



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	987 of 2024
Date of filing:	02.08.2024
Date of first hearing:	19.09.2024
Date of decision:	22.05.2025

Sarishti Raj Sarin & Shashi Sarin
Both R/o House No.D-2402, IREO Grand Arch, Sector-58,
Gurgaon-122011.

....COMPLAINANT(S)

VERSUS

Vatika Limited.
Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India Next, Gurugram-122012

....RESPONDENT(S)

CORAM:	Parneet Singh Sachdev	Chairman
	Dr. Geeta Rathee Singh	Member
	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: - Mr. Garvit Gupta, Counsel for the complainants through VC
Mr. Kamaljeet Dahiya, Counsel for the respondent through VC.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint was filed on 02.05.2022 by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016

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(for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	C-1133
5.	Unit area	500 sq. ft.
6.	Date of builder buyer agreement	21.10.2013
7.	Due date of offer of possession	21.10.2017

8.	Possession clause	<i>Clause 13</i> <i>Subject to the aforesaid and subject to timely payment by the buyer of the sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the Developer, the developer contemplates to complete construction of the said unit within 48 months of execution of agreement.</i>
9.	Total sale consideration	₹ 22,50,000/-
10.	Amount paid by complainants	₹ 23,33,430/-
11.	Offer of possession	No offer.
12.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Complainants booked a commercial unit bearing no. 1133 measuring 500 sq. ft. on 11^T floor, tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration of ₹ 22,50,000/- on 16.10.2013 by paying Rs 22,33,430/-. Builder buyer agreement was executed between the parties on 21.10.2013. By way of the said agreement, respondent agreed to pay monthly assured returns to the complainant at the rate of Rs 71.50 per sq. ft. per month on super area of 500 sq. ft. of the unit and to deliver the possession within 48 months, i.e. upto 21.10.2017.

4. That the respondent even after receipt of Rs 23,33,430/- failed to complete the construction of unit and had payment of assured returns only upto September,2018.

5. That on lapse of due date, the complainants went to the office of respondent and met its representatives who assured that the complainants that they would soon complete the construction and they would keep making payments towards the assured return. That there is inordinate delay in developing the project well beyond what was promised and assured to the complainants. Moreover, as per respondent's own admission, the Occupation Certificate for Tower-C has not been obtained.

6. That complainants made several enquiries to ascertain the status of construction work at the site and payment of assured return, however, no satisfactory response is received from the officials of respondent-builder. Respondent has failed to handover actual possession of unit and to execute the conveyance deed in favor of the complainants. Complainant is aggrieved by the act of respondent in having failed to complete the construction of the unit within stipulated time. Therefore, complainant is praying for refund of paid amount with interest.

C. RELIEF SOUGHT

7. Complainants in their complaint have sought following relief:

- i. Respondent is liable to refund the amount of Rs 23,33,430/- paid by the complainants along with interest on the amount paid by the complainants at the rate prescribed in RERA Act, 2016 and Haryana RERA Rules, 2017 from the date of each payment till the date of realization.
- ii. Till the time the amount as claimed in the present complaint is refunded back to the complainants, the respondent be restrained from creating any third party right on the unit in question.
- iii. Any other relief as deem fit by this Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 13.04.2023 pleading therein:

8. That present complaint is not maintainable for the reason that Authority does not have jurisdiction to decide the complaint pertaining to unregistered project- 'Vatika Mindscape'.
9. That the completion of construction for Block C wherein unit of the complainants is located had already been intimated to the complainant vide letter dated 27.03.2018. Present complaint for refund is not maintainable at such a belated stage when the construction had been completed and the respondent had invested huge sum in the project.

10. That the agreement between the complainants and Vatika Ltd. was in form of investment agreement and the complainant had made investment in the project of the respondent by purchasing a unit for speculative gains and not for getting possession of unit which is evident from clause 15 and 16 of builder buyer agreement. Therefore, there does not exist relation of allottees and promoter between the parties as complainants herein are not allottees but mere investors.

11. That as per agreement, the physical handover of the unit was contingent upon non-leasing arrangements. However, the complainants opted for leasing the unit, which meant they were not entitled to the physical possession of the unit. The complainants now claim a refund based on the pretext of non-receipt of the Occupation Certificate as they opted for a leasing arrangement, which explicitly excludes entitlement to physical possession. Commercial space booked by the complainants is not meant for physical possession. Unit in question is a virtual unit and was never intended to be physically possessed by the complainants.

12. That respondent has paid each and every penny of assured returns amounting to Rs 20,80,000/- till September, 2018. However, assured returns cannot be further paid to complainant due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of

assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants. Copy of assured return computation sheet is annexed as Annexure R-4.

13. Further, Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 titled "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 next date of hearing. Said matter is listed before the Hon'ble High Court for 25.08.2025. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

14. Respondent has further taken a plea that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency,

complainants cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bharti Knitting vs DHL by Hon'ble Apex Court.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

15. Learned counsel for complainants has submitted that possession of the booked unit was to be handed over by 21.10.2017, however, till date project is not complete. Occupation certificate has not been issued by competent authority with respect to tower in question i.e. tower C. Since project-Vatika Mindscape has been mortgaged time and again with banks and financial institutions by the respondent, conveyance deed cannot be executed. Without prejudice to interest of the complainants, it is averred that complainants are not desirous of waiting endlessly for a valid possession of unit and are therefore, praying for relief of refund of paid amount along with interest.

16. At the outset, learned counsel for complainants stated that complainants do not want to continue with the project and as such they are pressing for relief of refund of the paid amount along with interest. Further, he argued that amount of assured return should not be deducted as is done by the Hon'ble Authority in all of refund cases pertaining to Vatika Mindscapes. Said amount was paid by respondent in compliance of agreed

terms and conditions of agreement so complainants are entitled to retain said amount.

17. Learned counsel for respondent argued that as the complainants are an investors in the project of respondent, relation of complainants and respondent are based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainants were to receive monthly assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income to complainants. As a matter of fact, the complainants were paid assured returns till September,2018. It is only after the enactment of BUDS Act,2019 the scheme of assured returns became infructuous. In the present case, no date for handing over of possession has been defined in the builder buyer agreement and it is because of the fact that the complainants have invested for monetary gains- assured returns so there is no loss being caused to complainants even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainants since September,2018. Therefore, complainants are not aggrieved by any default on part of respondent. Further, he stated that construction of the unit of complainants stand completed.



F. ISSUES FOR ADJUDICATION:

- i. Whether complainants are entitled to refund of the paid amount along with interest?

G. OBSERVATIONS OF THE AUTHORITY:

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that the respondent has taken objection w.r.t the maintainability of complaint. Therefore, the Authority deems to give its findings/observations w.r.t maintainability issue which is as follows:

- i. The respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are an aggrieved persons who have filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the

RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

ii. In view of the above-mentioned definition of "allottee" as well as upon careful perusal builder buyer agreement dated 21.10.2013, it is clear that complainants are an "allottee" as unit bearing no. C-1133 in the real estate project "Vatika Mindscape", Faridabad was allotted to them by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal



no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

iii. Respondent has also raised a plea that complainants had applied for allotment of a unit in respondent's project as an investor for steady rental income by opting the leasing out arrangement as per clause 16 of agreement. Clause 16 of agreement has been referred which is reproduced below for reference:-

"16. At the request of the buyer as aforesaid, the developer agrees to put the said unit, individually or in combination with other adjoining units, on lease, as and when the said unit is ready and fit for occupation.."

Above referred clause was subject to condition when 'project is ready for possession' and that stage of possession has not been reached by respondent as occupation certificate for the tower C has not yet been received from the competent authority. Further, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that the allottee gets a perfect title in the property, however, it is a matter of fact that the title was never perfected as no conveyance deed has been



executed. That this stage of delegating/respondent's right to lease out property/unit does not arise. Thus, there is no doubt regarding the fact that complainants are only an allottee.

iv. The objection of the respondent that the project in which the complainants are seeking relief is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. It is pertinent to mention here that the project in which the unit in question is situated is registered with the Authority vide Registration no. 196 of 2017 dated 15.09.2017. The issue that whether this Authority has jurisdiction to entertain the complaint if the project is not registered with the Authority has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which



violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

15. *For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."*

v. Admittedly, complainants in this case had purchased the booking rights qua the unit in question in the project of the respondent in the year 2013 by making payment of total sale consideration amounting to ₹23,33,430/-. Thereafter, builder buyer agreement for Unit no. C-1133, 500 sq ft was executed with complainants on 21.10.2013. As per clause 13 of it, the possession of unit was supposed to be delivered upto 21.10.2017 (within 48 months). Fact remains that respondent has not issued any offer of possession till date as it is yet to receive the Occupation Certificate for tower in question. In present situation, respondent failed to

honour its contractual obligations without any reasonable justification.

vi. Respondent in its reply has claimed that no loss of any kind has been caused to complainants due to non-handing over of possession of unit till date as unit is not meant for physical possession. Complainants have duly accepted such type of builder buyer agreement for the reason that complainants have invested their money for monetary gains which in this case is assured returns. Said returns were duly paid to the complainants till September, 2018 and were stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainants are not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainants have purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainants in one-go. Assured returns were paid till September, 2018 but stopped thereafter due



to enactment of BUDS Act,2019. Complainants have filed the complaint in year 2024 for seeking refund of paid amount, i.e., after 6 years of non-payment of assured returns. Complainants herein are aggrieved of arbitrary acts of respondent ;first in not handing over possession of the unit till date and secondly stopping the payments of assured returns. Complainants who have already paid whole of total sale consideration in year 2013 got stuck with respondent without any definite timelines of delivery of possession w.r.t. unit booked. If we look at the intent of allottee-complainants, they have chosen to invest in a tangible property-showroom space in a commercial project developed under a license issued by DTCP and Haryana Development and regulation of Urban Areas Act,1975, not in any open share market where there is no definite/precise mode of transaction to be carried out. Investment in commercial property does not imply that complainant-allottees never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent states the unit to be virtually possessed and has not specified any clause for physical delivery of possession of unit. Furthermore, the reason that complainants are now exiting out from the project is that there exists no scope of a valid offer of



possession and execution of conveyance deed even in near future due to various mortgages created by respondent. Complainants rightly are under apprehension that their title of property will never be perfected. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today has clearly highlighted that possession of unit cannot be given to complainants as there is no clause of handing over of physical possession, on the other hand, refund of paid amount with interest also should not be awarded to complainants as unit was only meant for monetary gain-assured returns and for reason that there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault of respondent. Hence, the complainants are not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERD Act, 2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong (by not delivery possession of unit till date). By virtue of Section 18 of RERD Act, 2016, the respondent is obligated to refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainant is



seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022 the prices in real estate market is seeing a upward slide. So, this contention of respondent does not hold any merit.

vii. The complainants are insisting upon refund only for the reason that occupation certificate has not yet been received and further the legal and valid title of the property is not possible as conveyance deed of the unit would not be executed because of the several mortgages of project by the respondent to banks and financial institution. So, there is no hope of getting a valid offer of possession and legal title of unit with the complainants even in near future. Therefore, Authority cannot keep the complainant waiting endlessly for possession. Further, Hon'ble Supreme Court in the matter of **"Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others"** has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state.

Para 25 of ibid judgement is reproduced below:

"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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

viii. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

ix. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "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-

(i) 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;



(ii) 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;

x. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 22.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

xi. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".



xii. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 23,33,430/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 22.05.2025
1.	22,33,430	16.10.2013	28,77,802/-
2.	1,00,000	17.10.2013	1,28,821/-
3.	Total=23,33,430/-		Total= 30,06,623/-
4.	Total Payable to complainant	2333430+3006623 =	53,40,053/-
Respondent shall make the payment of refund after deduction of paid amount of assured return			

xiii. Complainant in its pleadings claims to have paid an amount of Rs 22,33,430/- on 16.10.2013 and Rs 1,00,000/- on



14.10.2013. Proof of said payment is annexed as Annexure C-1. At page 8 of complaint petition, details of paid amount is mentioned wherein Rs 22,33,430/- has been claimed to have paid on 16.10.2013 and Rs 1,00,000/- on 09.10.2013. Proof for said payment is now referred as Annexure C-2. Perusal of file reveals that receipt of payment of Rs 22,33,430/- is annexed at page no. 21 dated 16.10.2013. For another amount of Rs 1,00,000/- page no. 26 of complaint petition is referred, wherein date (handwritten) is 17.10.2013. So, date for second payment, ie. Rs 1,00,000/- is taken as 17.10.2013 for calculation of interest.

xiv. In respect of amount of assured return (liable to be deducted), the respondent in its para 21 of reply claimed to have paid an amount of Rs 20,80,000/- till September, 2018. Copy of computation sheet is annexed at page no. 71-78 of reply. Said sheet at page no. 78 shows two figure, Rs 12,87,505.19/- and Rs 10,68,149.19/- . These two figures do not tally with pleadings of respondent. Complainants have nowhere in complainant mentioned the amount of assured return received by them. In these circumstances, the exact/correct figure of assured return cannot be determined. Therefore, parties are directed to comply with the directions issued vide this final order by duly taking into consideration the deduction of assured return.



xv. Regarding relief of assured return/lease rental, it is observed that complainant wants to withdraw from the project and wants paid money to be refunded back along with interest. But it is the argument of ld. Counsel of complainants that amount of assured return should not be deducted. As a matter of fact, assured return and lease rental was payable by respondent by virtue of clause 15 and 16 of builder buyer agreement respectively. Now, complainants are withdrawing out from the project meaning thereby that the complainants are acting against the terms of 'builder buyer agreement' as said agreement duly provides for allotment of specific unit for a sale consideration along with terms of assured returns/lease rentals. Complainant is no longer interested in having possession of said allotted unit so the terms of agreement at this stage have no meaning. By virtue of seeking refund, complainants are coming out of the relationship with respondent-promoter as an allottees of a booked unit. In the above referred circumstances, the builder buyer agreement does not hold the sanctity of an agreement as complainants wishes to withdraw their allotment out of project in question. The terms of allotment/agreement (amount of assured returns) can be pressed upon only in cases where complainants are still interested in having possession of unit. Offer of paying assured returns/lease



rentals was made by respondent only qua the possession of unit. Moreover, under Section 18 of RERA Act, 2016 where the complainants demand refund of amount, promoter is liable to refund the same along with interest. In cases of the withdrawal from the project, the complainants are not entitled to other benefits such as assured returns/lease rentals attached thereto, they can only be allowed refund along with interest after deduction of the monetary benefit, if any received from respondent. Therefore, plea of complainants of not allowing deduction of assured return stands rejected.

xvi. Ld. Counsel for complainants neither argued nor pressed upon relief clause no. ii.

G. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to refund the entire amount of Rs 23,33,430/- with interest of Rs 30,06,623/- to the complainants in equal share after deducting paid amount of assured return. It is further clarified that respondent will remain



liable to pay the interest to the complainants till the actual realization of the above said amounts.


(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

20. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET SINGH SACHDEV
[CHAIRMAN]