BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**4704 of 2023**
Date of filing:	**03.11.2023**
Decided on:	**15.04.2025**

1. Prachi
2. Deepak Dhingra
3. Yogita Dhingra

Both RR/o: - 6/4, Hamelia Street, Vatika City, Sector 49, Sohna Road, Gurugram — **Complainants**

Versus

M/s Vatika Limited
Regd. Office at: - 7th floor, Vatika Triangle, Sushant Lok-1, Block-A, Mehrauli Gurgaon Road, Gurugram-122002 — **Respondent**

CORAM:
Shri Arun Kumar — **Chairperson**
Shri Ashok Sangwan — **Member**

APPEARANCE:
Ms. Anita Tripathi (Advocate) — Complainant
Ms. Ankur Berry (Advocate) — Respondent

ORDER

1. This complaint has been filed by the complainants/allottees 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 provision of the Act or the Rules and regulations

made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S.no.	Particulars	Details
1.	Name of the project	Vatika trade Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	DTCP license no.	258 of 2007 dated 19.11.2007 license migrated from commercial in residential zone to commercial plotted colony vide order dated 13.10.2022.
4.	Name of licensee	M/s Shivam Infratech Pvt. Ltd.
5.	RERA Registered/ not registered	Not Registered *Since the project is not registered the registration branch may take the necessary action under the provisions of the Act, 2016
6.	Date of allotment	29.09.2009 (Page 44 of complaint)
7.	Date of builder buyer agreement	29.09.2009 [pg. 29 of complaint]
8.	Unit no.	816A, 8th floor, tower A (page 31 of complaint)
9.	Possession clause	*As per clause 2 of the agreement – within 3 years from the date of execution of agreement*
10.	Assured return clause	*As per addendum agreement dated 29.09.2009:* *₹78/- till completion of building* *After completion ₹ 65 per sq. ft.*

11.	Due date of possession	29.09.2012
12.	Sale Consideration	₹ 20,00,000/- [as on pg. 31 of complaint]
13.	Paid up amount	₹ 20,00,000/- [pg. 31 of complaint]
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Assured return paid till Jul 2018	₹18,94,750/- to Yogita ₹9,47,375/-each to other two complainants TOTAL= ₹37,89,500/-

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:

a. That the complainants are Indian Citizens also and in so far as the knowledge and information of Complainant is concerned, and the respondent is Ltd. Company and is engaged in the business of real estate development.

b. That the respondent is the leading real estate developer in India offering residential apartments and commercial property in Gurgaon. Respondent is a company incorporated and registered with the Registrar of Companies, Delhi under the provisions of the Companies Act, 1956 as amended upto date, having its registered office at M/s Vatika Limited, Flat No. 621-A, 6th Floor, Devika Towers, 6, Nehru Place, New Delhi-110019 also at M/s Vatika Ltd,7th Floor, Vatika Triangle, Gurugram, Haryana And having five active directors in it and is represented to be one of the major real estate developers in India, and is, inter alia engaged in the business of construction and development of residential as well as commercial properties all over India.

c. That on 29th September, 2009 Complainants and respondent had entered into Builder Buyer Agreement (herein after referred to as "agreement") wherein the respondent had allotted a unit bearing no. 816A, 8th Floor, Tower-A, in a complex named as "VATIKA TRADE CENTRE" Gurgaon having area admeasuring 500 Sq. Ft for a total sale consideration Rs. 20,00,000/-.

d. It is not out of place to mention here that the applicants/complainants had already paid the entire sale consideration as mentioned herein above, which further shows the bona fide approach of my clients to investing their hard-earned money in the project of the addressee.

e. That in the said agreement and as per the point (i) of sub -clause (h) of clause N, respondent had agreed to pay a rental @ Rs. 65/- per square feet on monthly basis for the first 36 months after the date of completion of the project or till the date the said unit/space is put on lease, whichever is earlier.

f. That as per the agreed terms and consideration of agreement of sub-clause (i) of clause H, respondent had paid the said rental to Complainant till June 2018 only and stopped paying said assured return to Complainant from July, 2018 till this notice. Thereafter the complainants sent various reminders regarding to the respondent to pay assured payment. But no responses come from respondent side. That as per clause N of said agreement, respondent (the developer) agreed/undertook to put the said unit on lease and took authorization to put the unit on lease.

g. That as an Addendum to the agreement as Annexure A builder again specifically mentions his obligation to lease out the Unit @ 65 psft, which he failed to do so. That the mala fide act of respondent can be ascertained with two facts firstly, by not paying the agreed assured return in form of rental, Secondly, respondent had also not provided any document executed while rendering the unit on lease to third party taking into consideration para 17 clause (N) of BBA dated 29th Sept 2009.

h. That on 12 may 2016 complainants sent a mail to the respondent for reduction in amount of assured return, on which respondent revert them by an information of revised commitment charges from march 2016 and respondent also provided a letter in reference of it.

i. That on 8 Aug 2018, after so much fellow up of complainants with the respondent for assured return and it reduction, respondent sent a mail, where they informed complainants regarding lease deed execution of their said area with M/s Gaurav Dhani Advocate, Founding partner Induslaw. In this mail respondent told that "Rent against your unit shall start as per the actual rent received by the Tenant basis the lease terms. Lease deed is under execution and shall be shared shortly".

j. That Complainants are still waiting for above said lease deed details and rent amount. Respondent neither provided any lease deed details nor paid any rent amount to the Complainants. On 23 may 2019, Complainant sent a mail in this regard to the respondent, on which respondent did not even bother to reply.

k. That to utter surprise of complainants, on 07th Jan 2023 a demand notice of Rs. 607,307/- was served for the unit no A220, Vatika City Centre Block- A Gurgaon addressing all the complainant.

l. That in view of the above facts and circumstances of the case, it is evident that from the date of booking till today respondents are playing a game of cheating and fraud with Complainant in order to grab the precious amount of Complainants. It is also respectfully submitted that the complainants has purchased this unit with the hope that they will get the additional income from the respondent on monthly basis.

m. That the Complainants sent a legal notice through his counsel Anita Tripathi on dated 18.02.2023 regarding to pay assured return amount from July 2018 to February 2023. It is also respectfully submitted that respondent neither handed over the possession of the said unit nor refunded the amount of Rs. 20,00,000/- and even not clear the outstanding of the assured return till today.

n. That the cause of action arose several times firstly when respondent fails to give possession on time. Secondly when respondent stop assured return payment to the complainant. Thirdly when respondent without giving possession starts charging maintenance by sending demand notice through its respective maintenance authority. And lastly when respondent attentionally avoided to reply on legal notice sent by the complainants.

C. Relief sought by the complainant:

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

a. That based on the above facts placed before the Hon'ble Court, it is humbly requested that the respondent be directed to clear all dues of assured return with interest.

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 at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainants 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 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".

Banning of Unregulated Deposit Schemes Act, 2019

That Section 2 (4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the Explanation to the Section 2(4) further expands the definition of the "Deposit" in respect of Company, to have same meaning as defined within the Companies Act, 2013.

Companies Act, 2013

The Companies Act, 2013 in Section 2 (31) defines "Deposit" as "deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India". The Legislature while defining the term "deposit" intentionally used the term prescribed so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014.

Companies (Acceptance of Deposits) Rules,2014

Section 2(1)(c) defines the term "deposit" to includes any receipt of money by way of deposit or loan or in any other form, by a company, except any amount received from the following: -

Central Government or a State Government,

amount received from foreign Governments, foreign or international banks

any amount received as a loan or facility from any banking company,

any amount received as a loan or financial assistance

any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

any amount received by a company from any other company;

any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities

any amount received from a director of the company;

any amount raised by the issue of bonds or debentures

any amount received from an employee in the nature of non-interest-bearing security deposit;

any non-interest-bearing amount received or held in trust;

any amount received in the course of, or for the purposes of, the business of the company, any amount brought in by

the promoters of the company; any amount accepted by a Nidhi company.

b. That further the Explanation for the Clause (c) of Section 2(1) states that any amount - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit;

c. Thus, the simultaneous reading of the 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 illegal. That further the Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" as follows:

> *"2(17) Unregulated Deposit Scheme- means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule"*

d. The First Schedule of the Banning of Unregulated Deposit Schemes Act, 2019 prescribed limited Regulator who can publish Regulated Deposit Schemes, the same being only,

- The Securities and Exchange Board of India,
- The Reserve Bank of India,
- The Insurance Regulatory and Development Authority of India,
- The State Government or Union territory Government,
- The National Housing Bank,
- The Pension Fund Regulatory and Development Authority,
- The Employees' Provident Fund Organisation,

- The Central Registrar, Multi-State Co-operative Societies
- The Ministry of Corporate Affairs Government of India,

e. Thus the 'Assured Return Scheme proposed and floated by the Respondents 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 assured return till July, 2018.

f. 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 Respondent Company has become illegal by the operation of law and the Respondent Company cannot be made to run a scheme which has become infructuous by law.

g. That it is also relevant to mention here that the commercial unit of the Complainants 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

Complainants. Hence, the commercial space booked by the Complainants' is not meant for physical possession.

h. That in the matter of *Brhimjeet & Ors* vs. *M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of Assured Return and hence the present complaint deserves to be dismissed at the very outset. That further in the matter of *Bharam Singh &Ors* vs. *Venetian LDF Projects LLP* (Complaint No. 175 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns.

i. That further in the matter of *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.

j. That the Complainants have come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the Complainants just to harass the Respondent 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 Complainants have instituted the present false and vexatious

complaint against the Respondent Company who has already fulfilled its obligation as defined under the BBA dated 29.09.2009 and issued letter of completion of construction on 29.02.2016. 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 Complainants entered into an agreement i.e., BBA dated 29.09.2009 with Respondent Company owing to the name, good will and reputation of the Respondent Company. That it is a matter of record and also admitted by the Complainants' that the Respondent duly paid the assured return to the Complainant till July, 2018. Further due to external circumstances which were not in control of the Respondent, construction got deferred. That even though the Respondents suffered from setback due to external circumstances, yet the Respondents managed to complete the construction.

l. The present complaint of the Complainants 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 ShethInfraworld 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, it is evident that the entire case of the Complainants' is nothing but a web of lies and the false and frivolous allegations made against the Respondent are nothing but an afterthought, hence the present complaint filed by the Complainants deserves to be dismissed with heavy costs.

o. That the various contentions raised by the Complainants 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 Complainants 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 the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

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

> *Section 11(4)(a)*
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *Section 34-Functions of the Authority:*
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by 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

12. 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."*

13. 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 complainants.

G.I. Assured return

14. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement and Addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the addendum 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 and 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 allotee 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)(l) deals with the exception wherein 2(4)(l)(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 properly 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, MoU or addendum 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)(l)(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.

15. 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 allotee arises out of the same relationship and is marked by the original agreement for sale.

16. 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 read with addendum to the said agreement.

17. 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 29.09.2009. The assured return is payable to the allottees as per addendum to the buyer's agreement dated 29.09.2009. The promoter had agreed to pay to the complainants allottee Rs.78/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.65/- 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 July 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.

18. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block A is complete wherein the subject unit is located vide letter dated 29.02.2016. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of

₹37,89,500/- to the complainants as assured return till July 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.78/- per sq. ft. on monthly basis from the date the assured return has not been paid i.e., July 2018 till completion of construction of the building i.e., the date the OC is received from the competent Authority and thereafter Rs.65/- 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 in terms of clause N of the BBA dated 29.09.2009. The respondent has neither put on record any document for lease nor occupation certificate of the project has been obtained and hence, any lease prior to obtaining of occupation certificate cannot be considered as valid lease.

19. 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. Directions of the authority

20. 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.78/- per sq. ft. on monthly basis from the date the assured return has not been paid i.e., July 2018 till completion of

construction of the building i.e., the date the OC is received from the competent Authority and thereafter Rs.65/- 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 in terms of clause N of the BBA dated 29.09.2009.

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. 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 15.04.2025