

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

Complaint No. : 2294 of 2024
Date of filing : 17.05.2024
Date of decision : 09.05.2025

Shipra Sahni
R/o: H.No.B8/12, 2nd floor,
Vasant Vihar, New Delhi-110057.

Complainants

Versus

1. M/s. Vatika Ltd.
(Formerly known as Vatika Landbase Pvt.
Ltd.)
2. M/s Vatika One India Next Pvt. Ltd.
Address: Vatika Trianglr, 4th floor,
Sushant Lok, Phase L, Block A,
M.G. Road, Gurugram-122002, Haryana.

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Thribhuwan Sinha

Counsel for the complainant

Shri Venket Rao

Counsel for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S.no.	Particulars	Details
1.	Name of the project	"Vatika One India Next" at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial colony
3.	Application form dated	16.05.2017 [As admitted by the respondents on page 4 of reply]
4.	Unit no.	Priority No. P-288, [Undertaking given by the complainant at page 28 of complaint and at page 29 with letter of allocation of priority number]
5.	Unit area (in super area)	500 sq. ft. [Undertaking given by the complainant at page 28 of complaint and at page 29 with letter of allocation of priority number]
6.	Allocation of priority number	26.05.2017 [Page 29 of complaint]
7.	Date of execution of buyer's agreement	Not executed
8.	Due date of Possession	26.11.2020 As no BBA on record. (Calculated 3 years from the date of allocation letter dated 26.05.2017 i.e., 26.05.2020 + 6 months on account of Covid 19) [As per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> , Hon'ble Apex Court has held that a time period of 3 years would have been reasonable for completion of the contract]
9.	Assured return clause as per Allocation letter dated 26.05.2017	1. That the payments of your assured return of Rs.75.83 sq. ft. per month on super area of said unit will commence only on receipt of 100% of Basic Sale Price by us from your, in terms of the payment plan/schedule of payment as

		agreed/opted by you and will be paid till the completion of the construction of the building. Post completion of construction of the building, you will be paid committed return of Rs.65/- per sq. ft. per month on super area for up to three years from the date of completion of construction of the building or the said unit is put on lease, whichever as earlier. Your will be entitled to receive lease rent in respect of the said unit from the Rent Commencement date in accordance with lease document as may be executed with prospective tenant...
		[Page 29 of complaint]
10.	Total sale consideration	Rs.42,25,163/- (As alleged by complainant at page 27 of complaint)
11.	Paid up amount	Rs.42,25,163/- (As per undertaking by complainant at page 28 of complaint, duly acknowledged by respondents.)
12.	Assured return paid by the respondents	Rs.6,55,562.58/- [As per ledger at page 50 of reply]
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained
15.	Surrender Letter by the complainant	07.04.2022 (Page 31 of complaint)
16.	Settlement/undertaking between the parties	20.04.2022 [Page 28 of complaint]

B. Facts of the complaint

8. The complainant has made the following submissions:

- a. That in the first week of May 2012, the complainants received a marketing call from the office of the respondent, and the caller represented himself as the sales manager of the respondent and marketed commercial project namely **INDIA NEXT CITY CENTRE**, at Sector-83, Gurgaon Manesar Urban Complex, District Gurgaon, Haryana. The respondent asked to book a commercial unit in the said project. The respondent allured the complainants with proper



specifications and assured that committed assured return will be paid by the respondent to the complainants on the super area from the date of execution of buyer's agreement till the completion of construction and thereafter for up to 03 years from the date of completion of construction of the said building or till the commercial units put on the lease. The respondent assured that possession of the unit will be handed over very soon, since the construction of the project is at an advanced stage. The respondent gave them a brochure and a pre-printed form.

- b. That, believing on the representation and assurance of the respondent, the complainants booked a commercial unit. The respondent allotted a unit no.288 on Second Floor in Block-P having super area of 500 sq. fts. in the said project. The commercial unit was booked for a total sale consideration of **Rs.42,25,163/-**. The same was duly paid by the complainants to the respondent. The payment plan and price included basic price, EDC, IDC, IFMS, Club membership and car parking.
- c. That on 26.05.2017, the respondent issued a letter of allotment in the name of the complainant, confirming to the allotment of commercial unit.
- d. Since the buyer has paid the full basic sale consideration for the commercial unit upon signing of this Agreement and has also opted for leasing arrangement after the commercial unit is ready for occupation and use, the Developer has agreed to pay Rs.72.85/- per sq. fts. super area per month by way of assured return to the buyer from the execution of this agreement till the construction of the said commercial unit is complete.
- e. That the respondent informed the complainant, stating therein that "*we are pleased to inform you that the construction work of Tower-P of INDIA*



NEXT CITY CENTRE, at Sector-83, Gurgaon Manesar Urban Complex, District Gurgaon, Haryana is completed, and the building is operational and ready for occupation. Further, we are in active discussion with a prospective tenants for the property and expect to lease out substantial area in the building in due course. Thereafter, the complainant personally visited the office of the respondent alleging that TOWER-P is not ready for occupation and operation and asked for a joint inspection. It is matter of fact, the complainants verified the information from the website of DTCP, which states that till now the respondent has not received an occupation certificate from the authority, and the license has also expired.

- f. That since November 2018, the complainant has been regularly requesting the respondent to pay the committed assured return and also to provide a copy of the occupation certificate.
- g. That it is highly germane to mention here that the respondent has assured to give committed assured returns to the complainants, but the respondent has paid assured returns to the complainant only till Nov-2018 and thereafter the respondent has stopped paying assured returns on the pretext that the construction has been completed, which is clearly not the case. Even otherwise for the sake of argument, the respondent has failed to let out the units in terms of the Clause 16. Despite paying the entire consideration amount i.e. Rs.42,25,163/-, the respondent has failed to honour the terms of the BBA. Moreover, till today, which is almost 11 years from the date of execution of the BBA, the respondent has not completed the construction and procured the OC from the concerned department.
- h. That as per the Section 12 of the Act, 2016, the promoter is liable to return the entire investment along with interest to the allottees of an



apartment, building or project for giving any incorrect, false statement, etc. As per the Section 18 of the Act, 2016, the promoter is liable to pay the interest or return of amount and to pay compensation to the allottee of a unit, building or project for a delay or failure in handing over of such possession as per the terms and conditions of the builder buyer agreement. As per the Section 19(4) of the Act of 2016, the promoter is entitled to a refund of the amount paid along with interest.

- i. That the respondent has been continuously served with reminders and persistent requests were made telephonically, written intimations and by personal visits by complainant, to abide by the terms of the agreement entered between the parties and make the payment of the assured returns as per the terms of the agreement. The respondent kept on reassuring complainant that he will shortly make the payments as required. However, the respondent has willfully neglected and failed to adhere and make the payment of assured returns. Hence, this complaint.

C. Relief sought by the complainants:

9. During hearing dated 09.05.2025, the counsel for the complainants clarified that the complainants are seeking the following relief(s):
 - i. Direct the respondent to refund of entire consideration amount of Rs.42,25,163/- along with 18% per annum from the date of allotment till date.
 - ii. Directing the respondent to pay the sum of Rs.10,00,000/- towards the damages, loss, compensation for causing mental pain, agony and financial loss to the complainants.
 - iii. Direct Respondent to pay the cost of litigation as well as advocate fees to the Complainants.

10. 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 respondents

11. By virtue of reply dated 28.11.2024, the respondents have contested the complaint on the following grounds:

- i. That the License bearing no. 122 of 2008 and other plans and approvals for development of the said project land were initially approved and renewed in the name of "M/s Trishul Industries". M/s Trishul Industries was converted into a Public Ltd. Company i.e. M/s Trishul Prop. Build Ltd. by following due procedure which is evident from URC-1. M/s Trishul Prop. Build Ltd. was duly incorporated on 30.06.2006 under the Companies Act, 2013 and the Director of Town and Country Planning upon receipt of request, granted in principle approval for transfer of license No.122 dated 14.06.2008, initially issued to M/s Trishul Industries in favor of M/s Trishul Propbuild Ltd. vide Memo No. LC-1841-JE (VA)-2013/35170 dated 01.04.2013. Thereafter, M/s Trishul Propbuild Ltd. went into voluntary winding up and the Hon'ble High Court of Punjab & Haryana, appointed an official liquidator against M/s Trishul Propbuild Ltd. Further, vide order dated 18.01.2019, the Hon'ble High Court had allowed for dissolution of M/s Trishul Prop build Limited. Upon dissolution, the assets of M/s Trishul Propbuild Limited were subjected to be transferred to the Respondent Company i.e., M/s Vatika Limited in terms of the approved "Scheme for Transfer of Assets".
- ii. That the Respondent Company i.e., M/s Vatika Limited was constrained to have the License, plans and other approvals with respect to the project in question transferred in its name. The Noticee



Company on 27.12.2019 applied before the DTCP for transfer of the License in its name. It is submitted that the said transfer is in process in the records of the DTCP and however, all the communication with the company is now being done in the name of the Respondent Company only and acknowledging the name of Trishul Industries has been changed to Vatika Limited.

- iii. That delay in obtaining the Occupation Certificate is purely beyond the control of the Appellant due to the above process of winding-up, merger of assets and transfer of License and plans etc.
- iv. That in the year 2017, the complainant being in search of investment opportunities learned about the project launched by the respondent titled as **"INDIA NEXT CITY CENTRE"** (*herein referred to as 'Project'*) at Sector 83, Gurugram and visited the office of the Respondent to know the details of the said project. The Complainant further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- v. That after having dire interest in the commercial project constructed by the respondent, the complainant decided to invest and thus had booked a unit under the assured return scheme vide Application Form dated 16.05.2017. Further, upon knowing the assured return scheme, the complainant upon own will paid the entire sale consideration amount to the respondent for making steady monthly returns.
- vi. That the complainant was aware of the status of the project and invested in the project of the respondent without any protest or demur, to make steady monthly returns upon own judgement and investigation.



- vii. That on 26.05.2017, the respondent vide Allotment Letter allotted Priority No. P-288 measuring 500 sq. ft. (*hereinafter referred to as Priority Number*) in the aforesaid project. The Complainant was never allotted an Unit only a Priority Number was allotted.
- viii. That as per **Clause 1 and 2** of the Allotment Letter, the respondent was supposed to pay Rs. 75.83/- per sq. ft, per month as assured return to the complainant, from the date of full payment of the consideration till the completion of the building and Rs. 65/- per sq. ft. per month after completion of building up to 3 years or till the unit is put on lease, whichever is earlier.
- ix. That the complainant requested for refund in the year 2019. In April 2022, the complainant executed an undertaking following the complainant's request for refund made via the letter dated 31.08.2019 and email dated 28.06.2019. Based on the terms outlined therein, it can be conclusively regarded as a settlement agreement between the parties.
- x. That the undertaking explicitly states that the refund will be governed by the terms of the allotment letter and the Builder-Buyer Agreement (BBA), which entitles the promoter to deduct earnest money. However, the parties have mutually agreed to refund the entire amount deposited by the complainant in three instalments, which was duly accepted by the Complainant. Furthermore, any interest on the refund would accrue only from October 2022, which is the due date for payment by the promoter. The Complainant by executing the undertaking has voluntarily waived her right to claim any interest accrued prior to April 2022. The undertaking is unambiguously clear in its omission of any reference to interest payable.



- xi. That the unit in question was deemed to be leased out upon completion and the respondent has already put the unit on lease. As the complainant had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties. That only valid inference that can be drawn out of the futile attempt of the complainant by filling this complaint is that the complainant is an investor and seeks speculative gains. Therefore, the complaint is liable to be dismissed at the very outset.
- xii. That the Agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Leasing Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant is not a "Allottee" but investors who have invested the money for making steady monthly returns.
- xiii. The complainant herein had authorized the Respondent to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of the Respondent and the same are explained in detail herein below:
- The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The Respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
 - ***The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc. are highlighted in the table below:***

S. No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
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1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 16.11.2016 (8 days)	–
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)	
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 08.01.2018 (22 days)	–
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 17.06.2018 (3 days)	–
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018- 12.11.2018 (11 days)	
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 26.12.2018 (3 days)	–
7.	Central Pollution Control Board		26.10.2019 30.10.2019 (5 days)	–
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr.Bhure Lal, Chairman	Complete Ban	01.11.2019 05.11.2019 (5 days)	–
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 14.02.2020 (3 months 11 days)	–
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)	



11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021	3 months
TOTAL			1.7 years (approx.)

- xiv. That all these factors being *force majeure* may be taken into consideration for the calculation of the period of the construction of the Project. That after considering the above delay, the date of completion of the building has to be extended by approximately 1.7 years. It is not out of the place to mention here that the Respondent is entitled for the ***extension of 6 months' time period*** on account of the delay so caused due to ***worldwide spread of covid-19***, which the Ld. Authority and other courts had considered it as a *force majeure* circumstance and allowed extension of 6 months to the Promoters at large on account of delay so caused as the same was beyond the control of the Respondent. It is also required to be considered that the Ld. Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 had considered the period affected from the second wave of Covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 (Three) months extension to all the Promoters. Therefore, as the project of the respondent herein was also affected by the Second Wave of Covid-19, and therefore, the extension for a period of **3 months** may be allowed.
- xv. That despite these obstructions and changes in the prevailing laws, the Respondent was in the advanced stages of the construction in the year 2022.



- xvi. That the complainant was paid the complete assured returns amounting to Rs. 6,55,562/- till October 2018 and notified the Complainant vide communication dated 09.11.2018 and 18.02.2019 about the updates regarding recent legal precedents and amendments prohibiting any return-based sales thus informing the complainant that no further assured returns will be paid or the respondent will be penalized.
- xvii. That the Complainant vide email dated 07.04.2022 requested for the cancellation of their allotment of Priority Number P-288 and a refund on the consideration amount paid i.e., Rs. 42,25,163/-.
- xviii. That the relief of assured return is beyond the jurisdiction of the Ld. Authority. Also, the payment of assured return was stopped by virtue of Banning of Unregulated Deposits Schemes Act, 2019. The issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '*Vatika Limited vs. Union of India and Anr.*' in CWP No. **26740 of 2022**, wherein the Court had restrained the respondent from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing. The Hon'ble UP-REAT while adjudicating an appeal titled as "*Meena Gupta Vs. One Place Infrastructures Pvt. Ltd. (Appeal No. 211 of 2022)*" has held that the issue of Assured Return does not fall within the ambit of the Act of 2016 and dismissed the appeal filed by the Appellant/Allottee. Also, the Real Estate Appellate Tribunal of other states while adjudicating upon the similar issue of assured return had taken a similar view by observing the said issue is out of the purview of the Act of 2016. The Hon'ble Uttar Pradesh Appellate Tribunal (UPREAT) had evidently held that there is no provision under



the Scheme of Act 2016 for examining and deciding the issues relating to the provision of assured return/committed charges or commercial effect in an allotment letter/builder buyer agreement for the purchase of flat/apartment/plot.

- xix. That the respondent cannot pay "Assured Returns" to the Complainants by any stretch of imagination in the view of prevailing laws. An act titled as **"The Banning of Unregulated Deposits Schemes Act, 2019"** (*hereinafter referred to as "the BUDS Act"*) was notified on 31.07.2019 and came into force. Under the said Act, all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. Being a law-abiding company, by no stretch of imagination the Respondent could have continued to make the payments of the said Assured Returns in violation of the BUDS Act. The BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the Respondent to pay Assured Returns shall be in violation of the provisions of BUDS Act. It is also pertinent to note herein that for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act. Therefore, the Agreements or any other understanding of these kinds, may, after Feb 2019, and if any assured return is paid thereon or continued therewith may be in complete contravention of the provisions of the BUDS Act.
- xx. That it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainant has not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld.



Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant.

xxi. That the complainants have suppressed the above stated facts and thus, none of the reliefs as prayed for by the complainants are sustainable before this Ld. Authority.

12. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

15. 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.

16. 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.

F. Findings on the objections raised by the respondents:

F. I. Objection regarding the complainant being investor.

17. The respondents have taken a stand that the complainant is investor and not allottee/consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act.
18. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the documents, it is revealed that the complainant is buyer, and has paid a substantial amount to the promoter towards purchase of a unit/space 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;"

19. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions agreed between promoter and complainant, it is clear that the complainant is allottee as the subject unit was allotted to her by the promoter upon payment of the entire sale consideration. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act stands rejected.

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

20. The respondents-promoter have 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.
21. 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."

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

F.III Objections regarding force Majeure

23. The respondents-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure circumstances such as orders passed by the Hon'ble Environment Protection Control Authority, and Hon'ble Supreme Court and COVID-19. The pleas of the respondents advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondents-builder leading to such a delay in the completion. Furthermore, the respondents should have foreseen such situations. Thus, the promoter respondents cannot be given any leniency on the basis of aforesaid reasons.
24. It is pertinent to mention here Allocation letter was issued in favor of the complainant on 26.05.2017 and as such there was no possession clause in the said letter. In **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**, 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. Thus, the due date of completion of the project comes out to be 26.05.2020. Further *as per*

HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 26.05.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date for handing over possession **in view of notification no. 9/3-2020 dated 26.05.2020**, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. So, in such a case the due date for handing over of possession comes out to 26.11.2020. Granting any other additional relaxation would undermine the objectives of the Act.

G. Findings on the relief sought by the complainant:

G.I Direct the respondents to refund of entire consideration amount of Rs.42,25,163/- along with 18% per annum from the date of allotment till date.

25. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

26. On the basis of the documents placed on the record and submissions made by the parties, the authority observes that the complainant had booked a commercial unit in the project namely, "Vatika One India Next", Sector 83, Gurugram, Haryana by submitting application form to the respondents. Thereafter, the respondent no.2 issued an Allocation of priority letter dated 26.05.2017 in favour of the complainant and allotted priority no. P-288 admeasuring 500 sq. ft. The complainant has paid an amount of Rs.42,25,163/- towards the entire sale consideration.
27. Further, clause 1 of the Allocation letter dated 26.05.2017 provides for the terms of payment of assured return and committed return and the relevant para of the letter is reproduced as under for ready reference:

*"1. That the payments of your assured return of **Rs.75.83 sq. ft. per month on super area** of said unit will commence only on receipt of 100% of Basic Sale Price by us from your, in terms of the payment plan/schedule of payment as agreed/opted by you and will be paid **till the completion of the construction of the building**. Post completion of construction of the building, you will be paid committed return of **Rs.65/- per sq. ft. per month on super area for up to three years from the date of completion of construction of the building or the said unit is put on lease, whichever as earlier**. Your will be entitled to receive lease rent in respect of the said unit from the Rent Commencement date in accordance with lease document as may be executed with prospective tenant...."*

(Emphasis supplied)

28. In view of the aforesaid terms, the respondents were obligated to pay **Rs.75.83/- per sq. ft. per month on super area** of said unit w.e.f. 26.05.2017 till the completion of the construction of the building. It is matter of record that the respondents have paid Assured Return amounting to Rs.6,55,562/- up to October 2018 as admitted by the respondents and had stopped paying the same thereafter. Subsequently, the complainant has vide letter dated 07.04.2022 opted for the surrender of the subject unit and sought refund of the amount paid by the complainant. In view of the above, the respondent no. 1 vide letter dated 20.04.2022 had agreed to refund the

principal amount paid by the complainant. However, it is matter of record that the respondent no.1 has failed to comply with the same.

29. In the present complaint, the respondents have contended in their reply that the respondents are in advanced stage of construction in the year 2022. However, admittedly, the OC/CC for the unit of the complainant has not been received by the respondents till this date. Perusal of assured return clause mentioned in Allocation Letter reveals that the stage of offer of possession by respondents is not dependent upon the receipt of occupation certificate. However, the Authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondents for the said project. Thus, the construction of the project is not complete till date. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to her and for which she has paid a considerable amount of money towards the sale consideration. In view of the above-mentioned facts, the complainant-allottee intends to withdraw from the project and is well within her right to do the same in view of section 18(1) of the Act, 2016.
30. Moreover, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 observed as under:

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."

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit till date. Accordingly, the respondents-promoter are liable to the complainant- allottee, as the complainant-allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
32. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by her in respect of the subject unit with interest at prescribed rate as provided 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]

- (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.

33. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

34. 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., 09.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
35. During proceeding dated 09.05.2025, the counsel for the complainant requested for allowing refund of full amount deposited along with interest as no AR has paid by the respondents post October 2018 and hence, the complainant-allottee does not wish to continue with the project. The respondents have submitted that there has been no default on their part as it has duly paid assured returns to the complainant till the enactment of the BUDS Act after which it became illegal due to the legal position over unregulated deposits post the enactment of the BUDS Act. The authority observes that if the allottee does not wish to continue with the project, he is not entitled to the benefits of assured return as the purpose of assured return is to compensate the allottees for the amount paid by him in upfront and which is continued to be used by the promoter for the period specified in the agreement and the payment of assured return as well as the prescribed interest on the amount paid up would result in double benefit to the complainants and would not balance the equities between the parties.
36. In view of the above, the respondents-promoters are directed to refund the amount received by them from the complainants along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules. Out of the amount so assessed, the amount paid by the respondents on account of assured return shall be deducted from the refundable amount.

H. Directions of the authority

37. Hence, the authority hereby passes this order and issue 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):

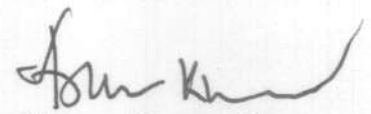
- i. The respondents-promoters are directed to refund the amount received by them from the complainant along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules.
- ii. Out of the amount so assessed, the amount paid by the respondents on account of assured return shall be deducted from the refundable amount.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

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

39. Files be consigned to registry.

Dated: 09.05.2025

HARERA
GURUGRAM



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram