

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

Date of decision: 01.04.2025

NAME OF THE BUILDER		VATIKA ONE ON ONE PVT. LTD. & VATIKA LTD.	
PROJECT NAME		VATIKA ONE ON ONE	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7994/2022	Arun Mittal & Anuradha Mittal V/s Vatika One on One Pvt. Ltd. & anr.	Sh. Harshit Goyal Ms. Ankur Berry
2.	CR/7995/2022	Styropack Pvt. Ltd. V/s Vatika One on One Pvt. Ltd. & anr.	Sh. Harshit Goyal Ms. Ankur Berry

CORAM:	
Shri. Arun Kumar	Chairperson
Shri. Vijay Kumar Goyal	Member
Shri. Ashok Sangwan	Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA ONE ON ONE' being developed by the same respondent promoters i.e., M/s Vatika One on One Pvt. Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location		"Vatika One on One", Sector 16, Gurugram, Haryana.	
Assured return clause:			
15. Assured monthly commitment of ₹151.65/- per sq. ft. per month from the date of execution of this agreement till construction of the said building is complete.			
16.1. The developer will pay to the buyer ₹130/- per sq. ft. super area of the unit per month shall be paid as committed for up to 3 years from the date of completion of construction of the said building or till the said unit is put on lease, whichever is earlier.			
OC: 06.09.2021			
Offer of possession: Not offered			
Comp no.	CR/7994/2022		CR/7995/2022
Allotment letter	24.03.2014 [pg. 12 of complaint]		24.03.2014 [pg. 13 of complaint]
Unit no. and area	309, block 4 admeasuring 500 sq. ft.		310, block 4 admeasuring 500 sq. ft.
BBA	16.02.2016 [pg. 16 of complaint]		16.02.2016 [pg. 16 of complaint]
Total sale consideration	₹40,00,000/- [pg. 62 of reply]		₹40,00,000/- [pg. 37 of reply]
Amount paid	₹41,90,320/- [pg. 62 of reply]		₹41,90,320/- [pg. 37 of reply]
Assured return paid	₹11,37,390/- till 01.09.2018		₹22,74,750/- till 01.09.2018
Relief Sought			
a. Assured Return			
b. Refund amount collected towards VAT, other govt. taxes			

- c. Execute CD
d. Not to charge anything which is not the part of BBA.
4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case *CR/7995/2022 titled as Styropack Pvt. Ltd. V/s Vatika One on One Pvt. Ltd. & anr.* Are being taken into consideration for determining the rights of the allottees qua assured return, execute buyers' agreement and conveyance deed.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

***CR/7995/2022 titled as Styropack Pvt. Ltd V/s
Vatika One on One Pvt. Ltd. & anr.***

S.N.	Particulars	Details
1.	Name of the project	Vatika One on One, Sector 16, Gurugram.
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.13125 acres
4.	DTCP	05 of 2015 dated 06.08.2015
5.	RERA Registration	237 of 2017 dated 20.09.2017
6.	Unit no.	310, 3 rd floor, block no. 4

		(Page 19 of complaint)
7.	Unit admeasuring	500 sq. ft. (Page no. 19 of complaint)
8.	Date of allotment	24.03.2014 (Page 13 of complaint)
9.	Date of execution of agreement	16.02.2016 (Page 16 of complaint)
10.	Basic sale consideration	Rs. 36,79,500/- (Page 20 of complaint)
11.	Paid up amount	Rs. 41,48,320/- (Page 10 of complaint)
12.	Assured return clause as per builder buyer agreement	15. "The Developer may, where the Buyer has paid 100% of the Total Sale consideration and other charges for the Commercial Unit, upon signing of this agreement pay Rs. 151.65/- per sq. ft. super area per month by way of assured return to the Buyer, of certain category of commercial unit as per its policy, from the date of <u>execution of this agreement till the construction of the said Commercial Unit is complete.</u> " (Page 33 of complaint)
13.	Amount of Assured return paid to complainant by respondent	Rs.22,74,750/- (from 01.04.2016 till 01.09.2018 as alleged by respondent at - page 3 of reply)
14.	Possession clause	Clause 17: <u>Handing over of possession of the commercial unit in case of non-leasing arrangement:</u> "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit Within 48 months from the date of execution of this agreement... " "...Subject to the provisions of Leasing Arrangement option, <u>the Developer, on completion of construction shall offer in writing to such Buyer to take over the physical possession of his commercial unit for his occupation and use in terms of this Agreement within sixty (60) days of issue of the notice as aforesaid...</u> " (Emphasis supplied) [Page 37 of complaint]

15.	Due date of possession	16.02.2020 <i>[as per possession clause, 48 months from the date of execution of buyer agreement i.e., 16.02.2016]</i>
16.	Offer of possession	Not offered
17.	Occupation certificate	06.09.2021

B. Facts of the complaint

7. The complainant has submitted as under:

- a. The respondent no. 2 made false representations and claims of being a big company and a reputed developer and thereby induced the complainant to book/purchase a 500 sq. ft. unit in its project then known as "Vatika One on One" located at Sector 16, Gurgaon, by showcasing a fancy brochure which depicted that the project will be developed and constructed as state of the art being one of its kind with all modern amenities and facilities. The complainant paid the full consideration amount of ₹41,48,320/- upfront at the time of booking of the unit in the name of the respondent no. 2 and was allotted a 500 sq. ft. unit bearing priority no. P - 120 vide letter dated 24.03.2014 by the respondent no. 2. The present complaint is being filed through Mr. Arun Mittal who is the director of the complainant and is authorised to file the present complaint vide board resolution dated 18.11.2022.
- b. As per the allotment letter the respondent no. 2 was liable to pay assured monthly returns @ ₹151.65/- per sq. ft. per month till completion post which it was liable to pay @ ₹130/- per sq. ft. per month to the complainant for up to 3 years post completion or till

the unit is put on lease, whichever was earlier. The said letter also contained terms specifying the terms and amounts to be paid by the complainant or the respondent no. 2 if the unit is put on lease at a higher or lower rate than ₹130/- per sq. ft., respectively.

- c. The respondent no. 2 issued a formal allocation letter dated 03.08.2015 to the complainant allotting unit no. 310 on the third floor of Block - 4 of the projects to the complainants having 500 sq. ft. super area. A BBA dated 16.02.2016 was executed between the respondents and the complainant. It is pertinent to mention here that this was the first time the respondent no. 1 came into the picture as all the payments were made by the complainant to the respondent no. 2 only and all communications, including the allotment and allocation of unit and payment of the monthly assured returns were issued by the respondent no. 2 prior to the execution of the BBA. Upon enquiry the respondent no. 2 said that the respondent no. 1 is a sister concern and both the respondents have a common director, hence, there is nothing to worry about and the Respondent no. 2 will continue to manage and be responsible for the entire project. Clause 16 and annexure 1 of the BBA contained terms pertaining to payment of assured returns and leasing of the unit of the complainant. It is pertinent to mention here that even after the execution of the BBA the monthly assured returns were paid to the complainants by the respondent no. 2, only.
- d. The respondents in furtherance of its mala fide intentions and ulterior motives stopped the payment of the monthly returns to the complainant from October, 2018 onwards claiming modification of

existing laws which was false and baseless. Despite of repeated requests, the same have not been paid till date.

- e. The Respondent no. 2 vide email dated 14.06.2019, claimed that they had finalized a lessee for the unit of the complainants but not further details were shared regarding the same. The respondent no. 2 then sent another email to the complainants containing an addendum stating that post execution of the addendum the monthly returns till June, 2019, will be paid to the complainant. The said addendum was a unilateral document containing all terms favouring the respondents and the execution of the addendum would mean that the complainant would forego their claims for the payment of assured returns post June, 2019, and therefore, the complainant refused for executing the addendum.
- f. It has come to the knowledge of the complainant that the respondents have not only duped the complainant but several other unsuspecting buyers by refusing to pay the monthly returns on one pretext or the other and the complainant is not even aware about the status of completion of the said project till date. It is a matter of record that no recent laws have been enacted which prevent the payment of monthly assured returns as claimed by the respondent as other developers are marketing project with assured return payments and are also paying the returns even today.
- g. The conduct of the Respondents is illegal and arbitrary and the Respondents are guilty of deficiency of services and of unfair and monopolistic trade practices. The Respondents are clearly in breach of its contractual obligations and are guilty of causing financial loss

to the complainants and the conduct of the respondents has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainant. The respondents are jointly and severally liable for the reliefs claimed by the complainant.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):

- a. The Respondents be directed to pay the amount of assured returns due and payable by it to the complainant(s) from December, 2019, till date of order, to be calculated at Rs. 151.65/- per sq. ft. per month till issuance of Occupation Certificate/Completion certificate by the competent authority and thereafter, as per the terms of the agreement executed between the parties.
- b. The Respondents be directed to pay interest at the prescribed rate on the unpaid assured returns to the complainant(s), to be calculated from the date the monthly returns became due till the date of actual payment.
- c. The respondents be directed to continue paying the investment returns / monthly returns to the complainant(s) as per the terms of the Builder buyers Agreement.
- d. The respondents be directed to refund any amounts collected by them illegally towards payment of VAT, other Government taxes and other charges.
- e. The Respondents be directed to execute a conveyance deed for the unit of the complainant upon the completion of the project.

- f. The Respondents be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreement executed between the parties.
9. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. The respondent has contested the complaint on the following grounds:
- a. That the Complainant has approached the Hon'ble Authority with unclean hands. That the claims of the Complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. That the Complainant are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
 - b. That the Complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the Complainant is raising false, frivolous, misleading and baseless allegations against the Respondent with intent to make unlawful gains.
 - c. That the very outset it is submitted that the Complainant has wrongly made "Vatika Ltd" as a party to the present complaint and the complaint is liable to be dismissed at the first instance due to mis-joinder of parties.

- d. That the Complainant has gravely erred in filing the present Complaint and misconstrued the Provisions of the RERA Act. That it is an admitted fact that by no stretch of imagination it can be concluded that the Complainant herein is an "Allottee/Consumer". That the Complainant is simply an investor who approached the Respondent for investment opportunities and for steady committed Returns and Rental Income. That the Complainant being an investor in the Project has no locus standi to file the present Complaint.
- e. That in the year 2014, the complainant learned about the commercial project launched by the Respondents under the name and title 'Vatika One on One' ("Project") and repeatedly visited the office of the Respondents to know the details of the said project.
- f. That the Complainant approached the Respondents and expressed interest in booking of an apartment in the commercial colony developed by Respondents situated in Sector 16, Urban Estate Gurgaon, Haryana. Prior to the booking, the Complainant conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the Respondents, to book the unit in question.
- g. That thereafter the Complainant, vide an application form dated 12.03.2014 applied to the Respondents for provisional allotment of the unit. Thereafter, an allotment letter was issued in favour of the Complainant and a unit admeasuring 500 sq. ft. bearing priority no. P120. That the Complainant was made familiar about the terms and conditions of the allotment. Pursuant thereto, unit bearing no.310,

3rd Floor, Block-4, admeasuring 500 sq. ft. (tentative area) was allotted vide allocation letter dated 03.08.2015. The Complainant consciously and wilfully opted for assured return down payment plan for remittance of sale consideration for the unit in question and further represented to the Respondents that they shall remit the sale consideration on time as per the payment schedule. The Respondents had no reason to suspect the bonafide of the Complainant and proceeded to allot the unit in question in their favour. That an allotment letter so issued in favour of the Complainant confirmed the allotment of the said unit along with monthly assured returns.

- h. That it is submitted that as per the Application form executed by the original allottees, time was the essence and were obligated to execute the Buyer's Agreement at the earliest. That a letter dated 26.11.2015 was sent to the Complainant along with the Buyer's Agreement for its execution but no heed was given to the said letter. That the Respondent after investing much efforts to get the Buyer's Agreement executed, was constrained to issue a reminder letter dated 19.01.2016 for the execution of the Buyer's Agreement. Thereafter, a Buyer's Agreement dated 16.02.2016 was executed between the Complainant and the Respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties.
- i. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and

obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect.

- j. That at this stage, it is categorical to highlight that the Complainant is trying to mislead this Hon'ble court by concealing facts which are detrimental to this Complaint at hand. That the Buyer's Agreement executed between the parties on 16.02.2016 was in the form of an "Investment Agreement". That the Complainant had approached the Respondent as investors looking for certain investment opportunities. Therefore, the Allotment of the said unit was made for leasing out the said unit as per clause 16 of the Agreement which empowers the Developer to put a unit of Complainant along with the other commercial space unit on lease. That the Complainant has voluntarily chose to get his property leased out along with other commercial units in order to ascertain rental income. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist. That it is also most humbly submitted that the present Complaint is not maintainable and the Complainant herein has no locus standi. The Complainant merely seeks to earn profits.
- k. 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 Hon'ble 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. That it is submitted that the Respondent vide its allotment

letter has acknowledged the receipt of the application form and further it was clearly apprised to the Complainant that the Respondent shall put on lease the said premises which clears the air that the Complainant is not an allottee but an investor who has booked the said unit in order to earn rental income at the behest of the Respondent.

- l. That it is humbly submitted before the Hon'ble Authority that the Respondent was always prompt in making the payment of assured returns as agreed under the Agreement. It is not out of place to mention that the Respondent herein had been paying the committed return of Rs. 151.65/- per sq. ft. every month to the Complainant without any delay since 01.04.16 till 01.09.2018. It is to note that the Complainant herein had already received an amount of Rs. 22,74,750/- as assured return as agreed by the Respondent as per the aforesaid allotment. However, 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.
- m. That it is submitted that the Complainant has been duly informed about the suspension of all return-based sales as the Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". 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 Hon'ble Authority. In this regard, it is most humbly submitted as under:

- n. 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 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. 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. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".
- o. That the non-payment of assured return post December 2019 as alleged by the Complainant in his complaint is bad in law. It is pertinent to mention herein that the payment 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 was barred under Section 3 of BUDS Act from making any payment

towards assured return in pursuance to an "Unregulated Deposit Scheme".

- p. It is imperative to mention that the issue pertaining to the assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court. Wherein, the Hon'ble High Court in the matter of 'Vatika Limited vs Union of India and Anr.' in CWP No. 26740 of 2022, had issued notice to the Respondent Parties and had also restrained the competent authorities from 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.
- q. That it is also apropos to bring into the knowledge of the Ld. Authority that an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favour of the allottee.
- r. That moreover, very recently, on 03.02.2023, the Ld. Tribunal had taken cognizance of the above-mentioned case before the Hon'ble High Court and had deferred itself from hearing the arguments and adjourned the matter in light of the same pending before the High Court. That the Complainant cannot, under the garb of said the allotment, seek enforcement or specific performance of an Investment Return Scheme before this Hon'ble Authority, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal. Reliance in this

regard is placed on the order dated 19.04.2022 passed by the Ld. District Court Guru gram in the matter titled as Naresh Prasad vs. M/s. Vatika Ltd. and Anr. (CIS NO. 338 of 2022).

- s. That it is reiterated that the issues so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the Respondent into succumbing to the pressure so created by the Complainant in filing this complaint before this Authority and seeking the reliefs which the Complainant are not entitled to raise before this Hon'ble Authority. That the Respondent cannot pay "Assured Returns" to the Complainant by any stretch of imagination in the view of the prevailing legal position. 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.
- t. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") was 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.
- u. That it is specifically mentioned under Rule 2(1)(C) what is included in the meaning of deposits along with other transactions which does not constitute deposits. Under sub rule (1)(c)(xii)(b) of Rule 2 of the Deposit Rules, an amount shall not be termed as deposit if received

in advance, accounted for in any manner whatsoever, in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of the agreement or the arrangement.

v. Therefore, there is no default or lapse on the part of the Respondent and there is no equity in favour of the Complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the Respondent. The allegations levelled by the Complainant are totally baseless. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

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

E. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district.

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

Section 11(4) (a)

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

Section 34-Functions of the Authority:

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

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

16. 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"

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 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.

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

18. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

19. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"...it is pointed out 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"

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

G. Findings on the relief sought by the complainant.

G.I. Assured return.

21. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea 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) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in **CR/8001/2022 titled as Gaurav Kaushik & anr. Vs. Vatika Ltd.** rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated 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. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High

Court in case *Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors.*, (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of the above-mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form. Further, section 2(4)(I) deals with the exception wherein 2(4)(I)(ii) specifically mention that deposit does not include an advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement. In the present matter 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 as agreed between the allottee and the builder in terms of buyer's agreement executed inter-se parties. Moreover, the developer is

also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. 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. The Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(ii) 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.

22. 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.
23. 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 builder buyer agreement.

24. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 16.02.2016. The assured return is payable to the allottees as per clause 15 & 16.1 of the buyer's agreement dated 16.02.2016. The promoter had agreed to pay to the complainants allottee Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. 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.
25. On hearing dated 01.04.2025 both the parties confirmed that the OC for the said unit has been received on 06.09.2021. The authority is of the view that the construction is complete since the OC/CC is obtained from the concerned authority by the respondent. Admittedly, the respondent has paid an amount of ₹22,74,750/- 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 at the agreed rate i.e., @ Rs.151.65/- per sq. ft. on monthly basis

from the date of agreement till completion of construction of the building i.e., till 06.09.2021 and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier. The respondent has neither put on record any document for lease therefore the respondent is obligated to pay the committed returns for three years from 06.09.2021 i.e., till 06.09.2024.

26. 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.

G.II. Execute CD

27. With respect to the conveyance deed, clause 9 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
28. 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"

29. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the date of order after final offer of possession and upon payment of requisite stamp duty by the complainants as per norms of the state government.

G.III. Refund amount collected towards VAT

30. The promoter shall charge VAT from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

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 at the agreed rate i.e., @ Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building i.e., till 06.09.2021 and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier. The respondent has neither put on record any document for lease therefore the respondent is obligated to pay the committed returns for three years from 06.09.2021 i.e., till 06.09.2024.
- 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. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of order after final offer of possession and upon payment of requisite stamp duty by the complainants as per norms of the state government



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- e. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
33. True certified copies of this order be placed on the case file of each matter.
34. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.04.2025

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