 passed by Commissioner, Municipal Corporation, Gurugram, order dated 04.11.2019 by Hon'ble Supreme Court with respect to complete or partial

prohibition/banning of the construction activity in Delhi/NCR region, the closure of all brick kilns, stones crushers, hot mix plants, etc, extracting of ground water etc.; Covid-19 pandemic (3 months Nationwide lockdown followed by various restriction orders). Thus, in view of the above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore, the same is not to be taken into reckoning while computing the period of 48 months has been provided in the agreement. Due to the above reasons, the project in question got delayed from its scheduled timeline. However, the respondent is committed to complete the said project in all aspect at the earliest.

xiii. Thus, the complainant had not approached the authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs.

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

E. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent:**F.I Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return**

12. 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.

13. 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."

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

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

15. 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.
16. 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."

17. 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 relief sought by the complainant.

- G.I. Direct the respondent to pay a delay possession charges from due date of 06.05.2013 till date of offer of possession along with Occupation Certificate.
- G.II. Direct the respondent to pay pending assured monthly return of Rs.71.50/- per sq. ft. pending from the month of September 2018 along with Interest to the complainant.

18. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

I. Assured return

19. The complainant is seeking unpaid assured return on monthly basis as per addendum to builder buyer agreement dated 15.07.2010 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). 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. 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.
22. 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 15.07.2010.

II. Delay possession charges.

23. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

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

.....

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

24. The subject unit was allotted to the complainant vide builder buyer agreement dated 15.07.2010. The due date of possession had to be calculated to be 3 years from the date of execution of the builder buyer agreement. Accordingly, the due date of possession comes out to be 15.07.2013. As per the builder buyer agreement, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.

25. **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 is reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

✓

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

26. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid 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., 21.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. As per the agreement executed between the parties on 15.07.2010, the possession of the subject unit was to be delivered within stipulated time i.e., 15.07.2013. However, the respondent has failed to handover possession of the subject unit till date.
28. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the addendum to the agreement dated 15.07.2010. 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 completion of the building and ₹65/- per sq. ft. on monthly basis after 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. 35,750/- per month whereas the delayed possession charges are payable approximately Rs. 26,675/- per month.

30. 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 said building and thereafter he shall be entitled for minimum guaranteed return/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.
31. 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.
32. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the 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 clause 32.2 of the BBA read with the Addendum to the builder buyer agreement dated 15.07.2010, the promoter had agreed to pay to the complainant allottee Rs.71.50/- per sq. ft. on monthly basis till completion of the construction of the building and Rs.65/- per sq. ft. after completion of the building for the first 36 months after the date of completion of the project or till the date the said unit put on lease, whichever is earlier. The said clause further ✓

provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the assured return was paid by the respondent-promoter till September, 2018 at the rate of Rs.71.5/- per sq. ft. in start and changed to Rs.65/- per sq. ft. w.e.f. April 2018 till September 2018. Thereafter, 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. Admittedly, the respondent has paid an amount of ₹34,84,000/- to the complainant as assured return/committed return till September 2018.

33. 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.

34. 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 completion of the building (till the date of receipt of occupation certificate) 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.

35. Further, it is observed that the respondent had paid assured returns @Rs.65/- per sq. ft. per month from 01.04.2018 till 30.09.2018 to the complainant as evident from Annexure R4 annexed by respondent at page 50 of the reply. However, the respondent was duty bound to pay assured returns @Rs.71.50/- till completion of the building after obtaining occupation certificate as per Addendum to BBA dated 15.07.2010. Therefore, the respondent is directed to pay the difference of assured return amount of Rs.6.50/- per sq. ft. per month from 01.04.2018 till 30.09.2018 along with interest @9.10% per annum.

G.III. Direct the respondent execute and register conveyance deed as per the agreed terms.

36. 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."

37. 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. 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 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.

H. Directions issued by the Authority:

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

- i. The respondent is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.71.50/- per sq. ft. per month (Rs.35,750/- per month) from the date the payment of assured return has not been made i.e., from October, 2018 till the date of completion of construction of the project, i.e., till the date of receipt of occupation certificate, and thereafter, ₹65/- per sq. ft. per month (Rs.32,500/- per month) 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 annexure 1 of the builder buyer agreement 15.07.2010.
- ii. 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

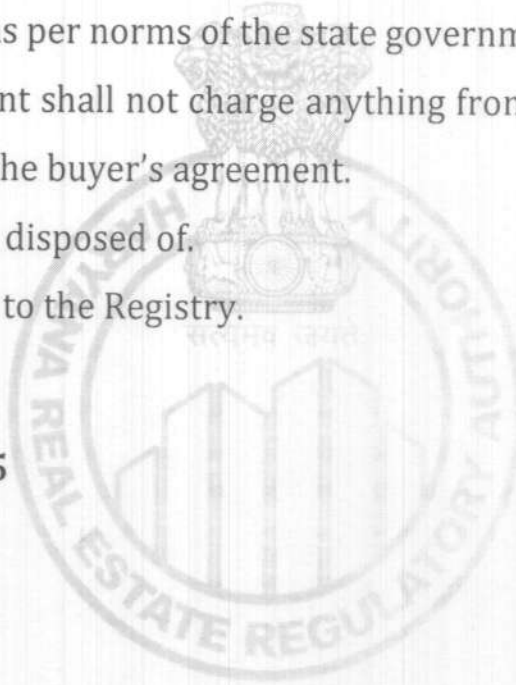
complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

- iii. The respondent is directed to pay the difference of assured return amount of Rs.6.50/- per sq. ft. per month from 01.04.2018 till 30.09.2018 along with interest @9.10% per annum.
- iv. 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.
- v. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 21.02.2025



Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM