

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

Complaint no. : 1346 of 2023
Date of filing complaint : 18.04.2023
Date of decision : 23.05.2025

Ashwini Sharma

R/o: Block 16, ST - 2A, Phase - III, Maitri Nagar,
Bhilai, Chattisgarh - 490006

Complainant

Versus

1. M/s Vatika One on One Private Limited
Regd. office: Vatika Business Centre,
Thapar House, 3rd Floor, Eastern & Central Wing,
Gate No.1, 124 Janpath Road,
CP, New Delhi DL-110001.

2. M/s Vatika Ltd.
Address: Unit no. A-002, INXT City Centre,
Ground Floor, Block - A, Sector-83,
Vatika India Next, Gurugram, HR-122012.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Varun Kathuria (Advocate)

Complainant

Sh. Anurag Mishra (Advocate)

Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

S. N.	Particulars	Details
1.	Name of the project	Vatika One on One, Sector-16, Gurugram
2.	Nature of the project	Commercial complex
3.	RERA Registered/ not registered	Registered (For Vatika One on One phase-I) Vide no. 237 of 2017 dated 20.09.2017 Valid up to 19.09.2022
4.	License no. and validity	05 of 2015 dated 06.08.2015 Valid up to 05.08.2020
5.	Unit no.	127, 1 st floor, block-3 [Page 15 of complainant]
6.	Unit area admeasuring	500 sq. ft. [Page 15 of complainant]
7.	Date of booking	24.07.2015
8.	Date of Allotment	26.08.2015 [Page 5 of reply]
9.	Date of BBA	13.01.2016 [Page 12 of complainant]



10.	Assured return as per BBA	<p><u>15. ASSURED RETURN IN FULL DOWN PAYMENT CASES</u></p> <p><i>The Developer may, where the Buyer has paid 100% of Total sale consideration and other charges for the Commercial Unit, upon signing of this Agreement pay Rs.151.65/- (Rupees One hundred fifty one & sixty five paise only) per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial Unit as per its policy, from the date of execution of this agreement till the construction of the Said Commercial Unit is complete. Such Policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme.</i></p> <p><u>16. LEASING AGREEMENT (OPTIONAL)</u></p> <p><i>16.1 The Developer will pay to the Buyer Rs.130/- (Rupees One hundred thirty Only) per sq. ft. super area of the said unit per month as committed return for up to three years from the date of competition of construction of the said Building or the said Unit is put on Lease, whichever is earlier. The Buyer will start receiving lease rental in respect of the said Unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent-free period on account of fit-out by the lessee or any other account, then the Buyer shall not be entitled for any rent during the same.</i></p> <p>[Page 29 & 30 of compliant]</p>
11.	Possession clause	<p><u>17. HANDING OVER POSSESSION OF THE COMMERCIAL UNIT IN CASE OF NON-LEASING ARRANGEMENT</u></p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit within a</i></p>

		<p><i>period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this Agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.</i></p> <p>[Page 33 of complaint]</p>
12.	Due date of possession	<p>13.01.2020</p> <p>[Calculated as 48 months from the date of BBA dated 13.01.2016]</p>
13.	Sale consideration	<p>Rs.86,66,500/-</p> <p>[As per Account Statement on page 45 of complaint]</p>
14.	Amount paid by the complainant to R-2	<p>Rs.90,30,691/-</p> <p>[Page 16 of complaint]</p>
15.	Occupation certificate /Completion certificate	<p>06.09.2021</p> <p>[Page 44 of reply]</p>
16.	Assured Return paid by Respondent till September, 2018	<p>Rs.22,74,750/-</p> <p>[As per SOA dated 08.12.2023 at page 39 of reply]</p>

B. Facts of the complaint:

3. The complainant has made the following submissions:

- That the present complaint has been filed by the complainant through his father and GPA holder Sh. Kiran Kumar Sharma, as the complainant is present based out of Singapore.
- That the Respondent no. 2 made false representations and claims of being a big Company and a reputed developer and thereby induced the complainants to book/purchase a unit in its project then known as "Vatika Sovereign Park" located at Sector 99, Gurgaon, by showcasing

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a fancy brochure which depicted that the project will be developed and constructed as state of the art being one of its kind with all modern amenities and facilities. The complainant paid a consideration amount of Rs. 87,75,821/-. However, as there were several hurdles in the development of the Dwarka Expressway, the complainant decided to switch his booking to the project "Vatika One on One" located at Sector 16, Gurgaon, regarding which the respondent had made several tall claims as well. After repeated requests of the complainant, the respondent executed a Builder Buyer Agreement for the new project and also unilaterally deducted an amount of Rs. 4,06,629/- under various heads from the amount already received by it and transferred the booking of the complainant to the project "One on One". Subsequently, the complainant was allotted unit no. 127 in Block 3 of the said project having 500 sq. ft. super area for a total consideration amount of Rs. 90,30,493/- which was paid upfront by the complainant. It is pertinent to mention here that the entire consideration amount was paid by the complainant to respondent no. 2 only.

- iii. As per the allotment letter the Respondents were liable to pay assured monthly returns @ Rs. 151.65/- per sq. ft. per month post which it was liable to pay @ Rs. 130/- per sq. ft. per month to the Complainant for upto 3 years post completion or till the unit is put on lease, whichever was earlier. The said letter also contained terms specifying the amounts to be paid by the complainants or the respondent if the unit is put on lease at a higher or lower rate than Rs. 130/- per sq. ft., respectively.
- iv. It is pertinent to mention here that this was the first time the respondent no. 1 came into the picture as all the payments were made by the complainants to the respondent no. 2 only and all

communications, including but not limited to the monthly assured returns was being received by the complainants from the respondent no. 1 prior to the execution of the BBA. Upon enquiry, the respondent no.2 said that the respondent no. 1 is a sister concern and both the respondents have a common director so there is nothing to worry about. Clause 16 and annexure 1 of the BBA contained terms pertaining to payment of assured returns and leasing of the unit of the complainants. It is pertinent to mention here that even after the execution of the BBA the monthly assured returns were paid by the respondent no. 2 to the complainants.

- v. That the respondent in furtherance of its mala fide intentions and ulterior motives stopped the payment of the monthly returns to the complainant from October, 2018 onwards claiming modification of existing laws which was false and baseless. Despite of repeated requests, the same have not been paid till date.
- vi. That the Respondent no. 2 vide email dated 26.06.2019, tried to coerce the complainant to execute an addendum, which was a unilateral document containing all terms favouring the respondent and the complainant was required to forego their claims for the payment of monthly returns post June, 2019, after the execution of the addendum and therefore, the complainant refused for the same.
- vii. That it has come to the knowledge of the complainant that the respondents have not only duped the complainant but several other buyers like him by refusing to pay the monthly returns on one pretext or the other and the complainant is not even sure about the status of completion of the said project till date. It is a matter of record that no recent laws have been enacted which prevent the payment of monthly assured returns as claimed by the respondent as other developers are

marketing project with assured return payments and are also paying the returns even today. Further, this Hon'ble Authority has further held in numerous judgements that the BUDS Act does not apply to payment of assured returns by developers to allottees such as in the present case.

- viii. That the conduct of the Respondents is illegal and arbitrary and the Respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. Respondents are clearly in breach of its contractual obligations and of causing financial loss to the complainant and the conduct of the respondents has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainant and his family members. The respondents are jointly and severally liable for the reliefs claimed by the complainant.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
- Direct the respondent to pay **assured return** due and payable by it to the complainant(s) from March, 2020, till date of order, to be calculated at Rs. 151.65/- per sq. ft. per month till issuance of Occupation Certificate/Completion certificate by the competent authority and thereafter at Rs. 130/- per sq. ft. per month for a period of 3 years after the issuance of Occupation Certificate/Completion certificate as per the terms of the agreement executed between the parties.
 - Direct the respondent to pay **interest at the prescribed rate** on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.
 - Directed the respondent to continue paying the investment returns / monthly returns to the complainant(s) as per the terms of the Builder buyers Agreement.
 - Direct the respondent to execute a conveyance deed for the unit of the complainant upon the completion of the project.

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- v. Restrain the respondent from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreements executed between the parties.
 - vi. This Hon'ble Authority may pass such order or further orders and grant any further relief as it may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

6. The respondents have contested the complaint on the following grounds:
- a) That the complainant has filed the present complaint for assured return and this Authority has no jurisdiction to entertain the present complaint as in the cases of assured return, this Hon'ble Court has no jurisdiction, as has been decided by this Authority in complaint of Brhimjeet & Anr Vs M/s. Landmark Apartments Pvt Ltd. (Complaint No. 141 of 2018) and Sh. Bharam Singh & Anr. Vs Ventain LDF Projects LLP (Complaint No. 175 of 2018) decided on 07.08.2018 and 27.11.2018. Further, the term "Assured Return" has not been defined under the Real Estate Regulatory Act, 2016 and therefore any such complaint is not maintainable under the present Act. The Complainant in this case should have approached civil court being proper forum to adjudicate upon such disputes.
 - b) That the Respondent had entered into an agreement of assured return with the Complainant in the year 2016 however the government has enacted Banning of Unregulated Deposit Scheme Act, 2019 thereby putting a sanction on all such commitments made by the Builder under the agreement of assured return. Therefore, as per Section 2 (j) of the Contract Act "A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable" and therefore all such contracts



after enactment of BUDS Act have been void contracts and therefore such agreements have no enforceability in the eyes of law.

- c) That the Complainant had erred gravely in filing the present Complaint and misconstrued the provisions of the Act. It is imperative to bring the attention of the Ld. Authority that the RERA Act, 2016, was passed with the sole intention for regulation of the real estate projects, promoters and for the dispute resolution between builders and buyers. The Complainant booked the Unit with the Respondent for investment purposes. The said Complainant herein is not an "**Allottee**", as the Complainant approached the Respondent with an investment opportunity in the form of a steady rental income from the commercial units. That the Agreement executed inter se parties, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant is not a "Allottee" but investor who has invested the money for making steady monthly returns.
- d) That the Complainant had booked a commercial shop vide application form dated 24.07.2015 under the assured return scheme, on her own judgement and investigation. It is evident that the Complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur. It is the admitted case of the Complainant that he has booked a unit in the project "Vatika Sovereign Park" located in Sector 99 Gurgaon for a total consideration of 86,66,5001/- and on the request of the Complainant the said booking was switched to project "Vatika One on One" located in Sector 16, Gurugram. Thereafter, the respondent vide an allotment letter dated 26.08.2015 was allotted a unit bearing no.127, Block 3 admeasuring 500

sq. ft. situated in project Vatika One on One. The complainant consciously and wilfully opted for instalment payment plan for remittance of sale consideration for the unit in question and further represented to the respondents that he shall remit every instalment on time as per the payment schedule. The respondents had no reason to suspect the bonafide of the Complainant and proceeded to allot the unit in question in his favour. The entire process of switching the booking from one project to another was only at the behest of the Complainant as the Complainant wanted to earn easy return on his investment and had no intent to use the premises for self-use.

- e) That the respondents after the allotment of the said unit duly sent the Builder Buyer Agreement to the Complainant on 13.01.2016. Since starting, the Complainant has always been in advantage of getting assured return as agreed by the Respondent. It is an admitted fact that the Complainant has received an amount of **Rs. 22,74,750/-** as assured return right from the date of allotment upto September 2018 from the Respondent.
- f) That since starting the Respondent had always tried level best to comply with the terms of the Agreement and has always intimated the exact status of the project. However, the Respondent herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019. In this regard Respondent had sent email dated 30.11.2018 and 14.06.2019 to his customers and apprised them that the Respondent shall not pay further any assured return due to change in law.
- g) That the said project of the respondent is already complete and Occupation Certificate has also been issued by the competent authority



on 06.09.2021. The respondent has already started giving possession of the said project to its customers.

- h) That Complainant is merely trying to hoodwink the Ld. Authority by concealing facts which are detrimental to this Complaint at hand. Therefore, the said Allotment of the said Commercial Unit contained a "Lease Clause" which empowers the Developer to put a unit of Complainant along with other commercial space unit on lease and does not have "Possession Clauses", for physical possession. However, it is pertinent to mention here that the said unit was successfully put on lease on 16.10.2023 by the respondent and the same was communicated with the complainant vide email dated 22.11.2023 sent by the respondent.
- i) 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 respondents 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 23.11.2023.
- j) That the Complainant herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the Complainant is sustainable before this Ld. Authority and in the interest of justice. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

7. Written submissions filed by the respondent and complainant is also taken on record and considered by the authority while adjudicating upon the

relief sought by the complainant. 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

8. 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

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 the entire Gurugram District for all purposes 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 the 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.

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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 an investor.

12. The respondent took a stand that the complainant is investor and not consumer and therefore, the complainant is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act.

13. The Authority observes 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 and BBA, it is revealed that the complainant is buyer, and has 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;"

14. 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 clear that the complainant is allottee as the subject unit was allotted to him by the promoter upon payment of the entire sale

consideration. 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 is not entitled to protection of this Act stands rejected.

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

15. The respondent has raised an objection that 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.
16. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated 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.*" Thus, in view of the above, the authority has decided to proceed further with the present matter.

G. Findings on relief sought by the complainants.

- G.I Direct the respondent to pay assured return due and payable by it to the complainant(s) from March, 2020, till date of order, to be calculated at Rs. 151.65/- per sq. ft. per month till issuance of Occupation Certificate/Completion certificate by the competent authority and thereafter at Rs. 130/- per sq. ft. per month for a period of 3 years after the issuance of Occupation Certificate/Completion certificate as per the terms of the agreement executed between the parties.

G.II Direct the respondent to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.

G.III Directed the respondent to continue paying the investment returns / monthly returns to the complainant(s) as per the terms of the Builder buyers Agreement.

G.IV Direct the respondent to execute a conveyance deed for the unit of the complainant upon the completion of the project.

17. The common issue with regard to assured return, delay possession charges and conveyance deed is involved in the aforesaid complaint.

I. Assured returns

18. The complainant is seeking unpaid assured returns on monthly basis as per builder buyer agreement dated 13.01.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said builder buyer 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*) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does

not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

19. 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 complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

20. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale. 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. In view of the above, the respondent is liable to pay assured return as well as committed return to the complainant-allottee as per clause 15 and 16 of the builder buyer agreement dated 13.01.2016.

II. Delay possession charges.

21. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of Section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

22. A builder buyer agreement executed between the parties and the due date of completion of the project is calculated as per clause 17 of BBA i.e., 48 months from the date of execution of this agreement. The relevant clause is reproduced below:

*"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit **within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in this Agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments."*

23. In view of the above, the due date of possession of the subject unit was 13.01.2020. Further as per the builder buyer agreement, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. *ibid.* Rule 15 has been reproduced as under:

*"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%."*

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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."

25. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default; the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

27. 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 possession of the subject unit was to be completed within a stipulated time i.e., by 13.01.2020.
28. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of

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possession, can claim both the assured return as well as delayed possession charges?

29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA. The rate at which assured return has been committed by the promoter is Rs. 151.65/- per sq. ft. of the super area per month from the date of execution of the BBA till the completion of the building which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the delayed possession charges as per section 18 of the Act is much better i.e., assured return in this case is payable at Rs.75,825/- per month till completion of building whereas the delayed possession charges are payable approximately Rs. 83,533.89/- per month.
30. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
31. In this case delay possession charges are higher as compared to assured return. Accordingly, the respondent is obligated to pay delay possession charges @ 11.10% p.a. on the amount paid by the complainant w.e.f. the due date of possession i.e., 13.01.2020 till the completion of the project on obtaining occupation certificate from the competent authority i.e., 06.09.2021.

DETERMINATION

32. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid

amount of assured return as per the terms of builder buyer agreement, DPC and Lease Rental/Committed return. As per the BBA dated 13.01.2016, the promoter had agreed to pay assured return to the complainant allottee Rs.151.65/- per sq. ft. on monthly basis till the construction of the said Commercial Unit is complete. It is matter of record that the assured return was paid by the respondent-promoter till September 2018 at the rate of Rs. 151.65/- per sq. ft., 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.

33. In the peculiar facts and circumstances of the present case, wherein the complainant is seeking both assured return as well as DPC, the due date of possession is 13.01.2020 and delay possession charges being higher than assured return are payable w.e.f. the due date of possession i.e., 13.01.2020 till the completion of the project on obtaining occupation certificate from the competent authority i.e., 06.09.2021. Therefore, the liability of the respondent to pay assured return to the complainant shall subsist only till the due date of possession i.e., 13.01.2020 as permitting the allottee to claim both Delayed Possession Charges (DPC) and Assured Return for the same period would amount to unjust enrichment and impose double penalty upon the promoter, which is contrary to the letter and spirit of the Act of 2016. Thus, allowing both remedies simultaneously for the same cause would defeat the intent of RERA and offend the doctrine of equity.
34. Considering the facts of the present case, the respondent is obligated to pay the amount of **assured return** at the agreed rate i.e., @ Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., w.e.f. October 2018 till the due date of possession i.e., 12.01.2020.

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Thereafter, the respondent is obligated to pay **delay possession charges** @ 11.10% p.a. on the amount paid by the complainant w.e.f. the due date of possession i.e., 13.01.2020 till the completion of the project on obtaining occupation certificate from the competent authority i.e., 06.09.2021.

35. Further, the respondent has stated in its pleadings that the unit allotted to the complainant had been put on lease on 16.10.2023 and same was communicated to the complainant vide email dated 22.11.2023. Clause 16.1 of the BBA enumerates the liability of the respondent to pay lease rental to the complainant. Clause 16.1 of the BBA is reproduced herein for the ready reference:

"16. LEASING AGREEMENT (OPTIONAL)

16.1 The Developer will pay to the Buyer Rs.130/- (Rupees One hundred thirty Only) per sq. ft. super area of the said unit per month as committed return **for up to three years from the date of completion of construction of the said Building or the said Unit is put on Lease, whichever is earlier.** The Buyer will start receiving lease rental in respect of the said Unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent-free period on account of fit-out by the lessee or any other account, then the Buyer shall not be entitled for any rent during the same.

36. Therefore, the respondent is obligated to pay **committed return/lease rental** @ Rs.130/- per sq. ft. per month after the completion of the building i.e., 07.09.2021 till the date the said unit is put on lease or for the first 3 years from the date of completion of the project, whichever is earlier in terms of clause 16.1 of the BBA.

III. Conveyance Deed

37. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real

estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

38. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter on 06.09.2021. Thus, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit upon payment of requisite stamp duty and other outstanding dues, if any, by the complainant as per norms of the state government.

IV. Restrain the respondent from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreements executed between the parties

39. It is observed that the complainant has agreed to pay an amount of Rs.86,66,500/- as per clause 2 of the builder buyer agreement dated 13.01.2016. It is pertinent to note that the complainant has paid an amount of Rs. 90,30,691/- upfront in the year 2015 which is prior to the execution of the builder buyer agreement dated 13.01.2016. The Authority observes that the unit was booked under assured return scheme and the complainant has already paid more than 100% of the sale consideration. In view of the same, the respondent is directed not charge anything from the complainant which is not part of the builder buyer agreement.

40. Further, in the case of **Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021**, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being

part of the builder buyer agreement as per law settled by the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

Therefore, the respondent is directed not to levy any holding charges upon the complainant.


H. Directions issued by the Authority:

41. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed pay the amount of **assured return** at the agreed rate i.e., @ Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., w.e.f. October 2018 till the due date of possession i.e., 12.01.2020. 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.
- II. The respondent is directed to pay **delay possession charges** @ 11.10% p.a. on the amount paid by the complainant w.e.f. the due date of possession i.e., 13.01.2020 till the completion of the project on obtaining occupation certificate from the competent authority i.e., 06.09.2021. The

- arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.
- III. The respondent is obligated to pay **committed return/lease rental** @ Rs.130/- per sq. ft. per month after the completion of the building i.e., 07.09.2021 till the date the said unit is put on lease or for the first 3 years from the date of completion of the project, whichever is earlier in terms of clause 16.1 of the BBA. The respondent is directed to pay the outstanding committed return/lease rental 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.
- IV. The respondent-promoter is directed to execute the conveyance deed of the allotted unit upon payment of requisite stamp duty and other outstanding dues, if any, by the complainant as per norms of the state government.
- V. The respondent shall not charge holding charges and anything from the complainant which is not the part of the buyer's agreement.
42. Complaint stands disposed of.
43. File be consigned to the Registry.

Dated: 23.05.2025

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