

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

Complaint no.: 4505 of 2022
Date of filing: 08.07.2022
Date of decision: 08.04.2025

Dinesh Kumar Ahluwalia

Regd. Address at: N-9/13, DLFCity-2,
Gurugram, Haryana

Complainant

Versus

M/s Vatika Ltd.

Regd. office: Vatika Triangle, 4TH floor,
Sushant Lok, Phase-1, Block- A, Mehrauli-
Gurugram Road, Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar
Shri Vija Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Mr. Rohit Jolly (Advocate)
Mr. Venket Rao (Advocate)

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:

Sno.	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
	Licensee name	M/s Trishul Industries Pvt. Ltd.
5.	RERA registered/ not registered	Not registered
6.	Allotment letter in respect of unit no. 619 in Vatika Trade Centre	22.07.2008 (page no. 39 of complaint)
7.	Date of execution of builder buyer's agreement (in respect of unit no. 619 in Vatika Trade Centre)	15.07.2008 (page no. 23 of complaint)
8.	Unit no.	619, 6 th Floor, Tower A admeasuring 500 sq. ft. in Vatika Trade Centre (page no. 24 of complaint)
9.	Change in unit	COM-012-Tower-D-3-334 Admeasuring 261.56 sq. ft. (carpet area) (As per SOA dated 12.04.2023 on page no. 89 of reply and as admitted by the respondent vide letter dated 31.07.2013)
11.	Addendum agreement (w.r.t change of the project from Vatika Trade Centre to Vatika Inxt City Centre)	25.08.2011 (page no. 37 of reply)
12.	Total consideration	Rs. 30,16,000/- (As per SOA dated 12.04.2023 on page no. 89 of reply)



13.	Total amount paid by the complainants	Rs. 30,47,668/- (As per SOA dated 12.04.2023 on page no. 89 of reply)
14.	Possession clause	2. Since the unit would be completed and handed over by 1st October 2010. [Page 25 of complaint]
15.	Due date of delivery of possession	01.10.2010
16.	Assured return clause	Clause 2 of BBA <i>It is hereby specifically clarified that the committed return would be paid by the Developer up to 30.09.2010 or in the event of any delay in completion of the project, up to the date of offer for handover of completed unit to the allottee.</i> [page 26 of complaint]
17.	Date of offer of possession to the complainants	Not offered
18.	Occupation certificate	Not obtained
19.	Assured return amount paid by the respondent till 30.09.2018	Rs.38,20,900/- (page 24 and 91 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. The Complainant had paid the total sale consideration of ₹30,16,000/- along with the Application Form vide cheque bearing No. 228986 dated 12.07.2008 drawn on Corporation Bank. That in terms of the Builder Buyers Agreement dated 15.07.2008 (hereinafter referred to as the "said agreement"), the Possession of the unit was to be handed over to the Complainant before 01.10.2010 and further an amount of ₹31,000/- per month (committed return) shall be paid till the handing over of possession in terms of the Clause 2 of the BBA. Thus, in strict terms the Possession of the subject unit was to be handed over by September,

2010. The Respondents has failed to perform his part of obligation rightfully and legally by neither offering legal possession of the flat till date nor paying the committed return of ₹31,000/- per month up to the date of offer for handing over of completed unit in terms of the Clause 2 of the BBA. In terms of the BBA, the Respondent has further failed to execute the Conveyance Deed of the said unit even after 14 years of execution of the Agreement.

- b. It is submitted that the respondent has stopped paying the committed return in terms of the agreement from September 2018. The complainant has time and again requested the respondent to clear the outstanding dues and execute the conveyance deed and hand over the said unit. However, the respondent and its executives have shown no interest to carry out the terms and conditions of the builder buyer agreement dated 15.07.2018. It is submitted that respondent has acted in an unprofessional and callous manner and the complainant has been made to run from pillar to post to recover its legitimate dues. In terms of the committed return guaranteed under the said agreement, an amount of ₹13,95,000/- is due from September, 2018 till date. It is further submitted that the respondent has deliberately, with malicious and fraudulent intentions, has paid no heed to the requests of the complainant to clear the outstanding dues.
- c. Thus, the complainant is constrained to approach this Hon'ble Authority seeking immediate possession of said unit along with committed return due from September 2018 with interest at the prescribed rate as per the Act, 2016 and the applicable rate of interest plus compensation and cost to be awarded in favour of the

complainant for the harassment, mental, economic caused at the behest of the respondent for being deficient and negligent in rendering services to the complainant.

- d. This Hon'ble Authority in Madhushree Khaitan vs Vatika Limited on November 10, 2021 has categorically laid down established that developers cannot wriggle out of their contractual obligations under an agreement and ordered the builder/developer, to pay the assured returns to the allottees/subscribers to the builder's assured returns schemes. It is most humbly submitted that the Complainant has lost all faith in the Respondents, but they believe through HRERA, Gurugram that their rights will be ensured.
- e. Hence, the present complaint is filed seeking immediate possession of the unit with committed return along with interest as per the Act of 2016 and Applicable Rules, compensation and cost or in the alternative refund of the deposited amount with interest from the date of respective payment(s) till the date of refund of entire amount with interest along with compensation and cost.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to handover immediate peaceful and unencumbered possession of the subject flat/ unit;
 - b. Direct the respondents to pay the arrears of ₹13,95,000/- in view of the committed return of ₹31,000/- per month assured by the respondent under clause of 2 of the BBA along with 12% interest p.a. from September 2018 till the date of realization;
 - c. Direct the respondents to pay the delay penalty compensation (MCLR + 2%) to the complainant from the date of offer of

possession, i.e., 1st October, 2010 till the legal and valid handing over of possession as per the Act of 2016 and the applicable rules;

- d. Direct the respondents to pay compensation of ₹5,00,000/- towards mental harassment faced by the complainant and ₹2,00,000/- towards litigation charges in lieu of delay cause by the Respondent.

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.
- a. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. That the complainants have filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondents. That the complainants herein have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants have not approached the Ld. Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- b. At the outset, it is imperative to bring into the knowledge of the Ld. Authority that the complainants herein is merely an investor

- who has booked four commercial unit(s) under assured return scheme to make steady monthly return. The complainants have erred gravely in filing the present complaint and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act, 2016'). It is to note, that the provision of the RERA Act, 2016, was passed with the sole intention of regularization of real estate projects, promoters and for the dispute resolution between builders and buyers.
- c. That it is an established fact herein that the complainants booked the unit with the respondents for investment purposes. The said complainants herein are not an "Allottee", as the complainants approached the respondents with an investment opportunity in the form of a steady rental income from the commercial units, which has been admitted by the complainants in the present complaint.
 - d. That in the year 2008, the complainants learned about the project launched by the respondent, titled as "Vatika Trade Centre" (herein referred to as 'Erstwhile Project') situated at Sector 83, Gurugram and visited the office of the respondent to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
 - e. That after having dire interest in the project constructed by the respondent, the complainants decided to invest and thus booked a unit vide application form dated 12.07.2008, under the assured return scheme, on their own judgement and investigation. It is

- evident that the complainants being investor were keen make steady monthly returns.
- f. That on 15.07.2008, a Builder Buyer Agreement was executed between the Original Allottee and the Respondent wherein the Unit bearing no. 619, admeasuring 500 Sq. ft. G Floor, Tower 'A' for a Total Sale Consideration of ₹ 30,16,000/- in the said Project.
 - g. That an Allotment Letter was issued in favor of the Complainant 22.07.2008, by way of which the same Unit bearing no. 609, 6" Floor, Tower A, admeasuring 500 Sq ft. was allotted in favor of the Complainant.
 - h. That on Addendum to Builder Buyer Agreement dated 25.08.2011, was executed between the Complainant and the Respondent by which certain clauses of the Agreement were amended. That the Respondent vide Letter dated 31.07.2013, the Respondent herein allocated a new Unit and upon final allocation, the Respondent allotted a Unit bearing no. 334, 3rd Floor, Tower 'D' admeasuring 500 Sq. Ft. in place of the earlier allotted Unit bearing no. 619 A, 6th Floor, Tower - A, admeasuring 500 Sq. ft.
 - i. It is not out of place, to mention that in the aforesaid letter dated 31.07.2013, the Respondent had very well reiterated the terms of the agreement under which the Complainant had authorized the Respondent to lease out the said unit with other commercial space in the Project. It is a matter of fact, that the Unit in question was deemed to be leased out upon completion. It is imperative to note, that the Original Allottee 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.

- j. That the said Builder Buyer Agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Original Allottee and subsequently the Complainant are not an "Allottee but investors who have invested their money for making steady monthly returns. That the Complainant is trying to mislead this Hon'ble Authority by concealing facts which are detrimental to this Complaint at hand. That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the said 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.
- k. It is submitted that the Complainant herein had authorized the Respondent to further lease the Units) upon completion of the same however, the construction of the Project was obstructed due to many reasons beyond the control of the Respondent and the same are explained in detail herein below.
- l. It is imperative to bring into the attention of this Ld. Authority that the relief of assured return is already pending with the Hon'ble High Court of Punjab and Haryana, wherein the Hon'ble Court in the matter of 'Vatika Limited vs Union of India and Anr.' in CWP No. 26740 of 2022, had already issued notice over a similar matter pertaining to the relief of assured return and had also restrained the competent authority for taking any coercive actions against

- the respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.
- m. Ad-Interim Stay granted by this Hon'ble Haryana Real Estate Appellate Tribunal, at Chandigarh (HREAT) over the order passed by the Ld. Authority pertaining to the same relief of Assured Return. It may be further noted that that an Appeal bearing no. 647 of 2021, titled as 'Vatika Limited vs Vinod Agarwal', is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Appellate Tribunal vide order dated 27.01.2021, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favor of the allottee.
- n. That a reading of the entire complaint on a demurrer reveals that the true nature of the relief sought is specific performance of the Assured Returns Commitment. It is respectfully submitted that the relief of specific performance flows from the Specific Relief Act, 1963 and no part of the Real Estate (Regulation and Development) Act, 2016 clothes this Hon'ble Authority to exercise powers under Specific Relief Act, 1963.
- o. In the present case, if the relief of specific performance was sought before a civil court, which alone has the jurisdiction to grant relief in accordance with the Specific Relief Act, 1963, it would have been compulsory to plead and prove readiness and willingness and other statutory preconditions for the grant of specific relief, and the above admission would have been fatal to the grant of specific relief. In such circumstances, entertaining this kind of a complaint for specific performance under the Real Estate

(Regulation and Development) Act, 2016 is nothing but permitting the complainant to do indirectly, what he could not do directly, and the same ought to be nipped in the bud by this Hon'ble Authority.

- p. That the Complainant has misguided herself in filing the present complaint before the wrong forum. That the Complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. Authority has been dressed 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. That the said remedies are of "Refund" in case the Allottee wants to withdraw from the Project and the other being "interest for delay of every month" in case the Allottee wants to continue in the Project and the last one is for Compensation for the loss occurred by the Allottee.
- q. That it is pertinent to note herein, that nowhere in the said provision the Ld. Authority has been dressed 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 Complainant shall be directed to file pursue her complaint before the civil court for any dispute arises from the Agreement pertaining to Assured Returns.

- r. That the Respondent cannot pay "Assured Returns" to the Complainant by any stretch of Imagination in the view of prevailing laws. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- s. That later, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination the Respondent could have continued to make the payments of the said Assured Returns in violation of the BUDS Act.
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.
8. The written submissions filed by the parties are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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.

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

F. Findings on the objections raised by the respondent.

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

13. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of

the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

G. Findings on the relief sought by the complainant.

G.I. Assured return.

15. The complainants are seeking unpaid assured returns on monthly basis as per the buyer's agreement at the rates mentioned therein. It is



pleaded that the respondent has not complied with the terms and conditions of the said 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 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 BBA.
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 complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the BBA dated 15.07.2008.

G.II. Delayed possession charges

G.III. Possession

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

"Section 18: - Return of amount and compensation

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

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

20. As per clause 2 of the BBA the developer undertook to complete the construction of the building and handover the possession by 01.10.2010. Accordingly, the due date of possession comes out to be 01.10.2010.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

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., 08.04.2025 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. The



possession of the subject unit was to be delivered within stipulated time i.e., by 15.07.2011. 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?

24. 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 BBA dated 25.07.2011. The promoter had agreed to pay to the complainants allottee ₹31,000/- on monthly basis up to 30.09.2010 or in the event of any delay in completion of the project, up to the date of offer for handing over of completed unit to the allottee. Thereafter the lease rental as promised in clause N(i) if the BBA shall continue. 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 as ₹31,000/- per month whereas the delayed possession charges are payable approximately ₹28,190/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is offered. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as 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.
25. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under

section 18, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

26. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA along with interest on such unpaid assured return. As per BBA dated 15.07.2008, the promoter had agreed to pay to the complainants allottee ₹31,000/- on monthly basis till 30.09.2010 or in case of delay in completion, up to the date of offer of possession. Since the respondent has failed to complete the construction of the project within the stipulated time accordingly the assured return is payable till the date of valid offer of possession in terms of clause 2 of the BBA. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
27. Admittedly, the respondent has paid an amount of ₹38,20,900/- to the complainants 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 of ₹31,000/- per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of valid offer of possession after obtaining occupation certificate from the competent authority.

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

29. With regard to the relief sought concerning possession, the Authority notes that the Builder Buyer Agreement (BBA) executed between the parties does not contain any clause stipulating the handing over of possession of the said unit to the complainant. Instead, the agreement reflects a leasing arrangement between the parties, as is evident from Clause N of the BBA.

G.IV. Compensation for mental harassment-₹5,00,000/- & litigation cost-₹2,00,000/-

30. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges 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.

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 amount of assured return of ₹31,000/- per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of valid offer of possession after obtaining occupation certificate from the competent authority.
- 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 complainants 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 complainants which is not the part of the builder buyer agreement.
- d. 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.

32. Complaint stands disposed of.

33. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.04.2025