

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

Complaint no.	:	4676 of 2023
Date of filing	:	16.02.2024
Date of decision:		23.05.2025

**1. Sanjay Khanna****2. Vinita Khanna**

Both RR/o: D-23, First Floor,  
South Extension, Part-2, New Delhi- 110049

**Complainants****Versus****Vatika Limited**

Address: Unit No. - A-002, INXT City Centre,  
Ground Floor, Block -A, Sector -83, Vatika  
India Next, Gurugram, Haryana-122004.

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Abhijeet Gupta

Ms. Ankur Berry

Counsel for the complainants

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. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name and location of the project	"Vatika Inxt City Center" at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.72 acres
4.	DTCP License	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2018
5.	RERA registered/ not registered	Not registered
6.	Old Unit no. and area	1739, 17 <sup>th</sup> floor admeasuring 500 sq. ft. in Vatika Trade Centre [As per allotment letter dated 25.06.2010, page 18 of complaint]
	Present Unit and area	516, 17 <sup>th</sup> floor block B in Vatika INXT City Centre [As per letter dated 11.11.2014, page 42 of complaint]
7.	Date of builder buyer agreement	25.06.2010 [Page 19 of complaint]
8.	Assignment of Unit in the project 'Vatika INXT City	11.11.2014



	Centre' in favour of present complainant	[Page 42 of complaint]
9.	<b>Possession clause as per clause 2 of BBA dated 25.06.2010</b>	<i>The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs refer annexure-A (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</i> [Page 22 of complaint]
10.	Due date of possession	25.06.2013
11.	Total sale consideration as per clause 1 of BBA dated 25.06.2010	₹ 27,50,000/- [Page 22 of complaint]
12.	Amount paid by the complainant as per clause 2 of BBA dated 25.06.2010	₹ 27,50,000/- [Page 22 of complaint]
13.	Assured return clause as per addendum agreement dated 25.06.2010	<b>ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 25.06.2010</b> The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder buyer Agreement dated 25.06.2010

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		<p>A. Till Completion of the building: Rs. 71.50/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 25.06.2010 on a monthly basis before the 15<sup>th</sup> of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.</p> <p>1. If the rental is less then Rs. 65/- per sq. ft. then you shall be refunded @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq. ft.</p> <p>2. If the achieved rental is higher than Rs. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p> <p>[Page 41 of complaint]</p>
14.	Return was payable after completion of building as per BBA	<p>Clause 32.2 <b>Return on completion of the project and letting-out of unit</b></p> <p>(a) <i>That on the completion of the project, the unit would be let-out by the Developer to a bonafide lessee at a minimum rental of Rs. 65/- per sq. ft. per month less tax deducted at source. In the event of the Developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs. 65 per sq. ft. per month to the Allottee as Minimum Guaranteed Rent for the <b>first 36 months after the date of completion of the project</b></i></p>



		<i>or till the date the said unit is put on lease, whichever is earlier.</i> [Page 32 of complaint]
15.	Occupation certificate	Not obtained
16.	Letter intimating Completion of construction for block B, Vatika INXT City Center	29.03.2016 [Page 43 of complaint]
17.	Assured return paid till	September 2018
18.	Amount of Assured return paid to the complainant	₹ 15,82,750/- (As per page 37 -40 of reply)

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- a. That pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the former allottees in the year 2010, being allotted a unit bearing no. 1739 on 17<sup>th</sup> Floor admeasuring 500 sq. ft. in Vatika Trade Centre, Sector 82, Gurugram for a total sale consideration of Rs. 27,50,000/- by the respondent. Subsequently, the booking of the said unit was confirmed to the former allottees vide Builder Buyer Agreement dated 25.06.2010, wherein the respondent explicitly assigned all the rights and benefits to the former allottees. The former allottees had already paid the total sale consideration of Rs. 27,50,000/- vide cheque dated 21.06.2010 and RTGS on 29.06.2010.



- b. That at the request of the former allottees for assignment of their rights/benefits under the Builder Buyer Agreement dated 25.06.2010 to the present Complainants, the Respondent acceded the request and assigned the rights in respect of the new Unit bearing no. **156, ad- measuring 500 Sq. Ft. in Tower-B in India Next City Centre, NH-8, Sector-83, Gurugram** and made the necessary endorsement in the Builder Buyer Agreement in the name of complainants.
- c. That it is also pertinent to mention that in Addendum to the Agreement dated 25.06.2010, Respondent had promised an assured monthly return to be calculated @ 71.50/- per sq. ft. per month till the Completion of the Building and @65/- per sq. ft. per month after the Completion of the Building. That it is pertinent to mention that the Respondent had paid the Complainants the amount of assured return at the rate of 71.50/- per sq. ft. till March 2016.
- d. That the Respondent then sent a Completion Letter dated 29.03.2016, wherein, it claimed that the construction work of the Block-B of Vatika INXT City Centre is complete and the building is operational and ready for occupation. The Respondent further informed the Complainants that the commitment charges will be paid at the rate of Rs. 65/- per sq. ft. per month from 01.04.2016. However, it is pertinent to mention that the Respondent has not obtained the completion certificate or occupation certificate from the competent authority and the construction work of the building is still incomplete. Due to this forged conduct of the Respondent, the Complainants have received the less amount of assured return at the





rate of Rs. 65/- per sq. ft. instead of Rs. 71.50/- per sq. ft. from the month of April 2016 to August 2018.

- e. That vide Clause 8 of the Builder Buyer Agreement, the Respondent also undertook to execute and registered the Conveyance Deed for confirming the marketing title of the said unit to the Complainants. However, the Respondent has failed to complete the construction work of the building and is not in the position to execute the Conveyance Deed.
- f. That, by the act and conduct of the Respondent, it's been unambiguously lucid that the Respondent from the very beginning had malafide intention to cheat and defraud the Complainants. The Respondent is not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the Complainants by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- g. That the Complainants having shattered and scattered dreams of owning his own Unit herein are constrained and left with no option but to approach this Hon'ble Authority. The Complainants after losing all the hope from the Respondent Company, after being mentally tortured and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance.

**C. Relief sought by the complainants:**

- 4. The complainants have sought following relief(s) vide application dated 16.08.2024 for amendment of relief sought and the same was allowed by



the Authority during proceedings dated 23.05.2025 in view of no objection to the counsel for the respondent:

- a. Direct the respondent to pay the outstanding assured return to the complainants as per BBA.
  - b. Direct the respondent to pay the difference of Rs. 6.50/- per sq. ft. of Assured Return for the period of April 2018 to August 2018.
  - c. Direct the respondent to execute the Sale Deed/Conveyance Deed in favour of the complainants.
  - d. Pass any other further orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of case.
5. On the date of hearing, the authority explained to the respondent /promoters 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 present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act), the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration cannot run, operate, continue an assured return scheme. Thus, the



'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus, the relief prayed in the present complaint cannot survive due to operation of law.

- b. That as a matter of fact the respondent duly paid Rs.15,82,750/- till September 2018. The Complainants' have not come with clean hands before this Hon'ble Authority and has suppressed these material facts. The complaint has been filed by the complainants just to harass the respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants requires detailed deliberation by leading the evidence and cross-examination, thus only the Civil Court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.
- c. That as per Section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act makes the Assured Return Schemes of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the assured return scheme of the Respondent Company has become illegal by the operation of law and the Opposite Parties / Respondent Company



cannot be made to run a scheme which has become infructuous by law.

- d. 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 20.03.2024. 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.
- e. 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 BUDS 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.

- f. That in the matter of *Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of Assured Return and hence the present complaint deserves to be dismissed at the very outset. Further in the matter of *Bharam Singh & Ors. vs. Venetian LDF Projects LLP* (Complaint No. 175 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram had decided not to entertain any matter related to assured returns.
- g. That the erstwhile allottees entered into an agreement i.e., BBA dated 25.06.2010 with Respondent Company owing to the name, good will and reputation of the Respondent Company. Further due to external circumstances which were not in control of the Respondent, construction got deferred. That even though the Respondent suffered from setback due to external circumstances, yet the Respondent managed to complete the construction and sent letter of completion of construction dated 29.03.2016, copy of which admittedly attached with the complaint. That it is a matter of record and also admitted by the Complainants' that the Respondent duly paid the assured return to the Complainants till September, 2018. It

is highly pertinent to note that vide email dated 31.10.2018, the Respondent Company sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investor of assured return-based projects.

- h. That the Respondent further sent communication to its allottee including the present Complainant on 25.02.2020, regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the Project INXT City Centre. Copy of all communication, emails, adverts and news article showing the bonafide of the Respondent Company.
- i. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. It is pertinent to submit that the complainants were sent the letter dated 29.03.2016 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 complainants and against the respondent and hence, the complaint deserves to be dismissed.
- j. That the various contentions raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. Hence, the complaint is liable to be dismissed with imposition of exemplary



cost for wasting the precious time and efforts of this Hon'ble Authority. Hence, the present complaint deserves to be dismissed.

7. Written submissions filed by the respondent is also taken on record and considered by the authority while adjudicating upon the relief sought by the complainants. 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 those undisputed documents and submissions made by the parties.

**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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

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

***"Section 11(4) (a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as*





*the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

**Section 34-Functions of the Authority:**

**34(f)** *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

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

12. 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.
13. 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

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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."*

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

**G. Findings on the relief sought by the complainants**

**G.I Direct the respondent to pay the outstanding assured return to the complainants as per BBA.**

**G.II Direct the respondent to pay the difference of Rs. 6.50/- per sq. ft. of Assured Return for the period of April 2018 to August 2018.**

15. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the addendum to the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) 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.*

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wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

16. 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 complainants-allottees have a right to approach the authority for redressal of his grievances by way of filing a complaint.
17. 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. Further, the MOU/agreement defines the builder buyer relationship. So, it can be said that the MOU/agreement for assured returns between the promoter and allottee arises out of the same relationship. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay

assured return to the complainants-allottees in terms of the BBA read with addendum dated 25.06.2010.

18. It is pertinent to mention here that the Addendum to the Buer agreement dated 25.06.2010 provides for assured return and the same is reproduced as under for ready reference:

**"ANNEXURE A**

**ADDENDUM TO THE AGREEMENT DATED 25.06.2010**

*The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:*

*This addendum forms an integral part of builder buyer Agreement dated 25.06.2010*

*A. Till Completion of the building: Rs. 71.50/- per sq. ft.*

*B. After Completion of the building: Rs. 65/- per sq. ft.*

*You would be paid an assured return w.e.f. 25.06.2010 on a monthly basis before the 15th of each calendar month.*

*The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.*

*1. If the rental is less than Rs. 65/- per sq. ft. then you shall be refunded @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft.*

*2. If the achieved rental is higher than Rs. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals."*

19. Further as per clause 32.2 of the buyer's agreement dated 25.06.2010, the return on completion of the project and letting out shall be payable for the first 36 months after the date of completion of the project or till the date the said unit is put on lease, whichever is earlier. The relevant clause of the buyer's agreement is reproduced below for ready reference:

**"32.2 Return on completion of the project and letting-out of unit**

**(a) That on completion of the project, the unit would be let out by the Developer to a bonafide lessee at a minimum rental of Rs.65/- per sq. ft.**



*per month less tax deducted at source. In the event of the Developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs.65/- per sq. ft. per month to the Allottee as Minimum Guaranteed Rent for the first 36 months after the date of completion of the project or till the date the said unit is put on lease, whichever is earlier...."*

20. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.
21. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the unpaid amount of assured return as per the terms of BBA and addendum executed thereto. As per clause 32.2 of the BBA read with the Addendum to the builder buyer agreement dated 25.06.2010, the promoter had agreed to pay to the complainant allottee Rs.71.50/- per sq. ft. on monthly basis till completion of the construction of the building and Rs.65/- per sq. ft. for the first 36 months after the date of completion of the project or till the date the said unit put on lease, whichever is earlier. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the assured

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return was paid by the respondent-promoter till March, 2018 at the rate of Rs.71.5/- per sq. ft. in start and changed to Rs.65/- per sq. ft. w.e.f. April 2018 till September 2018. Thereafter, 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. Admittedly, the respondent has paid an amount of ₹15,82,750/- to the complainants as assured return/committed return till September 2018.

22. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block B is complete wherein the subject unit is located vide letter dated 29.03.2016. However, admittedly, the OC/CC for that block where the unit of the complainants is situated has not been received by the promoter till this date. The counsel for the respondent states that the unit has been completed and fire NOC has been obtained and Occupation Certificate is expected shortly. Further, the assured return is required to be paid only till completion of the building. Perusal of assured return clause mentioned in Addendum to 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.
23. 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.71.50/- per sq. ft. per month from the date the payment of assured return has not been made i.e., from October 2018 till the date of completion of construction of the project (till the date of receipt of occupation certificate) and thereafter, Rs.65/- per sq. ft. per month as minimum guaranteed return up to 36 months from the date of receipt of occupation certificate after the completion of the said building or till the date the said unit is put on lease, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA. The respondent is directed to pay 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.

24. Further, it is observed that the respondent had paid assured returns @Rs.65/- per sq. ft. per month w.e.f. 01.04.2018 till 30.09.2018 to the complainants as evident from Annexure R2 annexed by respondent at page 36 of the reply. However, the respondent was duty bound to pay assured returns @Rs.71.50/- till completion of the building on obtaining occupation certificate as per Addendum to BBA dated 06.05.2010. Therefore, the respondent is directed to pay the difference of assured return amount of Rs.6.50/- per sq. ft. per month from 01.04.2018 till 30.09.2018 along with interest @9.10% per annum.

**G.III Direct the respondent to execute Conveyance deed.**

25. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent 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.

26. 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.”*

27. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, 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 within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

**H. Directions of the authority**

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

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cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 01.10.2018 till the completion of the project on obtaining occupation certificate from the competent authority and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of Addendum read with clause 32.2 of the BBA.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
- c. Further, the respondent is directed to pay the difference of assured return amount of Rs.6.50/- per sq. ft. per month from 01.04.2018 till 30.09.2018. 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.
- d. The respondent is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the

concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

e. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.

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

30. File be consigned to registry.

**Dated:** 23.05.2025

V.I. 3  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory  
Authority, Gurugram