BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 2295 of 2024
Date of filing : 17.05.2024
Date of decision : 09.05.2025

1. Sonali Ray
2. Nikhil Sahni

Both RR/o: 8478, Sector, C, Pocket 8,
Vasant Kunj, New Delhi-110070. **Complainants**

Versus

M/s. Vatika Ltd.
(Formerly known as Vatika Landbase Pvt. Ltd.)
Address: Vatika Trianglr, 4th floor,
Sushant Lok, Phase L, Block A,
M.G. Road, Gurugram-122002, Haryana. **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Shri Thribhuwan Sinha Counsel for the complainant
Shri Venket Rao Counsel for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

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 Centre" at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial colony
3.	DTCP License no.	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
4.	Unit no.	114, 1st floor, Tower A [Page 28 of complaint]
5.	Unit area (in super area)	750 sq. ft. [Page 28 of complaint]
6.	**New Unit no.** allotted by the respondent on 15.04.2013	434 on 4th floor Block C (Page 58 of complaint)
7.	Date of execution of buyer's agreement	25.05.2012 [Page 30 of complaint]
8.	Due date of Possession	No clause of possession in BBA
9.	Assured return clause as per clause 12 of the BBA	12 ...the Developer has agreed to pay Rs.65/- 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... (i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial Unit 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. [As per BBA at page 44 of complaint]

10.	Basic sale consideration of the unit as per builder buyer agreement	Rs.58,50,000/- [Page 32 of complaint]
11.	Amount paid by the complainant	Rs.58,50,000/- [Page 32 of complaint]
12.	Assured return paid by the respondent from 09.07.2012 till June 2018	Rs.35,72,903/- [Page 22 of reply]
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained

B. Facts of the complaint

8. The complainants have made the following submissions:

a. That in the first week of May, 2012, the complainants received a marketing call from the office of the respondent, and the caller represented himself as the sales manager of the respondent and marketed commercial project namely **Vatika INXT CITY CENTRE**, at Sector-83, Gurgaon Manesar Urban Complex, District Gurgaon, Haryana. The respondent asked to book a commercial unit in the said project. The respondent allured the complainants with proper specifications and assured that committed assured return will be paid by the respondent to the complainants on the super area from the date of execution of buyer's agreement till the completion of construction and thereafter for up to 03 years from the date of completion of construction of the said building or till the commercial units put on the lease. The respondent assured that possession of the unit will be handed over very soon, since the construction of the project is at an advanced stage. The respondent gave them a brochure and a pre-printed form.

b. That, believing on the representation and assurance of the respondent, the complainants booked a commercial unit. The respondent allotted a unit no.114 on First Floor in Tower-C, having super area of 750 sq. fts.

in the said project. The commercial unit was booked for a total sale consideration of **Rs.58,50,000/-**. The same was duly paid by the complainants to the respondent. The payment plan and price included basic price, EDC, IDC, IFMS, Club membership and car parking. On 25.05.2012, a pre-printed, unilateral, arbitrary builder buyer's agreement was executed inter-se, the respondent and the complainant.

c. Since the buyer has paid the full basic sale consideration for the commercial unit upon signing of this Agreement and has also opted for leasing arrangement after the commercial unit is ready for occupation and use, the Developer has agreed to pay Rs.65/- per sq. fts. super area per month by way of assured return to the buyer from the execution of this agreement till the construction of the said commercial unit is complete. Thereafter, vide letter dated 15.04.2013, the allotment of the flat was changed to Flat no.434, 04th Floor, TOWER-C, in the same premises.

d. That the respondent informed the complainants, stating therein that *"we are pleased to inform you that the construction work of Tower-C of INDIA NEXT CITY CENTRE, at Sector-83, Gurgaon Manesar Urban Complex, District Gurgaon, Haryana is completed, and the building is operational and ready for occupation. Further, we are in active discussion with a prospective tenants for the property and expect to lease out substantial area in the building in due course.* Thereafter, the complainants personally visited the office of the respondent alleging that TOWER-C is not ready for occupation and operation and asked for a joint inspection. It is matter of fact, the complainants verified the information from the website of DTCP, which states that till now the respondent has not received an occupation certificate from the authority, and the license has also expired.

e. That it is highly germane to mention here that the respondent has assured to give committed assured returns to the complainants as per the clause no.12 of the BBA, but the respondent has paid assured returns to the complainants only till Jul-2018 and thereafter the respondent has stopped paying assured returns on the pretext that the construction has been completed, which is clearly not the case. Even otherwise for the sake of argument, the respondent has failed to let out the units in terms of the Clause 16. Despite paying the entire consideration amount i.e. Rs.58,50,000/-, the respondent has failed to honour the terms of the BBA. Moreover, till today, which is almost 11 years from the date of execution of the BBA, the respondent has not completed the construction and procured the OC from the concerned department.

f. That as per the Section 12 of the Act, 2016, the promoter is liable to return the entire investment along with interest to the allottees of an apartment, building or project for giving any incorrect, false statement, etc. As per the Section 18 of the Act, 2016, the promoter is liable to pay the interest or return of amount and to pay compensation to the allottee of a unit, building or project for a delay or failure in handing over of such possession as per the terms and conditions of the builder buyer agreement. As per the Section 19(4) of the Act of 2016, the promoter is entitled to a refund of the amount paid along with interest.

g. That the respondent has been continuously served with reminders and persistent requests were made telephonically, written intimations and by personal visits by complainants, to abide by the terms of the agreement entered between the parties and make the payment of the assured returns as per the terms of the agreement. The respondent kept on reassuring complainants that they will shortly make the

payments as required. However, the respondent has willfully neglected and failed to adhere and make the payment of assured returns. Therefore, the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

h. That the complainants through its counsel issued the legal notice dated 05.10.2023, calling the respondent to (a) provide proper ledger, (b) to pay outstanding/arrear of assured return, (c) to cancel the allotment and refund the entire sale consideration, and (d) to pay compensation for the loss. Even to this, the respondent paid no heed. Again, the reminder notice dated 06.12.2023 was also issued by the counsel. Hence, this complaint.

C. Relief sought by the complainants:

9. During hearing dated 09.05.2025, the counsel for the complainants clarified that the complainants are seeking the following relief(s):

i. Direct the respondent to refund of entire consideration amount of Rs.58,50,000/- along with 18% per annum from the date of allotment till date.

ii. Directing the respondent to pay the sum of Rs.10,00,000/- towards the damages, loss, compensation for causing mental pain, agony and financial loss to the complainants.

iii. Direct Respondent to pay the cost of litigation as well as advocate fees to the Complainants.

10. 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

11. By virtue of reply dated 20.09.2024, the respondent has contested the complaint on the following grounds:

i. That the complainants had erred gravely in filing the present complaint and misconstrued the provisions of the Act. The

complainants had booked the said unit, in the project of the respondent for steady monthly returns first in the form of assured return and subsequently in the form of lease rental. Since starting the Complainants booked the unit in question considering the same as an investment opportunity. By no stretch of imagination, it can be concluded that the Complainants herein can be referred as "***allottee***". It is a matter of fact, that the Complainants are simply an investor who approached the Respondent for investment opportunities and for a steady rental income.

ii. That in the year 2012, the Complainants learned about the project launched by the Respondent titled as **"VATIKA INXT CITY CENTRE"** situated at Sector 83, Gurugram and visited the office of the Respondent to know the details of the said project. The Complainants further inquired about the specifications. After having dire interest in the project constructed by the respondent, the complainants booked a unit under the assured return scheme, on their own judgement and investigation. It is evident that the Complainants were aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.

iii. That as per the Builder Buyer Agreement dated 25.05.2012, the respondent was allotted a unit no. 114 on 1st Floor of building Block A, having a super area of 750 Sq. Ft. in the said project for a total sale consideration of Rs. 58,50,000/-.

iv. That the Respondent had sent a letter dated 15.04.2013 to the Complainant's titled as **"Allocation of the unit number in INXT City"** wherein final allocations of the areas in the complex had

completed and pertinently the unit number was shifted from unit no. 114 on 1st Floor to unit no. 434, 4th admeasuring 750 Sq. Ft., Block C in favour of the Complainant's in place of the earlier allotted Unit.

v. That the Complainants are trying to mislead this Ld. Authority by concealing facts which are detrimental to this Complaint at hand. That the Complainant's had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the said Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of Complainant's along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession.

vi. The Complainants herein had authorized the Respondent to further lease the Unit(s) upon completion of the same however, the construction of the Project was obstructed due to many reasons beyond the control of the Respondent and the same are explained in detail herein below:

- Construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past, The EPCA, NCR vide its notification dated 25.10.2019 banned construction activity in NCR from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 vide notification dated 01.11.2019
- Hon'ble Supreme Court vide its order dated 04.11.2019 passed in writ petition no. 13029/1985 titled as 'MC Mehta Vs. Union of India' completely banned all construction activities in Delhi NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by Hon'ble Supreme Court vide order dated 14.02.2020. These bans forced the migrant labours to return to their native villages creating acute shortage of labourers in NCR region. Due to shortage, the construction activity could not be

resumed at full throttle even after the lifting of ban by the Hon'ble Apex Court.

- COVID-19 Pandemic including imposing curfew, lockdown, stopping all commercial activities. Also, HARERA has extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and/or was supposed to expire on or after 25.03.2020.

vii. That the issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '***Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022***, wherein the Court had restrained the respondent from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing and the same has now been listed for 16.08.2023. The Hon'ble UP-REAT while adjudicating an appeal titled as ***"Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)"*** has held that the issue of Assured Return does not fall within the ambit of the Act of 2016 and dismissed the appeal filed by the Appellant/Allottee. Also, the Real Estate Appellate Tribunal of other states while adjudicating upon the similar issue of assured return had taken a similar view by observing the said issue is out of the purview of the Act of 2016. The Hon'ble Uttar Pradesh Appellate Tribunal (UPREAT) had evidently held that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provision of assured return/committed charges or commercial effect in an allotment letter/builder buyer agreement for the purchase of flat/apartment/plot.

viii. That the Respondent cannot pay "Assured Returns" to the Complainants by any stretch of imagination in the view of prevailing laws. An act titled as **"The Banning of Unregulated Deposits Schemes Act, 2019"** (*hereinafter referred to as "the BUDS Act")* was notified on 31.07.2019 and came into force. Under the said Act, all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. Being a law-abiding company, by no stretch of imagination the Respondent could have continued to make the payments of the said Assured Returns in violation of the BUDS Act. The BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the Respondent to pay Assured Returns shall be in violation of the provisions of BUDS Act. It is also pertinent to note herein that for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act. Therefore, the Agreements or any other understanding of these kinds, may, after Feb 2019, and if any assured return is paid thereon or continued therewith may be in complete contravention of the provisions of the BUDS Act.

ix. That the Respondent vide Letter dated 27.03.2018, intimated the Complainant's 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 27.03.2018, the Respondent also informed the Complainant's that the commitment charges payable under the

Agreement shall be revised to Rs. 65/- sq. ft. per month w.e.f. 01.03.2018.

x. 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 June 2018, and the same has been very well accepted by the Complainant's in the Complaint.

xi. That right from the date of booking of the unit, the Respondent herein had been paying the committed return of Rs.**43,875/-** every month to the Complainants without any delay. As on **07.06.2018**, the Complainants herein have already received an amount of **Rs. 35,72,903/-** as assured return as agreed by the Respondent under the aforesaid agreement. Since starting, the Complainants has always been in advantage of getting assured return as agreed by the Respondent. It is an admitted fact that the Complainants have received an amount of **Rs.43,875/-** every month as assured return right from the date of allotment up to **07.06.2018.**

xii. It is an admitted fact that since starting the Respondent has always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project. However, the delay caused in the payment was bonafide and purely out of the control of the Respondent and the same has been explained in detail herein above.

xiii. That the complainants have suppressed the above stated facts and thus, none of the reliefs as prayed for by the complainants are sustainable before this Ld. Authority.

12. 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 submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

14. 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

15. 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.

16. 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.

F. Findings on the objections raised by the respondent:

F. I. Objection regarding the complainants being investor.

17. The respondent has taken a stand that the complainants are investor and not allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the documents, it is revealed that the complainants are buyer, and have paid total price of Rs. 87,65,400/- to the promoter towards purchase of a unit/space 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;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in

appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

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

19. 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.

20. 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."*

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

F.III Objections regarding force Majeure

22. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble Environment Protection Control Authority, and Hon'ble Supreme Court and COVID-19. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.

23. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that buyer's agreement was executed between the parties on 25.05.2012 and as such there was no possession clause in the said agreement. In **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018,** Hon'ble Apex Court

observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Thus the due date of completion of the project comes out to be 25.05.2015 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

24. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

> *"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself"*

25. In the present complaint, the respondent was liable to complete the construction of the project in question by 25.05.2015. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of completion of the project was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself

and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund of entire consideration amount of Rs.58,50,000/- along with 18% per annum from the date of allotment till date.

26. In the present complaint, the complainants intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

> *"**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.-*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *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."*
>
> *(Emphasis supplied)*

27. On the basis of the documents placed on the record and submissions made by the parties, the authority observes that the complainants had booked a commercial unit in the project namely, "Vatika INXT City Centre", Sector 83, Gurugram, Haryana by submitting application form to the respondent company. Thereafter, a buyer's agreement was executed inter se parties on 25.05.2012 allotting a unit bearing no. 114, 1st floor, Tower A admeasuring

750 sq. ft. The complainants have paid an amount of Rs.58,500,000/- towards the sale consideration of Rs.58,50,000/-. Subsequently, the respondent has allotted a new unit bearing no. 434 on 4th floor Block C in favour of the complainants vide letter dated 15.04.2013.

28. Further, clause 12 of the buyer's agreement dated 25.05.2012 provides for the terms of payment of assured return and committed return and the relevant para of the letter is reproduced as under for ready reference:

> *"12. ...the Developer has agreed to pay Rs.65/- 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....*
> *(i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial Unit 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.."* *(Emphasis supplied)*

29. In view of the aforesaid terms, the respondent was obligated to pay **Rs65/- per sq. ft. per month** on super area of said unit w.e.f. 25.05.2012 (i.e., when the buyer's agreement was executed) till the completion of the construction of the building. It is matter of record that the respondent has paid Assured Return up to June 2018 as admitted by the respondent and has stopped paying the same thereafter.

30. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block F is complete wherein the subject unit is located vide letter dated 27.03.2018. However, admittedly, the OC/CC for that block where the unit of the complainants is situated i.e., Block C has not been received by the promoter till this date. Perusal of assured return clause mentioned in BBA reveals that the stage of offer of possession by respondent is not dependent upon the receipt of occupation certificate. However, 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. Thus, the construction of the project is not complete till date. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. In view of the above-mentioned facts, the allottees intended to withdraw from the project and are well within their right to do the same in view of section 18(1) of the Act, 2016.

31. Moreover, the Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 observed as under:

> *25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

32. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit till date. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

33. **Admissibility of refund along with prescribed rate of interest:** The complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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]***
>
> *(1) 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.*

34. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

35. 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., 09.05.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

36. During proceeding dated 09.05.2025, the counsel for the complainants requested for allowing refund of full amount deposited along with interest as no AR has paid by the respondent post June 2018 and hence, the allottee does not wish to continue with the project. The respondent has submitted that there has been no default on their part as it has duly paid assured returns to the complainants till the enactment of the BUDS Act after which it became illegal due to the legal position over unregulated deposits post the

enactment of the BUDS Act. The authority observes that if the allottee does not wish to continue with the project, he is not entitled to the benefits of assured return as the purpose of assured return is to compensate the allottees for the amount paid by him in upfront and which is continued to be used by the promoter for the period specified in the agreement and the payment of assured return as well as the prescribed interest on the amount paid up would result in double benefit to the complainants and would not balance the equities between the parties.

37. In view of the above, the respondent/promoter is directed to refund the amount received by it from the complainants along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules. Out of the amount so assessed, the amount paid by the respondent on account of assured return shall be deducted from the refundable amount.

H. Directions of the authority

38. Hence, the authority hereby passes this order and issue 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/promoter is directed to refund the amount received by it from the complainants along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules.

ii. Out of the amount so assessed, the amount paid by the respondent on account of assured return shall be deducted from the refundable amount.

iii. 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.

39. The complaint as well as applications, if any stand disposed of.

40. Files be consigned to registry.

Dated: 09.05.2025

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram