

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

Date of decision: 27.05.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA TOWERS	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7065/2022	Madhu Bala Jain V/s Vatika Limited. & ors.	Sh. Dhruv Lamba Ms. Ankur Berry
2.	CR/7066/2022	Madhu Bala Jain & anr. V/s Vatika Limited. & ors	Sh. Dhruv Lamba Ms. Ankur Berry

CORAM:

Shri. Arun Kumar

Chairperson

Shri. Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA TOWERS' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location		"Vatika Towers", Sector 54, Gurugram, Haryana.	
Assured return clause:			
a) Assured monthly commitment of Rs.129.72/- per sq. ft. payable till completion of the project.			
b) Post completion of the project an amount equivalent to Rs.120/- per sq. ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said unit, for up to 36 months or till the said unit is put on lease, whichever is earlier. After the said Unit is put on Lease, then payment of aforesaid committed return will come to an end from the date of execution of Lease deed and the buyer will start receiving Lease rental in respect of the said Commercial Unit from the rent commencement date as per the Lease Deed of the said Unit.			
OC: Not obtained			
Offer of possession: Not offered			
Comp no.		CR/7065/2022	CR/7066/2022
Application allotment for		23.05.2015 [pg. 38 of reply]	23.05.2015 [pg. 37 of reply]
Unit no. and area		P-297 admeasuring 500 sq. ft.	P-299 admeasuring 500 sq. ft.
Acknowledgement letter		30.07.2015 [pg. 8 of complaint]	30.07.2015 [pg. 8 of complaint]
Total sale consideration		₹33,00,000/- [pg. 4 of complaint]	₹33,00,000/- [pg. 4 of complaint]

Amount paid	₹34,68,600/- [pg. 4 of complaint]	₹34,68,600/- [pg. 4 of complaint]
Assured return paid	₹25,94,400/- till 18.10.2018	₹25,94,400/- till 18.10.2018
a. Execute BBA b. Assured Return c. DPC d. Litigation cost-₹88,000/-		

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7066/2022 titled as Madhu Bala Jain & Krishan Kumar Jain V/s Vatika Limited & ors.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.
- A. Unit and project related details**
6. 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:
CR/7066/2022 titled as Madhu Bala Jain & Krishan Kumar Jain V/s Vatika Limited & ors.

S.no.	Particulars	Details
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1.	Name of the project	Vatika Towers, Golf Course Road, Suncity, Sector 54, Gurugram, Haryana.
2.	Application for allotment	23.05.2015 [Page 37 of reply]
3.	Date of builder buyer agreement	Not placed in file
4.	Unit no.	P-299 admeasuring 500 sq. ft.
5.	Provision regarding assured return as per acknowledgement letter dated 30.07.2015	<p>a) Assured monthly commitment of Rs.129.72/- per sq. ft. payable till completion of the project.</p> <p>b) Post completion of the project an amount equivalent to RS. 120/- per sq. ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said unit, for up to 3 years or till the said unit is put on lease, whichever is earlier. After the said Unit is put on Lease, then payment of aforesaid committed return will come to an end from the date of execution of Lease deed and the buyer will start receiving Lease rental in respect of the said Commercial Unit from the rent commencement date as per the Lease Deed of the said Unit.</p> <p>Page 8 of complaint</p>
6.	Due date of possession	Cannot be ascertain
7.	Total sale consideration	Rs.33,00,000/- [As per statement of account dated 19.06.2015, page 4 of complaint]
8.	Paid up amount	Rs.34,68,600/- [As per statement of account dated 19.06.2015, page 4 of complaint]
9.	Offer of possession	Not offered
10.	Occupation certificate	Not obtained
11.	Legal notice sent by the complainant seeking payment of assured return from November	15.09.2022 [Page 14 of complaint]

	2018 along with 15% interest, to execute BBA	
12.	Amount of assured return paid by the respondent	Rs.25,94,400/- w.e.f. 18.06.2015 till 18.10.2018 (i.e., Rs.64,860/- per month) [Page 5 of reply]

B. Facts of the complaint

7. The complainant has submitted as under:

- a. That after getting lured by the rosy picture as shown by the officials of the respondents, the complainants decided to invest her hard-earned money in the Project namely 'Vatika Towers' and made an initial payment towards booking amount of ₹ 5,00,000/- out of the total sale consideration of ₹ 33,00,000/-. Subsequently, the complainants cleared the remaining amount of sale consideration amounting to ₹ 12,19,300/- on 15.06.2015 and ₹ 17,19,300/- on 15.06.2015. The factum of payment can also be verified from the statement of account issued by respondent no. 1 dated 19.06.2015.
- b. That on 30.07.2015 the respondent no. 1 also issued a letter acknowledging the receipt of the application dated 26.05.2015 allotting Priority No. P-299 to the complainants for a unit ad-measuring 500 sq. ft. and further assured the complainants of a monthly commitment i.e. assured return to the tune of Rs. 129.72/- per sq. ft. of the area which shall be payable to the complainants till the completion of the project. Along with the said letter, the respondent no. 1 to prove his willingness and good conscience issued a cheque bearing no. 982030 and 982032 dated 10.07.2015 of Rs. 41,835 (exclusive of TDS) towards commitment charges.

- c. That as all the sale consideration was paid to the respondent no. therefore, the respondent no. 1 started the payment of assured returns to the complainants to the tune of Rs. 32,430/- every month i.e. Rs. 129.72 per sq. ft. for 500 sq. ft. area.
- d. That the complainants after the payment of the complete sale consideration requested the officials of the respondents to either execute a Builder Buyer Agreement or an Agreement to Sell but to no avail.
- e. That as the period of 36 months elapsed in the month of August 2018, the complainants again went to the registered office of the respondent no.1 and asked the officials of the respondent no.1 about the status of Tower C of Vatika Towers but the officials of the respondents started giving vague answers. Further, on being asked about the execution of Agreement to sell or Builder Buyer Agreement, the officials of the respondents assured that it will be signed soon and further assured that there is no need to doubt the integrity of the project as the builder is still giving assured return. On this pretext, the complainants got convinced and came back. However, to the utter dismay of the complainants that after 2 months i.e. after October 2018, the respondent no.1 even stopped giving the assured returns as promised by the respondent no.1 in the letter dated 30.07.2015. The complainants repeatedly tried contacting the officials of the respondents but no plausible answers were given by them and the matter was got lingered on, on one pretext or the other. Consequently, the complainants again went to the office of the respondents whereby they met Mr. Mukesh Kashyap

and it was assured by him that the project will be completed soon and from next month the assured return will start again but the said assurance made by the official of the respondents went into vain.

- f. That That when the officials of the respondent started ignoring the calls and stopped meeting and entertaining the complainants then the complainants having no via media wrote emails to the respondents on 08.07.2019, 29.09.2019 and 08.07.2020 for the want of status of the project and regarding the non-payment of the assured return but to the dismay of the complainants that all such mails went unanswered by the respondents.
- g. That from the above act and conduct, it became apparent to the complainants that the respondents have no intentions of launching Tower-C in Vatika Towers, with further no intentions of releasing the assured returns amount of the complainants and with further no intentions of executing any BBA or ATS with the complainants. Lastly on 09.09.2022, the complainants visited the official website of the respondents whereby it was revealed that the respondents have plans to launch Tower-C in Vatika Towers on the Golf Course Road.
- h. That on 15.09.2022, the complainants sent a Legal Notice to the respondents to clear the dues of the complainants pertaining to the assured return amount from November 2018 till date, along-with 15%p.a. interest from the date of accrual of the said amount till its actual realization. Further, to execute a Builder Buyer Agreement or Agreement to Sell in favour of the complainants for the unit ad-measuring 500 sq. ft. (super area) in Tower C, Vatika Towers, Golf Course Road within 7 days next from the receipt of this Legal Notice.

However, despite the due delivery of the same Legal Notice on 17.09.2022, the respondents failed to either reply to the said Legal Notice or to accede to the just and legal demands of the complainants. Hence, this complaint.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):

- a. The authority may kindly direct the respondents to execute an BBA in favour of complainant of a unit at measuring 500 sq. ft. in Vatika towers golf course road.
- b. Direct the respondent to pay the remaining amount of a short return which was stopped by the respondents from October 2018 along with 15% interest per annum from the date of accrual of said amount till its actual realization.
- c. Direct the respondent to pay delayed possession charges for the deliberate and inordinate delay in handing over the possession of the unit to the complainant.
- d. The authority may kindly grant litigation expense to the tune of ₹88,000/-.

9. 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.

10. The respondent has contested the complaint on the following grounds:

- a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law, and is filed without a cause of

action, hence is liable to be rejected on this ground alone. That the complainant has approached the Hon'ble Authority with unclean hands. That the claims of the complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. That the Complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

- b. That the Complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the Complainant is raising false, frivolous, misleading and baseless allegations against the Respondent with intent to make unlawful gains.
- c. At the outset, the Complainant has erred gravely in filing the present Complaint and misconstrued the Provisions of the RERA Act. That it is an admitted fact that by no stretch of imagination it can be concluded that the Complainant herein is an "Allottee/Consumer". That the Complainant is simply an investor who approached the Respondents for investment Opportunities and for steady Assured Returns and Rental Income. That the Complainant being an investor in the Project has no locus standi to file the present Complaint.
- d. That in the year 2015, the complainant, learned about the commercial project launched by the Respondent under the name and title 'Vatika Towers' ("Project") and repeatedly visited the office of the Respondent to know the details of the said project.

- e. That after having an interest in the commercial project being developed by the Respondent, the Complainants vide an application form dated 23.05.2015, booked a Unit tentatively admeasuring 500 Sq. ft for an amount of ₹34,37,788/- on free will and consent, without any demur whatsoever. Thereafter, considering the future speculative gains, the Complainant, in June 2015, at their own will made the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same.
- f. Were allotted a priority number P299 in the said project. It is pertinent to mention that complainants were aware of terms and conditions under the afforested allotment and only upon being satisfied with each and every term agreed to execute the same with free will and consent. That as per the application form executed by the complainants for allotment of the said unit the complainants were under an obligation to execute the buyer's agreement in order to define the mutual terms and conditions agreed between the parties.
- g. That the unit of the Complainant was tentative and subject to change, as was categorically agreed between the Parties in terms of the application form. It is further submitted that the sale of the said unit is subject to force major condition and the said clause has been duly accepted by the complainants without any demur or protest. That as per clause 19 of the application form, the intending allottee agrees that the sale of the premises is subject to force major clause which inter alia include delay on account of non-availability of steel and/or Cement or other building materials, or water supply or electric

power or slow down strike or due to a dispute with the concern construction agency employed by this company civil commotion or by person of war or enemy action or terrorist action or earthquake or any act of God or if non delivery of possession as a result of any notice order, rule or notification of the government and slash or any other public or competent authority or for any other reasons beyond the control of the company and in any of the opposite events the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises. That the construction of the set project got delayed due to the reasons beyond the control of the respondent.

- h. That at this stage, it is categorical to highlight that the Complainant is trying to mislead this Hon'ble court by concealing facts which are detrimental to this Complaint at hand. That the application form executed between the parties on 23.05.2015 was in the form of an "Investment application". That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.
- i. That it is humbly submitted before the Hon'ble Authority that the Respondent was always prompt in making the payment of assured returns as agreed under the Agreement. It is not out of the place to

mention that the Respondent herein had been paying the committed return of Rs. 64,860/- for every month to the Complainants without any delay since 18.06.2015 till 18.10.2018 (i.e., for 40 months). It is to note, that as on 18.10.2018, the Complainant herein had already received an amount of Rs.25,94,400/- as assured return as agreed by the Respondent per the aforesaid allotment. However, post October 2018, the Respondent could not pay the agreed Assured Returns due to change in the legal position and the illegality of making the payment of the same.

- j. That in the given facts and circumstances, it is most humbly submitted that the Respondent had rightly stopped making the payment, and in any case whatsoever, the present Complaint cannot be entertained by this Hon'ble Authority. That the Complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that

nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".

- k. That as the Complainant in the present complaint is seeking the relief of Assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019.
 - l. It is imperative to mention that the issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court. Wherein, the Hon'ble High Court in the matter of 'Vatika Limited vs Union of India and Anr.' in CWP No. 26740 of 2022, had issued notice to the Respondent Parties and had also restrained the competent authorities from taking any coercive actions against the Respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.
 - m. That it is also apropos to bring into the Knowledge of the Ld. Authority that an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favour of the allottee.
11. 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

12. 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

13. 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

14. 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.*

15. 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

16. 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"

17. 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

18. 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.
19. 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"

20. 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 complainant.

G.I. Assured return.

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

22. 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.
23. 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 acknowledgement letter.
24. 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 acknowledgement letter dated 30.07.2015.

G.II. Delayed possession charges

25. 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"***

26. Further, the authority observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018***, the Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Since no BBA has been

executed between the parties therefore the due date of possession is deemed to be calculated as 3 years from the date of acknowledgement letter i.e., 30.07.2015. Accordingly, the due date of possession comes out to be 30.07.2018.

27. **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"

28. 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%.
29. 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 30.07.2018.

30. 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?
31. 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 acknowledgement letter dated 30.07.2015. The assured return in this case is payable as per "acknowledgement letter". The promoter had agreed to pay to the complainants allottee ₹129.72/- per sq. ft. on monthly basis till the completion of the project and thereafter ₹120/- per sq. ft. per month for up to 3 years or till the said unit is put on lease whichever, is earlier. 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 ₹64,860/- per month whereas the delayed possession charges are payable approximately ₹32,084/- 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.

32. 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.
33. 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 acknowledgement letter issued thereto along with interest on such unpaid assured return. As per acknowledgement letter dated 30.07.2015, the promoter had agreed to pay to the complainants allottee ₹129.72/- per sq. ft. on monthly basis till completion of the project and ₹120/- per sq. ft. on monthly basis after the completion of construction of the said unit, for up to 3 years or till the said unit is put on lease, whichever is earlier. 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 18.10.2018 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.

34. Admittedly, the respondent has paid an amount of ₹25,94,400/- to the complainants as assured return till 18.10.2018. 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., @ ₹129.72/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 18.10.2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, ₹120/- 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 acknowledgment letter.
35. 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.

G.III. Execute BBA

36. The respondent is directed to execute the BBA with the complainants within a period of 90 days from the date of this order.

G.IV. Litigation Cost-₹88,000/-

37. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section

71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.

H. Directions of the authority:

38. 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., @ ₹129.72/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 18.10.2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, ₹120/- 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 acknowledgment letter.
- 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 allot and deliver the possession of booked unit and execute buyer's agreement within a period of 90 days from the date of this order.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. True certified copies of this order be placed on the case file of each matter.
41. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025


(Arun Kumar)
Chairperson