



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

Complaint no.: 844 of 2023
Date of filing: 27.02.2023
Date of decision: 15.04.2025

Praveen Sheoran

Regd. Address at: Hno. 1761, Sector 13,
Gurugram

Complainant

Versus

1. M/s Vatika Ltd.
2. M/s Trishul Industries

Both Regd. office: Vatika Triangle, 7th
Floor, Block- A, Mehrauli-Gurugram Road,
Gurugram

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Mr. Tushar Behmani (Advocate)
Ms. Ankur Berry (Advocate)

**Counsel for Complainant
Counsel for Respondents**

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:

Sr. No.	Particulars	Details
1.	Name of the project	India Next City Centre, Sector 83, Gurugram
2.	Project area	10.718 acres
3.	Nature of project	Commercial Complex
4.	DTCP license	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	License	Trishul Industries
6.	Unit no.	116, Tower-E, Floor-1 (page no. 33 of complaint)
7.	Unit admeasuring	500 sq. ft. (page no. 33 of complaint)
8.	Date of execution of builder buyer agreement	25.06.2012 (page 11 of complaint)
9.	Possession clause	10. Possession <i>..... Subject to timely payments by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the Developer, the Developer contemplates to complete construction of the said commercial Unit within 48 months of execution of this agreement</i>
10.	Assured return clause	12.



"Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. -65/- (Rupees Sixty-five only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:

(i) The Developer will pay to the Buyer Rs.65/-per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed"



11.	Due date of delivery of possession	25.06.2016 (calculated from the date of execution of BBA)
12.	Basic sale price	Rs. 35,00,000/- (page no. 13 of complaint)
13.	Total amount paid by the complainant	Rs. 36,05,150/- (page no. 13 of complaint)
14.	Assured return paid by the respondent till 01.09.2018	Rs.24,13,384/- (page no. 33 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- a. That the Complainant after they were approached by the Respondent through there lucrative advertisement promising world class amenities and safe commercial space in their commercial project named 'INDIA NEXT CITY CENTRE' located in sector - 83, in the revenue estate of village Shikhopur, District Gurugram, executed a Builder Buyer Agreement of a Unit admeasuring 500 sq. ft. on 25.06.2012.
 - b. That the Complainant got allotted UNIT NO.116, TOWER-E, FLOOR-1 admeasuring 500 sq. ft. in the commercial project of the Respondent named 'INDIA NEXT CITY CENTRE, NH-8, SECTOR-83, GURUGRAM' by paying the entire sale consideration at the time of execution of BBA dated 25.06.2012 i.e., Rs.36,08,150/- as clearly mentioned in Clause 1 of the said BBA annexed in the present complaint paper book.



- c. That Clause 10 of the said BBA dt.25.06.2012 envisages the timeline for completion of the construction of the said commercial Unit i.e. within 48 months of execution of this BBA. This is clearly mentioned in the last line of Clause 10. As per the said timeline the construction was to be completed on or before 25.06.2016.
- d. That Clause 12 of the said BBA dt. 25.06.2012 envisages the terms and conditions of the Assured Return and Leasing Arrangement which briefly says that since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on leave in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs.65/-(Rupees Sixty Five only) per sq ft super area of the said Commercial Unit per month by way of assured return of the Buyer from the date of execution of this agreement till the completion of construction of the said Building.
- e. That the obligation of the Respondent shall be to lease the premises of which the Unit 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 (a) If the rental is less than Rs.65/- per sq. ft. Rs.126/- per sq. ft. for every Rs.1/- by which achieved rental is less than Rs.65/- per sq. ft. of the increased rental shall accrue to the Complainant free of any additional sale consideration. However, additional sale consideration @Rs.126/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% increased rentals. (b) If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rentals



shall accrue for free of any additional sale consideration. However additional sale consideration will be paid to the Complainant @ Rs.126/- per sq. ft. for every additional rental achieved in the case of balance 50% of increased rental.

- f. That as per the Clause 12 of the BBA dt. 25.06.2012, the Respondent had to pay assured Return amount to Rs.29,250/- per month which was paid till September 2018. The same was stopped to the Complainant after September 2018 without assigning any valid reasons whatsoever to the Complainant.
- g. That several efforts were made by the Complainant to seek, timely updates about the status of the construction work at the site, but due to the negligence of the Respondent, there was no satisfactory response from their end. The Agreement entered between the parties in the present complaint provided full payment, the Complainant assumed that the money collected by the Respondent from the Complainant would be utilized for the construction purpose. Unfortunately, the Respondent did not properly utilize the Complainant's hard-earned money and even after the lapse of around 12 years of the from the date of booking the completion of the project is nowhere near.
- h. That after getting zero response from the Respondents, the complainant visited the construction site but were shocked and appalled to see that construction held had not been completed. Despite Respondents promise wide world class project with impeccable facilities to the complainant the complainant was shocked to see that the construction site is still under construction and is not at all near completion in near future.



- i. That it is pertinent to mention here that the Respondents has illegally raised falls and fictitious maintenance bills without handing over of the actual position of the said unit to the complaint end. It is further stated that demands raised in maintenance bills is false and has been made without application of mind to extort money from the innocent complainant.
- j. That the Respondents at various instances violated the terms and conditions of the builder buyer's agreement by not paying the promised monthly rentals to the complainant at initially promised rates also not handing over the peaceful and vacant position of the abovementioned allotted unit and by not executing the sale deed of the above said unit allotted to the complainant.
- k. That at the time of execution of the builder buyer agreement the Respondents had represented to the complaint and that they are in possession of the necessary approvals from DTCP, Haryana to commence with the construction work of the commercial project. However, till date construction is incomplete at the site.
- l. That it is evidently clear that the Respondents has no intention of completing the above said project and have not abided to the terms and conditions mentioned in the clauses of the said builder buyer agreement in the present complaint.
- m. That it is unambiguously lucid that no force measure was involved, and project has been at standstill since several years precisely in the end of 2012 and it has been more than ten years till the present date therefore the Respondents cannot take a plea of the construction was halted due to COVID-19 pandemic. It is submitted that the complainant has already made the full payment to the



Respondents towards the commercial unit booked by them. That despite paying such a huge amount towards the commercial unit the Respondents has failed to standby its terms and conditions of the builder buyer agreement and the promises assurances and representations etc which they made to the complainant at the time of booking of the above said unit

- n. That the is not only guilty of deficiency of services and for unfair trade practice but also with breach of contractual obligations mental torture harassment of the Complainant by misguiding them keeping them in dark in putting their future at risk by rendering them incomeless.
- o. That it is pertinent to mention here that the Respondents have committed grave violation of the terms and conditions of the Apartment Buyer's Agreement dt. 25.06.2012 and had miserably failed to hand over the possession of the Apartment in dispute as and when promised i.e. on or before 25.06.2018. Hence, the Complainant is before this Hon'ble Authority and prays for the rightful relief in terms of interest on delayed possession as well as monthly assured returns which has been not paid to the Complainant since September 2018 till date on account of default made by the Respondents.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s).
 - a. Direct the respondent to pay delayed possession on the entire deposited amount and pay the assured return as per the terms and conditions of the BBA along with interest on the said assured



return which has not paid to the complainant since September 2018 till date.

- b. Direct the respondent not to charge holding charges.
 - c. Direct the respondent not to create any third-party rights until the present complaint is disposed of.
 - d. Direct the respondent not to charge maintenance bill until the physical possession of the unit is not handed over to the complainant.
 - e. Direct the respondent not to charge anything which is not the part of the BBA.
 - f. Direct the respondent to pay litigation cost of ₹1,00,000/-.
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 Respondent No. 1 No. 1 is a company, registered under the Companies Act, 1956 having its office at Unit No A-002, INXT City Centre Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram - 122012, Haryana INDIA. That for the past two decades the Respondent No. 1 Company has been engaged in the business of Real Estate Sector.
 - b. That the Complainant have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the



Builder Buyers Agreement dated 25.06.2012, as shall be evident from the submissions made in the following paras of the present reply.

- c. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainant have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the Complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The Respondent No. 1 Company having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
- d. Thus the 'Assured Return Scheme proposed and floated by the Respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the Respondent duly paid Rs.24,13,387/- till September, 2018. The Complainant has not come with clean hands before this Hon'ble Authority and has suppressed these material facts.



- e. That as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the Assured Return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the assured return scheme of the Opposite Parties / Respondent No. 1 Company has become illegal by the operation of law and the Opposite Parties / Respondent Company cannot be made to run a scheme which has become infructuous by law.
- f. That further 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. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 16.08.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks



jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019.

- g. That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That the Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter simpliciter understanding that any order violative of the upcoming judgment of the Hon'ble High Court would be bad in law. Thus the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.
- h. That the Hon'ble High Court of Jammu & Kashmir while deliberating over the issue of charges being framed in FIR lodged qua the Assured Return non-payment. That further the Rajya Sabha, Parliamentary Committee on Subordinate Legislation on 24.03.2021, presented Report No. 246. That vide the said Report, the Committee observed upon the objectives of coming up with a special and comprehensive law i.e., to check illicit deposit schemes. The Committee also focused on bringing clarity upon the deposit that constitute legitimate business transactions and thus



fall within the "normal course of business." The Committee further expressed its dismay, on the fact that most of the States/UTs had shown lax and nonchalant attitude in implementation of the crucial legislation. The casual approach of the State/UT in not issuing the notification of the Designated Courts and their jurisdiction. The Report of the Parliamentary Committee is noteworthy since the importance of Jurisdictional Designated Court/Authorities for implementation of BUDs Act, 2019 and the ambit of definition of "DEPOSIT" would be brought to light only upon institution of proper Rule and duly designated/jurisdictional Court to adjudicate upon issues of Assured Return Schemes/Collective Investment Schemes/Other similarly founded schemes.

- i. That it is also relevant to mention here that the commercial unit of the Complainant was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the Agreement, the said commercial space shall be deemed to be legally possessed by the Complainant. Hence, the commercial space booked by the Complainant' is not meant for physical possession and is rather for commercial gain only.
- j. That the Complainant have come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the Complainant just to harass the Respondent No. 1 and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention



to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The Complainant have instituted the present false and vexatious complaint against the Respondent No. 1 Company who has already fulfilled its obligation as defined under the BBA dated 25.06.2012 and issued completion of construction letter on 26.03.2018. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- k. It is submitted that the Complainant entered into an agreement i.e., BBA dated 25.06.2012 with Respondent No. 1 Company owing to the name, good will and reputation of the Respondent No. 1 Company. That it is a matter of record and admitted by the Complainant that the Respondent No. 1 duly paid the assured return to the Complainant till September, 2018. Further due to external circumstances which were not in control of the Respondent, construction got deferred. That even though the Respondent No. 1 suffered from setback due to external circumstances, yet the Respondent No. 1 managed to complete the construction.
- l. The present complaint of the Complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate



Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/Developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the Developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- m. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the Promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- n. That the Complainant are attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts



of the present case that the main purpose of the present complaint is to harass the Respondent No. 1 by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent No. 1 Company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainant and against the Respondent No. 1 and hence, the complaint deserves to be dismissed.

- o. That, it is evident that the entire case of the Complainant' is nothing but a web of lies and the false and frivolous allegations made against the Respondent No. 1 are nothing but an afterthought, hence the present complaint filed by the Complainant deserves to be dismissed with heavy costs. That the various contentions raised by the Complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the Complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
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. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

13. 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.
14. 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"

15. 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 complainants.

G.I. Assured return.

16. The complainants are seeking unpaid assured returns on monthly basis as per the BBA at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said BBA. 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.

17. 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.
18. 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.
19. 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 25.06.2012.

G.II. Delayed possession charges



G.III. Possession

20. 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"

21. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within a time period of 48 months from the date of BBA i.e., 25.06.2012. Accordingly, the due date of possession comes out to be 25.06.2016.
22. **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"

23. 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., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. 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 25.06.2016.
25. 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?
26. 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 25.06.2012. The assured return in this case is payable as per "BBA". The promoter had agreed to pay to the complainants allottee ₹65/- per sq. ft. on monthly basis from the date of execution of agreement till the completion of construction of the project and thereafter ₹65/- per sq. ft. per month as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the DPC



is much better i.e., assured return in this case is payable as ₹32,500/- per month whereas the delayed possession charges are payable approximately ₹33,347/- 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 put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. 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.

27. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
28. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA executed thereto along with interest on such unpaid assured return. As per BBA dated 25.06.2012, the promoter had agreed to pay to the complainants allottee ₹65/- per sq. ft. on monthly basis from the date of execution of agreement till the completion of construction of the project and thereafter ₹65/- per sq. ft. per month as committed return for up to



three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. 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. 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.

29. Admittedly, the respondent has paid an amount of ₹24,13,384/- 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., @ ₹65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, thereafter ₹65/- per sq. ft. per month as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.
30. 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.III. Direct the respondent not to charge maintenance bill until the physical possession of the unit is not handed over to the complainant.

31. The authority observes that maintenance charges are applicable from the time a flat is completed & OC is granted by the competent Authority, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Accordingly, the respondent is right in demanding maintenance charges at the rate agreed in the BBA once the offer of possession is made to the complainants.

G.IV. Litigation cost

32. 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

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹65/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of offer of



possession and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of clause 12 of the BBA.

- 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.
34. Complaint stands disposed of.
35. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Arun Kumar)

Chairperson

Dated: 15.04.2025