

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

Complaint no.: 979 of 2024
Date of complaint: 22.03.2024
Order pronounced on: 24.04.2025

Divya Gandhi

Resident of: - W-65, Regency Park-2, DLF Phase-4,
Gurugram, Haryana - 122002

Complainant

Versus

M/s Vatika Limited.

Regd. Office at:- Unit No.-A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next
Gurugram, Gurgaon-122012, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Varun Kathuria (Advocate)

Ms. Ankur Berry (Advocate)

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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 Inxt City Center at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	Unit no.	834, 8 th floor, in " Vatika Trade Centre " (page 13 of complaint)
4.	New unit no.	240, 2 nd floor, block A in " Vatika Next City Centre " (as per the letter for allocation dated 17.09.2013 of unit at page no. 14 of complaint)
5.	Unit area (in super area)	500 sq. ft. (page 13 & 14 of complaint)
6.	Allotment letter	08.05.2010 (Page 13 of complaint)
7.	Date of execution of buyer's agreement (with Sh. Sunil Dhawan)	20.04.2010 (Page 16 of complaint)
8.	Completion Clause	2. Sale consideration <i>"The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement....."</i>
9.	Due date of Possession	20.04.2013 (Calculated from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement).

10.	Addendum to the buyer's agreement (for assured return clause)	20.04.2010 (page 34 of complaint)
11.	Assured return clause	This addendum forms an integral part of builder agreement dated 20.04.2010 A. Till completion of building: Rs.78/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft.
12.	Total sale consideration	Rs.20,00,000/- (page 19 of complaint)
13.	Amount paid against the allotted unit	Rs.20,00,000/- (as alleged by complainant on page 19 of complaint)
14.	Assured return paid by the respondent from 07.06.2013 to till 07.07.2018	Rs.22,29,500/- (page no. 98-99 of reply)
15.	Agreement to sell (between original allottee and complainant)	26.04.2013 (Page 38 of complaint)
16.	Endorsed in favor of complaint	Undated (Page 33 of complaint)
17.	Assignment of unit in favor of complainant	24.05.2013 (Page 41 of complaint)
18.	Completion of construction of Block-A, INXT City Centre	29.02.2016 (page 45 of complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered (as confirmed by counsel for the respondent during proceedings dated 24.04.2025)
21.	Lease deed (Between Vatika, Trishul & Gaurav Dani, Advocate, Founder of Indus Law)	03.07.2018 (page 46 of complaint)

B. Facts of the complaint

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

- a. The complainant believing the assurances and representations of the respondent of being a big company and a reputed developer purchased a 500 sq. ft. unit in resale its project then known as "Vatika Trade Centre" from the original allottees, Mrs. Sunil Dhawan and Mr. Ashwini Kumar Dhawan vide agreement to sell and purchase dated 26.04.2013 for a total consideration amount of Rs.23,00,000/-. The builder buyer agreement dated 20.04.2010 was assigned in favour of the complainant vide assignment letter dt. 24.05.2013. As per Annexure - A of the BBA the respondent was liable to pay monthly returns at Rs.78/- per sq. ft. per month and post completion at Rs.65/- per sq. ft. clause 32.2 of the BBA specified that the respondent was liable to lease the unit at a minimum rent of Rs.65/- per sq. ft. per month or pay the said amount till upto 3 years post completion of the unit. The said clause further specified formulas by which the respondent was to compensate the complainant if her unit was not leased out at Rs.65/- per sq. ft. per month. That the builder buyer agreement was a pre-printed booklet drafted by the respondent containing unilateral terms and conditions favouring the respondent and prejudicing the complainant and the complainant was never given the option of changing the same.
- b. The complainant was unilaterally shifted to the project "Vatika INXT City Centre" located in Sector-83, Gurgaon, vide letter dt. 17.09.2013 and was unilaterally and arbitrarily allotted unit no.240A on the second floor in the said project. The respondent also demanded property tax from the complainant in 2014, even though the project was not complete and the



said demand was paid by the complainant as it did not doubt the intentions of the respondent then.

- c. The respondent falsely claimed completion of the block where the unit of the complainant is located vide its letter dated 29.02.2016, in order to reduce its liability to pay monthly returns at Rs.65/- per square foot per month as per Annexure-A. That the completion or an occupation certificate for the said block was never shared by the respondent.
- d. The respondent, sent communication in July, 2018 falsely claiming that it had allegedly leased the unit of the complainant to a Mr. Gaurav Dani vide lease deed 03.07.2018 and has given a 1 year rent free period to the lessee and that the lease amount of Rs.65/- per sq. ft. per month shall be payable after a period of 1 year from the lease commencement or from the date of removal of Kherki Daula toll plaza whichever was earlier. That the consent of the complainant obtained at the time of execution of the said lease and unilateral and illegal terms were being forced upon the complainant by the respondent. That the terms of the said lease were in direct contradiction to the BBA or the Annexure-A executed between the parties and specifically clause 32.2 thereof. Furthermore, assuming not admitting that the said lease was executed in the manner claimed by the respondent is illegal and void as it is contrary to the letter and spirit of the agreements executed between the parties and therefore, the respondent is liable to pay monthly returns as per the BBA and Annexure-A or compensate the complainant as per the terms mentioned in the BBA and the Annexure-A. Thereafter, the respondent did not pay any rent or monthly returns to the complainant. Upon subsequent enquiry the respondent informed the complainant that the alleged tenant had vacated the premises but did not share any paperwork in support of the said claim.



- e. It has come to the knowledge of the complainant that the respondent has not only duped the complainant but several other buyers like them by refusing to pay the monthly returns on one pretext or the other even the project has not received the completion/occupation certificate from the competent authority till date. The buyers have been paid the monthly returns for different periods and have been denied the payment of the same on different grounds. It has also come to the knowledge of the complainant that the respondent has played a fraud upon her as the building where her unit is located has not received an occupation certificate and therefore, cannot be leased out and the respondent has created a false and fictitious lease agreement without actually ever leasing the unit to get out of its liability to pay the monthly returns to the complainant. That the alleged lease deed was supposedly for a term of 3 years and was not registered and is therefore, null and void and cannot be relied upon.
- f. The respondent has not even offered the possession of the unit of the complainant and has not executed a conveyance deed with her as per clause 8 of the BBA and has further stopped responding to the communications of the complainant and has also restricted entry into its office for the complainant and other buyers and has failed to apprise the complainant regarding the true and correct status of the project where the unit of the complainant is located and has further refused to pay the monthly assured rent/minimum guaranteed rent to the complainant.
- g. The respondent in further of its malafide intentions and to extort more money from the complainant, sent an illegal, arbitrary and backdated demand notice dated 07.01.2023 of over Rs.6 Lacs to the complainant on the pretext of pending maintenance charges and has further levied interest on it and has refused to withdraw the same despite of receiving written



replies dated 30.01.2023 from the complainant. The said demand of maintenance charges is illegal and arbitrary and is in the tooth of various judgements passed by various authorities which clearly state that no maintenance can be demanded without obtaining occupation certificate and without handing over of possession.

- h. The conduct of the respondent is illegal and arbitrary and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the complainant and the conduct of the respondent has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainant and her family members. Hence the present complaint.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay assured return from July, 2018 @Rs.78/- per sq. ft. per month till completion of construction as respondent has not received any OC/CC from concerned authority.
 - ii. Direct the respondent to withdraw all demands for maintenance charges as the project has not received any OC.
 - iii. The respondent be directed to continue paying the investment return/ monthly returns to the complainant as per the terms of BBA.
 - iv. The respondent be directed to pay interest at the prescribed rate on the unpaid monthly returns.
 - v. The respondent be directed to execute the conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant.
 - vi. The respondent be restrained from demanding any amounts from the complainant at the time of offer of possession which do not form a part of the agreement executed between the parties.

- vii. The Hon'ble Authority may pass such order or further order and grant any further relief as it may deems fit.
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 contested the complaint on the following grounds: -
- a. That the complainant has 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 buyer's agreement dated 20.04.2010. It is brought to notice of this Authority that complainant is subsequent purchaser who bought the commercial unit from the erstwhile allottees on 24.05.2013.
 - b. That the complainant herein is merely an investor who has booked commercial unit under assured return scheme to make steady monthly return. The complainant does not come within the definition of allottees and is rather speculative investor, who intended to invest in the commercial unit for commercial gains only.
 - c. That in the year 2010, the erstwhile allottee invested in the commercial unit for financial gains and thereafter in May, 2013 the present complainant learned about the project titled as "Vatika INXT City Centre" situated at Sector 83A, Gurugram and directly approached the erstwhile allottees for buying the commercial unit.
 - d. That after developing a keen interest in the project constructed by the respondent, the complainant independently bought a unit under the assured return scheme from the erstwhile allottees. That the complainant

was fully aware of the project's status and chose to book the unit to secure consistent monthly returns, without raising any objections or complaints.

- e. That on 08.05.2010, respondent vide allotment letter allotted a unit bearing no.834, admeasuring 500 Sq. ft. on Tower A to the erstwhile complainants. Thereafter, a builder buyer agreement dated 20.04.2010 was executed between the erstwhile allottees, for a total sale consideration of Rs.23,00,000/- in the project. However, upon knowing the assured return scheme, the erstwhile allottee upon own will paid entire amount of Rs.23,00,000/- for making steady monthly returns.
- f. That an assignment/ endorsement was executed by the previous allottees to transfer their rights and benefits under the BBA dated 20.04.2010 to the current complainant. In the BBA/ addendum the respondent assured to provide assured return of Rs.78/- per sq. ft., till the completion of the building and Rs.65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier.
- g. Thereafter the respondent vide letter dated 17.09.2013, the respondent herein allocated a new unit to the complainant and allotted a unit bearing no.834, 5th Floor, Block 'A' admeasuring 500 sq. ft. in the INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favor of the complainant in place of the erstwhile Unit.
- h. That the present complaint is not maintainable or tenable in the eyes of law as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' 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. Further, the 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'.

- i. That as per 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. 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". Further, the explanation for the clause (s) of Section 2(1) states that any amount received by the company, whether in the form of any 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 deposit. Thus, the simultaneous reading of the BUDS Act read with Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.
- j. 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 has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- k. 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 22.11.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated
- l. 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

- m. That in the complaint no.175 of 2018 "Bharam Singh &Ors vs. Venetian LDF Projects LLP", the Real Estate Regulatory Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns.
- n. That the respondent herein was committed to complete the construction of the project and subsequently lease out the same as agreed under the agreement. However, the Respondent in due compliance of the terms of the agreement has paid assured return till Jun, 2018.
- o. That since starting the complainant has always been in advantage of getting assured return as agreed by the respondent. That the present complainant has received an amount of Rs.21,12,500/- as assured return right from the date of assignment up to June, 2018, further the erstwhile allottees also received the assured return amount before the present complainant got the unit assigned in their favour.
- p. That the BUDS Act, 2019 being a subsequent act from RERA Act, 2016 shall prevail over the provisions over the RERA Act. The matters pertaining to the assured return shall be regulated by the Competent Authority appointed under Section 7 of the BUDS Act. Therefore, the Ld. Authority has no jurisdiction over the assured return scheme matters.
- q. That the respondent vide letter dated 29.02.2016, intimated the complainant regarding the completion of construction of the respective unit

comprising in Block-F of the project and also stated that they are in discussions with various tenants and expect to lease out the unit in due course. That vide said letter dated 29.02.2016, the respondent also informed the complainant that the commitment charges payable under the agreement shall be revised to Rs.65/- sq. ft. per month w.e.f. 01.03.2018.

- r. 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.
- s. That since in October, 2018 the amendments being made in the laws were at ripe stage the respondent could not engage in acts/omissions that may create criminal culpability upon the respondent itself thus in furtherance of the email dated 31.10.2018, the respondent sent another email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all return based/assured/committed return based sale. The email communication of 30.11.2018 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project since the respondent did never intend to cheat or even leave its customer in lurch. Further vide email dated 28.12.2018 the respondent sent email to all its allottees including the complainant regarding the stoppage of monthly return and reconciliation of all dues by June, 2019, and issued communication regarding Addendum Agreement containing revised clauses excluding assured return / committed return

clause alternatively giving option to allottees to shift to another project and also gave option to the allottees to shift to alternate project with quarterly return benefits, yet the complainant chose to ignore the option and thereby letting go of her rights to monthly assured returns.

- t. On 14.06.2019, the respondent issued update to all allottees regarding reconciliation of accounts as of 30.06.2019 and issuance of addendum-agreement for revising the clause of assured return and finally stopping the future returns. The respondent admittedly paid assured returns from the date of execution of BBA till June, 2018 and at the time of stoppage of assured return in June, 2018, the respondent timely provided detailed communication to all allottees in the project.
 - u. That the complainant was sent the letter dated 29.02.2016 informing of the completion of construction. 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 and hence, the complaint deserves to be dismissed.
7. All other averments made in the complaint were denied in toto.
8. 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 written submissions made by the parties.

E. Written submission made by both the parties

9. The complainant has filed the written submission on 21.03.2025 and the respondent has filed the written submission on 11.04.2025 and the same are taken on record. No additional facts apart from the complaint has been stated in the written submission.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

11. 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.

F.II Subject-matter jurisdiction

12. 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.

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent:**G.I Objection regarding maintainability of complaint on account of complainant being investor.**

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is 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 complainants are buyer's, 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;"

15. 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 complainants, it is crystal clear that the complainants 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.II Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return.

16. 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.
17. 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."*
18. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondent to pay assured return from July, 2018 @Rs.78/- per sq. ft. per month till completion of construction as respondent has not received any OC/CC from concerned authority.**
- H.II Direct the respondent to continue paying the investment return/ monthly returns to the complainant as per the terms of BBA.**
- H.III Direct the respondent to pay interest at the prescribed rate on the unpaid monthly returns.**
19. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
20. The complainant in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. 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 of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act 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. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.
21. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This

contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, [Writ Petition No. 2737 of 2017] decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

22. It is now well settled preposition of law 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 can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. 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. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. 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.

23. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. 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, but does not include

- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. *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.*

24. 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.
25. 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. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)*** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured

returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)* as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

26. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
27. 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 agreement executed between the parties on 20.04.2010, As per clause 2 of buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., 20.04.2013.
28. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement or an addendum to the buyer's agreement. The assured return in this case is payable as per "Annexure A - Addendum to the agreement dated 20.04.2010". The rate at which assured return has been committed by the promoter is Rs.78/- per sq. ft. of the super area per month which is more than reasonable in the present

circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till completion of the building and Rs.65/- per sq. ft. after completion of the building.

29. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of buyer's agreement and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of buyer's agreement dated 20.04.2010, the promoter had agreed to pay to the complainant-allottee Rs.78/- per sq. ft. on monthly basis till completion of the building and Rs.65/- per sq. ft. on monthly basis after completion of the building. The buyer's agreement further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till June, 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.
30. In the present complaint, vide letter dated 29.02.2016, the respondent has intimated the complainant that the construction of subject tower is complete wherein the subject unit is located. However, admittedly, the respondent-promoter has not obtained the occupation certificate till date and hence, 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. 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. per month from the date the payment of assured return has not been paid i.e., July, 2018 till the completion of the building and thereafter, @ Rs.65/- per sq. ft. per month after the completion of the building as per the agreed terms of addendum to the agreement dated 20.04.2010.

31. 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.

H.IV Direct the respondent to execute the conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant.

32. The complainant is seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016 and also as per clause (8) of buyer's agreement dated 20.04.2010, the relevant clause of the buyer's agreement is reproduced for ready reference: -

8. Conveyance

"Subject to the approval/ no objection of the appropriate authority the developer 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. The conveyance deed shall be in the form and content as approved by the developer's legal advisor and shall be in favour of the allottee. Provided that the conveyance deed shall be executed only upon receipt of full consideration amount of the said unit, stamp duty and registration charges and receipt of other dues as per these presents."

33. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as

provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.

34. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of complainant/allottee within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

"Section 17: Transfer of title.

17(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."

35. The Authority hereby directs the respondent to execute the conveyance deed in favor of the complainant within 3 months after obtaining the occupation certificate from the competent authorities. Further, the respondent-promoter shall offer the possession of the allotted unit to the complainant-allottee as per the agreed terms and condition of buyer's agreement dated 20.04.2010.

H.V Direct the respondent to withdraw all demands for maintenance charges as the project has not received any OC.

36. The complainant contended that they have received a maintenance invoice dated 07.01.2023 from Enviro Integrated Facility Services Private Limited amounting to Rs.6,07,307/-, inclusive of interest, in respect of a unit which has not yet been constructed. The complainant allege that such demand is

per se illegal, as neither the unit in question nor the overall project being developed by the respondent has been completed as on date.

37. On the other hand, during the course of proceedings dated 24.04.2025, the counsel for the respondent stated that the maintenance agency raising the demand had not been impleaded as a party in the matter and the respondent is not demanding any payment on account of maintenance charges from the complainants.

38. Upon consideration, this Authority observes that no demand for maintenance charges has been raised by the respondent in the present matter. The said demand has been issued by M/s Enviro Integrated Facility Services Private Limited, which is not a party to these proceedings. Thus, the authority cannot deliberate upon the said relief.

H.VI The respondent be restrained from demanding any amounts from the complainant at the time of offer of possession which do not form a part of the agreement executed between the parties.

H.VII The Hon'ble Authority may pass such order or further order and grant any further relief as it may deems fit.

39. The respondent-promoter is directed not to charge any amount from the complainant-allottee, which is not part of buyer's agreement dated 20.04.2010.

I. Directions of the authority:

40. 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):

- i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., July, 2018 till the completion of



the building and thereafter, @ Rs.65/- per sq. ft. per month after the completion of the building, as per the agreed terms of addendum to the agreement dated 20.04.2010.

- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
- iii. The respondent-promoter is directed to execute the registered conveyance deed in favor of the complainant-allottee within 3 months after receipt of occupation certificate from the competent authority.
- iv. The respondent-promoter is further directed not to charge any amount from the complainant-allottee, which is not a part of buyer's agreement dated 20.04.2010.

41. Complaint stands disposed of.

42. File be consigned to registry.

Dated: 24.04.2025

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram