

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

Complaint no.: 585 of 2022
Date of filing: 14.02.2022
Date of decision: 27.05.2025

Hardip Singh Wirk
Regd. Address at: 2, Harcharan Bagh,
Andheria Morh, Mehrauli, New Delhi

Complainant**Versus**

M/s Vatika Ltd.
Regd. office: Vatika Triangle, 4TH FLOOR,
Sushant Lok, Phase-1, Block- A, Mehrauli-
Gurugram Road, Gurugram-122002

Respondent**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member****APPEARANCE:**

Mr. Hemant Phogat (Advocate)
Ms. Ankur Berry (Advocate)

**Counsel for Complainant
Counsel for 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 there under or to the allottees 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, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Date of builder buyer agreement executed between the original allottee i.e., Mahinder Kumar Malhotra and the respondent for trade centre	25.07.2011 [Page 30 of complaint]
7.	Unit no. as per BBA dated 25.07.2011	222B, 2 nd floor, tower A admeasuring 500 sq. ft. of super area [page 33 of complaint]
8.	Shifting of unit vide assignment letter dated 21.11.2018	431, block F, Vatika INXT City Centre, Gurgaon [Page 50 of complaint]
9.	Due date of handing over possession as per BBA dated 25.07.2011	25.07.2014 [As per clause 2 of BBA dated 25.07.2011, the developer will complete the construction of the said complex within three (3) years from date of execution of this agreement, page 33 of complaint]
10.	Assured return/ committed return as per Annexure A of BBA	ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 25.07.2011



		<p>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:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 25.07.2011</p> <p>A. Till offer of possession: 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. 25.07.2011 on a monthly basis before the 15th 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 applicable.</p> <p>1. If the rental is less than Rs. 65/- per sq. ft. than 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. than 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 48 of complaint]</p>
11.	Letter by respondent regarding assignment of rights of 1 st subsequent allottee of subject unit in favour of the complainant	<p>21.11.2018</p> <p>[Page 50 of complaint]</p>

12.	Total sale consideration as per clause 1 of BBA dated 25.07.2011	Rs.23,15,625/-
13.	Amount paid by the complainant as per clause 2 of BBA dated 25.07.2011	Rs.23,15,625/-
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Amount of assured return paid by the respondent to till September 2018	Rs.31,10,250/- [Page 39 of reply]

B. Facts of the complaint

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

- a. That Ms. Madhu Tangri D/o Sh Ram Narayan Sama purchased a Unit Bearing No. 431, Block F, at Vatika INXT City Centre, Gurgaon from Mr. Mahinder Kumar Malhotra s/o Sh RK Malhotra. That the present Complainant purchased the said unit from the Former Allottee. Thereafter, the said unit was transferred to the Complainant vide a Second Transfer dated 18.10.2018.
- b. That the Respondent vide its letter dated 21.11.2018, duly transferred the rights/benefits from the original Builder Buyer Agreement dated 25.07.2011 to the Complainant. That it is pertinent to mention that the due date of possession was 30.09.2014, however the Respondent has failed to deliver the possession of the aforementioned unit to the Complainant within the prescribed period of time as mentioned in the original allotment letter issued by the Respondent in favour of Mr. Mahinder Kumar Malhotra.
- c. That it is also pertinent to mention that the respondent vide addendum to the agreement dated 25.07.2011 had promised an

assured monthly return to be calculated @ ₹71.50/- per sq. ft till offer of possession and ₹65/- after completion of the building. The assured return first accrued from 25.07.2011. It is pertinent to mention here that the respondent only paid the promised assured monthly return till September 2018. Even after the complainant seeking the reason for respondent's abstinence from providing the assured return, neither the assured return was resumed nor was any satisfactory response provided by the respondent.

- d. 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 complainant. That, the Complainant has no other efficacious remedy with him but to file the present Complaint against the Respondents. That, the Respondent are 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 Complainant by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- e. That, the Complainant further declares that the matter regarding which this Complaint has been filed is not pending before any other court of law or any other authority or any tribunal. That the Complainant contacted the Respondent on several occasions and was regularly in touch with the Respondent. The Respondent was never able to give satisfactory response to the Complainant regarding the status of the construction and was never definite about the delivery of the possession. Some or the other reason was

being given in terms of some dispute in regard to land or shortage of resources etc.

- f. That the Respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same will not be able to deliver the possession within the stipulated time. It is abundantly clear that the Respondent have played a fraud upon the Complainant and has cheated him fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.
- g. That there is an apprehension in the mind of the Complainant that the Respondent has been playing fraud by illegally cancelling the Unit booked by the Complainant, even though the Complainant has paid all the demands timely as and when raised by the Respondent. It is noteworthy to mention that there is something fishy which the Respondent is not disclosing to the Complainant just to embezzle the hard-earned money of the Complainant. The Complainant has neither political rivalry nor any business jealousies with the opposite party rather is a common man.
- h. That the Respondent No. 1 is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The Complainant has suffered on account of deficiency in service by the Respondent and as such the Respondent is fully liable to cure the deficiency as per the provisions of the Real Estate

(Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- i. That the Complainant 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. Further, the Complainant is seeking and entitled to full refund of the amount including but not limited to all the payments made in lieu of the said unit/flat, as per the terms and conditions of the Builder Buyer Agreement executed by the Respondent and even otherwise are entitled to the same. That the Complainant cannot be held responsible by any stretch of imagination. Further, the Complainant herein reserves his right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Authority.
- j. That the present Complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the Respondent in sale of their Units and the provisions allied to it. The modus operandi adopted by the Respondent, from the Respondent's point of view may be unique and innovative but from the Allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the Allottees, be it either by arbitrarily cancelling the Unit booked by the Complainant or by raising illegal

demands without giving any heed to the construction linked payment plan attached to the Apartment Buyer's Agreement.

- k. That as per section 18 of the RERA Act. 2016, the promoter is liable to Refund the Amount and pay interest at the Prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale. The Complainant 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. That, the Complainant further declare that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- That the respondent may very kindly be directed to handover the actual possession of the unit bearing no. 431, Block F, at Vatika INXT City Centre, Gurugram, along with the all the rights, title and interests without any delay or default in terms with the original builder buyer agreement dated 25.07.2011.
 - That the respondent may very kindly be directed to register the sale deed in favour of the complainant.
 - That, the respondent may very kindly be directed to pay the outstanding assured monthly return @71.50/- per sq. ft. per month (as no possession has been offered) along with 18% GST on the total amount.

- d. That the respondent be directed to pay penalty for delay in possession on the amount paid i.e. along with assured rentals till realization, as per RERA Act.
 - e. That the respondent may be very kindly be directed to continue paying the assured monthly return till the unit is leased out.
 - f. The respondent be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the builder buyer agreement.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
- a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Builder Buyers Agreement dated 25.07.2011, as shall be evident from the submissions made in the following paras of the present reply.
 - b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the Complainant 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. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".

- c. Thus the 'Assured Return Scheme proposed and floated by the Respondents has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the Respondent duly paid Rs. 31,10,250/- till September, 2018. The Complainant has not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
- d. 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 Respondent Company cannot be made to run a scheme which has become infructuous by law. Thus, the present complaint deserves to be dismissed at the very outset, without wasting precious time of this Hon'ble Authority.

- e. That the complaint has been filed by the Complainant 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 Complainant 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.
- f. That it is pertinent to mention that the present complaint is not maintainable before the Hon'ble Authority as it is apparent from the prayers sought in the complaint. That further it is crystal clear from reading the complaint that the Complainant is not an 'Allottee', but purely is an 'Investor', who is only seeking physical possession/delay possession charges from the Respondent, by way of present petition, which is not maintainable as the Unit is not meant for personal use rather it is meant for earning rental income.
- g. That it is also relevant to mention here that the commercial unit of the Complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per clause 32.1(d) of the Agreement, the said commercial space shall be deemed to be legally possessed by the Complainant. Hence, the commercial

space booked by the Complainant is not meant for physical possession.

- h. That in view of the judgment and order dated 16.10.2017 passed by the Maharashtra RERA Authority in the complaint titled Mahesh Pariani vs. Monarch Solitaire order, Complaint No: CC00600000000078 of 2017 wherein it has been observed that in case where the Complainant has invested money in the project with sole intention of gaining profits out of the project, then the Complainant is in the position of co-promoter and cannot be treated as 'Allottee'.
- i. That 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 upheld its earlier decision of not entertaining any matter related to assured returns. That further in the matter of Jasjit Kaur Grewal vs. M/s MVL Ltd. (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.
- j. That the Complainant has come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the Complainant just to harass the Respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of

others. The Complainant has instituted the present false and vexatious complaint against the Respondent Company who has already fulfilled its obligation as defined under the BBA dated 25.07.2011. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainants, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- k. It is submitted that the erstwhile allottees entered into an agreement i.e Builder Buyers Agreement dated 25.07.2011 with Respondent Company thereafter owing to the name, good will and reputation of the Respondent Company the present Complainant purchased the unit from the erstwhile allottees on 21.11.2018. That further, the construction of Unit was completed and the same was duly informed to the erstwhile allottees vide letter dated 27.03.2018. That due to external circumstance which were not in control of the Respondent, minor time line alterations occurred in completion of the project. That even though the Respondents suffered from setback due to external circumstances, yet the Respondents managed to complete the construction. Further the assured returns were stopped in September, 2018 thus the Complainant herein have never received any assured return amount.
- l. The present complaint of the Complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate

Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/Developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the Developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- m. That in matter titled Anoop Kumar Rath Vs M/S ShethInfraworld Pvt. Ltd. in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the Promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016. The efforts of the Promoter to ensure the progress of the development works combined by the fact that the construction

was completed and intimated to the Complainant vide letter dated 27.03.2018 and the same is also admitted by the Complainant and this needs to be considered while adjudicating the present matter.

- n. Thus, upon finding the reasons to be justified and beyond the control of Promoter, the Hon'ble Maha RERA Authority condoned the delay in giving possession. In the present case there has not been one single delay causing event which can be attributed to the Respondent and hence the Respondent prays for the Respondent not be held liable for time line changes.
 - o. That the Complainant is 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 erstwhile allottees was sent the letter dated 27.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainant and against the Respondent and hence, the complaint deserves to be dismissed.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The written submissions filed by the parties are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

10. 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

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

12. 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 investor

13. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"

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 crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per

the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

15. 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.
16. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating

agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"

17. 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. Assured return.

18. The complainants are seeking unpaid assured returns on monthly basis as per the addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum. 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 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.

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 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 addendum agreement.
21. 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 addendum to the agreement dated 25.07.2011.

G.II. Delayed possession charges**G.III. Possession**

22. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and 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"

23. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within a time period of 3 years from the date of BBA i.e., 25.07.2011. Accordingly, the due date of possession comes out to be 25.07.2014.
24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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. 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%.

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 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., 27.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 25.07.2014.
27. 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 possession, can claim both the assured return as well as delayed possession charges?
28. 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 addendum to BBA dated 25.07.2011. The assured return in this case is payable as per "addendum agreement". The promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till the completion of the project and thereafter ₹65/- per sq. ft. per month thereafter. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹35,750/- per month whereas the delayed possession charges are payable approximately ₹21,419/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this

specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

29. 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 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.
30. 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 BBA and addendum executed thereto along with interest on such unpaid assured return. As per addendum to BBA dated 25.07.2011, the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till offer of possession and ₹65/- per sq. ft. on monthly basis after the completion of the building. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning

of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

31. Admittedly, the respondent has paid an amount of ₹31,10,250/- to the complainants as assured return till September 2018. 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., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the project after 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.
32. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
33. With regard to the relief sought concerning possession, the Authority notes that the Builder Buyer Agreement (BBA) executed between the parties does not contain any clause stipulating the handing over of possession of the said unit to the complainant. Instead, the agreement reflects a leasing arrangement between the parties, as is evident from Clause 32.2 of the BBA and the addendum appended thereto.

G.IV. Conveyance deed

34. 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.
35. 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."

36. 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 complainant as per norms of the state government.

H. Directions of the authority

37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 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 till the date of offer of possession 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 complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- e. The respondent is directed to 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 complainant as per norms of the state government.

38. Complaint stands disposed of.
39. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

(Arun Kumar)

Chairperson



HARERA
GURUGRAM