

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

Complaint no.: 5690 of 2024
Date of filing: 06.12.2024
Date of first hearing: 19.03.2025
Order pronounced on: 03.09.2025

1. Tanvi Vij

2. Ananya Vij

Both Resident of: - C-702, Saraswati
Apartment, Plot no. 97, Patparganj,
Shakarpur, Baramad, Eash Delhi- 110092

Complainants

Versus

1. M/s Vatika Limited

Regd. Office at: - INXT City Centre, 4th
floor, Block A, Sector-83, Vatika India Next,
Gurugram- 122012, Haryana.

2. Mr. Gautam Bhalla, Director

Resident of: - 4, Hyde Park, Bandh Road,
Sultanpur, Mehrauli, New Delhi- 110030

Respondent No.1

Respondent No.2

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Sunny Menghi (Advocate)

Ms. Ankur Berry (Advocate)

**Complainant
Respondents**

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder 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:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Vatika INXT City Centre", village Sihi, Shikohpur, Sikanderpur Badha, and Kherkidaula, Sector 81-85, Gurugram
2.	Project area	10.72 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 valid upto 13.06.2018
5.	Name of the Licensee	M/s Trishul Industries
6.	RERA registered/ not registered and validity status	Not Registered
7.	Allotment Letter	04.04.2012 (Page 68 of complaint)
8.	Date of buyer's agreement	04.04.2012 (Page 40 of complaint)
9.	Unit no.	319B, 3 rd Floor (Page 69 of complaint)
10.	Reallocation letter and details	31.07.2013 Reallocated unit no. 136 on 1 st Floor (Page 69 of complaint)
11.	Unit area admeasuring	500 sq. ft. (Page 69 of complaint)
12.	Addendum Agreement executed between the parties	28.03.2022 (Page 70 of complaint)
13.	Assured return and lease rentals clause	ASSURED RETURN AND LEASING ARRANGEMENT Since the Buyer has paid the full basic sale consideration for the said Commercial UnitIt is further agreed that:

		<p>(i) The Developer will pay to the Buyer Rs. 65 (Rupees Sixty-Five) per sq. ft. super area of the said Commercial Unit as committed return for upto three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the buyer will start receiving lease rental</p> <p>"The developer expects to lease out the said Commercial Unit (individually or in combination with the adjoining units) at a minimum lease rental of Rs.65/- per sq. ft. per month for the first term. (of whatever period) In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be applicable:</p> <ol style="list-style-type: none"> 1) If the rental is less than Rs.65/- per sq. ft., then you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which the achieved rental is less than Rs.65/- per sq. ft. 2) If the achieved rental is higher than Rs.65/- per sq. ft., then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.60/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of the increased rentals." <p>(BBA at page 55 of complaint)</p>
14.	Assured Returns received till September, 2018	Rs. 25,31,750/- (As per AR sheet at page 39 of reply)
15.	Basic sale consideration	Rs.21,93,750/- (As per clause 1 of BBA at page 42 of complaint)
16.	Amount paid by the complainants	Rs.22,50,000/- (As per clause 1 of BBA at page 42 of complaint)
17.	Occupation certificate	Not obtained

18.	Letter as to completion of construction sent by respondent to complainant	26.03.2018 (Page 40 of reply)
-----	---	----------------------------------

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- a) That the complainant no. 1 is the mother of complainant no. 2. The complainant no. 1 is a homemaker and the complainant no. 2, is currently pursuing her higher studies abroad. Both the complainants are law-abiding citizens who have unfortunately fallen victim to the respondent's deceptive and lucrative projects.
- b) That the respondent has applied for the RERA Registration and has been issued a temporary project ID- RERA-GRG-PROJ-97-2018.
- c) That the respondents had advertised its upcoming Vatika India Next City Centre project in Gurgaon, Haryana as a state-of-the-art project with all modern amenities and facilities. The officials of respondent no. 1, Company, made various lucrative representations to the complainants and assured them that buying a unit in the project would yield them better financial opportunities.
- d) That on the basis of these representations, assurances, and promises in around March 2012, the complainants tendered a pre-printed application form presented by the respondents on 30.03.2012 along with the booking amount of Rs. 15 Lacs and booked a commercial unit no. 319 B, 3rd Floor, at INXT City Centre ad measuring 500 sq. ft. area at the basic sale price of Rs. 4,387.50/- per sq. ft. total amounting to Rs. 21,93,750/-.
- e) That the total sale consideration for the said unit was Rs. 21,93,750/-, however, the complainants have paid an extra amount of Rs. 56,489/- for which the complainants are entitled to a refund. The complainants have duly abided by all the terms and conditions as per the BBA dated

04.04.2012 by performing their part of obligation/performance as per the BBA, and have complied with all the provisions, formalities, and documentations as prescribed in the BBA.

- f) That the Builder Buyer Agreement dated 04.04.2012 was executed between the complainants and the respondents specifying the terms and conditions of the booking and allotment of the unit.
- g) That the respondents had assured the complainants that the unit would be completed and ready for possession/ lease by 30.09.2014. The date of possession has not been mentioned in the BBA dated 04.04.2012, however, the Allotment letter dated 04.04.2012 reflects the date of possession for the said unit as 30.09.2014.
- h) Post-execution of BBA and the allotment letter, the respondents without giving any opportunity to the complainants to object/ reconsider/ consent had unilaterally reallocated Unit 136, Tower- D, 1st Floor ad measuring 500 sq. ft. in "INXT City Centre" vide Allotment Letter dated 31.07.2013. The said Allotment Letter relocated the originally purchased commercial unit, i.e. Unit 319, Tower-B, 3rd Floor to Unit 136, Tower-D, 1st Floor, without providing any valid explanation or justification for this change. When the complainants raised concerns about this reallocation, the respondents declined to adhere to this concern, stating that the reallocation was final and could not be changed otherwise the said unit would stand cancelled. Hence, having no opportunity of being heard the complainants silently bore the wrath of the respondents, as the complainants had already invested a substantial amount with the respondents for the original unit.
- i) The entire sale consideration received by the respondents from the complainants as a deposit in advance against the allotment of the unit of

which the possession was to be offered by 30.09.2014, was in lieu of the promised assured returns payable to the complainants till the completion of the said project as detailed in clause 12 of the BBA dated 04.04.2012.

- j) That as per clause 12 of the said BBA, the respondents are liable to pay monthly assured returns to the complainants calculated @ Rs. 65/- per sq. ft. per month from the date of execution of the BBA till the completion of the construction of the unit. The respondents further assured the complainants to pay Rs. 65/- per sq. ft. super area of the unit as a committed return for upto 3 years from the date of completion of the construction of the said unit or till the said unit is put on the lease, whichever is earlier.
- k) That however, the respondents failed to comply with clause 12 of the BBA and had paid assured returns till 2019 amounting to Rs. 23,40,000/-. Even after numerous reminders and requests for payment, the respondents ignored their contractual obligations and blatantly disregarded the agreed terms causing financial hardships to the complainants.
- l) That the assured returns paid and payable till 03.11.2024 (date closer to the filing of the present case) as per the BBA dated 04.04.2012 are Rs.25,67,500/-.
- m) Therefore, on the basis of clause 12 of BBA, the respondents are under the legal liability of paying Rs. 35,200/- per month as assured returns. Till the filing of the complaint, the respondents paid Rs. 23,40,000/- as assured returns to the complainants which are merely for 6 years approximately. To the contrary, the respondent is liable to make the payments for 151 months i.e. till 3.11.2024, amounting to Rs. 49,07,500/-.
- n) That the respondents being in a dominant position had unilaterally presented a pre-printed Addendum Agreement dated 28.03.2022

depriving the complainants of Assured Return and Leasing Arrangement under clause 12 of the BBA dated 04.04.2012. Vide the said Addendum Agreement the respondents without the consent of the complainants had replaced Clause 12 with 'LEASING ASSISTANCE' whereby the respondents very conveniently altered and replaced the very indispensable clause of the BBA and evaded from the contractually binding clause of Assured Returns and lease arrangements which the complainants are legally entitled and further, the respondents have also diluted the leasing arrangement as was in the BBA.

- o) That the said Addendum has been intentionally given a retrospective effect i.e. 01.07.2019 just to evade the legal liability as detailed in the BBA, hence, agonizing the misery of the complainants by unilaterally revoking the assured returns which was one of the master features of the project portrayed and presented by the respondents while advertising and promoting the present project in the year 2012. Therefore, this Addendum dated 28.03.2022 and its retrospective implementation is ex-facie, unfair, biased, and unreasonable, further, incorporation of such one-sided clauses constitutes an unfair trade practice as per section 2(r) of the Consumer Protection Act, 2019, as it adopts unfair method and practices for the purpose of evading the legal liability by misusing the dominant position by the promoter/ builder.
- p) That by no stretch of the imagination this Addendum can be said to have been executed with free will by the complainants. The said Addendum was a pre-printed document that was presented to the complainants leaving with no choice to the complainants to suggest and alter any of the terms and conditions or clauses that were against their interest. However, when the complainants objected to such a document, the respondent very

conveniently and shamelessly said that the present Allotment shall be cancelled and the amount paid shall stand forfeited. It is further stated that this partisan agreement is preferential to the respondents, discriminatory to the complainants, coloured, inequitable, unjust slanted in the favour of the respondents, and cannot be said anything but an unfair trade practice apart from being non-transparent and lopsided.

- q) Further, the Addendum Agreement dated 28.03.2022 evades the legal liability of the respondents to pay the assured return as detailed in BBA dated 04.04.2012 and also stipulates the payment of maintenance charges by the Complainants from the date of the first lease or 01.07.2021, whichever is earlier.
- r) That the complainants most humbly pray before this Hon'ble Authority to strike off the ex-facie one-sided Addendum dated 22.03.2022 and declare it as null and void and not binding upon the complainants and to the contrary direct the respondents to deposit the unpaid assured returns as per clause 12 of the BBA dated 04.04.2012.
- s) That the Act of 2016 defines the "Agreement for sale" as an agreement entered into between the respondents and the complainants with free will and consent of both parties. Accordingly, the liability of the respondents to pay assured returns as per BBA is still continuing and the respondents are liable to pay the assured returns as committed.
- t) That the Assured Returns and DPC are conceptually different reliefs under which compensation is being sought in the present case as the Assured Returns is a contractual obligation having its origin from the BBA i.e. a contract, while DPC is a statutory remedy having its origin from the proviso to section 18 (1) of the RERA Act i.e. legal remedy. Therefore, the complainants are entitled to both i.e. Assured Returns and DPC.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to handover possession of the commercial unit no. 136, tower D, 1st floor, INXT City Centre.
 - II. Declare the addendum dated 22.03.2022 as null and void.
 - III. Direct the respondents to continue paying assured returns to the complainants at the agreed rate i.e., Rs.32,500/- per month from the date of BBA i.e., 04.04.2012 after deducting the amount already paid on account of assured return against the unit till the actual delivery of possession of the said unit along with OC and CC of the project.
 - IV. Direct the respondent to pay arrears of assured returns at the interest of 11.10% p.a. till the actual date of realisation.
 - V. Direct the respondent to ensure return on leasing out premises @ Rs.65/- per sq. ft. per month as per clause 12 of the BBA dated 04.04.2012 from the date of completion of the said unit.
 - VI. Direct the respondent to pay delay possession charges per month at the prescribed rate against the paid-up amount for every month of delay from the due date of possession till the actual delivery of physical possession of the unit as per Section 18(1) of the Act, 2016 read with Rule 15 of the Rules, 2017. Further, the respondent also be directed to pay interest on the arrears of such interest.
 - VII. Direct the respondent to refund the excess amount of Rs.56,489/- paid by the complainants to the respondents on 30.03.2012 along with interest at the prescribed rate.
 - VIII. Direct the respondent to execute conveyance deed within 3 months from the date of completion of the said project and upon receiving the CC/OC of the project.

- IX. Direct the respondent not to charge any further amount from the complainants that is not part of the buyer's agreement dated 04.04.2012.
- X. An order may be passed in favour of the complainants for compensation due to mental agony, and harassment caused by the respondents to the tune of Rs.3,00,000/- along with litigation cost to the tune of Rs.1,50,000/-
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 no.1

6. The respondent no.1 has contested the complaint on the following grounds:
- a) That the primary relief in the complaint are DPC, possession and assured returns payment however the complainant fails to acknowledge that vide addendum agreement dated 28.03.2022, the speculative investors, have already agreed to stoppage of assured returns and further for deletion of the said clause from the BBA. That once the assured return clause has been deleted through mutual consent, there can be no valid explanation for the present complaint being allowed. It is humbly submitted that, that if the complainants had been aggrieved by the terms of addendum, they could have withdrawn from the project by cancelling the unit and sought refund but they with their eyes wide open have chosen to stay and executed the addendum. There is not a single email/correspondence to substantiate that the complainants were aggrieved by the terms of the addendum. In absence of any document to support the contention a mere bald averment that they were forced to sign the addendum is wrong and contrary to facts. The parties have relinquished their claims by the addendum.
- b) That the complainants have prayed for simultaneous relief of DPC and payment of assured returns in the complaint. This is a settled law that AR

and DPC cannot be claimed together as the same would result in double jeopardy. Thus, complaint is not maintainable in its present form and either needs amendment or withdrawn to be filed afresh.

- c) That, further the other relief of possession of commercial unit, fails to be on any legal standing since the speculative investors have been aware of the fact the commercial units in the project were always intended for leasing and never for physical possession. Reliance for the same is upon the Clause 12 of the BBA and Clause 3 of the Addendum Agreement dated 28.03.2022. Also in the addendum Clause G, it is stated that the agreement is for earning rental income. In view of the above unambiguous terms, it is clear that the consensus of minds was rental income and AR not possession. Thus, can the complainant even seek DPC specifically when the possession was not the essence of the agreement.
- d) That it is an established fact herein that the complainant booked the Unit with the Respondent for investment purposes. The said complainant herein is not "Allottee", as the complainant approached the Respondent with an investment opportunity in the form of a steady monthly income from the commercial unit, which has been admitted by the complainant in the present complaint. An allottee as defined under the Act contemplates person who needs possession of his booked unit in a time bound manner and possession being the essence of BBA and not payment of Assured returns.
- e) The respondent after the initial provisional allotment, got the BBA dated 04.04.2012 executed for a total sale consideration of Rs. 21,93,750/- in the Project. However, upon knowing of the assured return scheme, the complainant upon own will paid entire amount of Rs. 21,93,750/- for making steady monthly returns.

- f) That further the respondent has duly paid the assured returns from the July, 2012 till September 2018 and thereby a total of Rs. 25,31,750/- has already been paid out to Ananya Vij. Further vide letter dated 26.03.2018, the respondent duly issued letter of completion of construction to the complainant informing them of the completed status of construction of the block where the commercial unit was located.
- g) That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. That upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration cannot run, operate, continue an assured return scheme. Thus, the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus, the relief prayed in the present complaint cannot survive due to operation of law.
- h) Further, it pertinent to mention herein that the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.

- i) Therefore, the terms of the allotment letters or any other understanding of these kinds without approval after February 2019 is violation of BUDS Act, and if any assured return is paid thereon or continued therewith may be in complete contravention of the provisions of the BUDS Act.
- j) In view of the above discussion, it is submitted that in the present complaint the respondent has offered Assured Returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. And upon coming into force of the BUDS Act, any such unregulated deposits which are not approved have become illegal and continuing the same shall expose the respondent to strict penal provisions of the Act.
- k) That under the scheme of the statute, the respondent submits that if this Ld. Authority takes a contrary view it is going to only create undue ambiguity for the real estate sector, which would be contrary to the mandate of the statute. It would create an ambiguity if the two Authorities act at cross purposes with the result that a project giving assured returns.
- l) Further, any orders or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent act passed post the RERA Act, which, is not violating the obligations or provisions of the RERA Act. Therefore, enforcing an obligation on a Promoter against a Central Act which is specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.
- m) 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, in the matter of 'Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered

against the respondent herein, for seeking recovery against deposits till next date of hearing.

- n) The BUDS Act, 2019 being a subsequent act from RERA Act, 2016 shall prevail over the provisions over the RERA Act. The matters pertaining to the assured return shall be regulated by the competent authority appointed under Section 7 of the BUDS Act. Therefore, the Ld. Authority has no jurisdiction over the assured return scheme matters.
- o) That it is also relevant to mention here that the commercial unit of the complainant were 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 the Agreement, the said commercial space shall be deemed to be legally possessed by the complainant.
- p) That since in October, 2018 the amendments being made in the laws were at ripe stage the respondent could not engage in acts/omissions that may create criminal culpability upon the respondent itself thus in furtherance of the email dated 31.10.2018, the respondent sent another email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all return based/assured/committed return based sale. The email communication of 30.11.2018 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project since the respondent did never intend to cheat or even leave its customer in lurch. Further vide email dated 28.12.2018 the respondent sent email to all its allottees including the complainant regarding the stoppage of monthly return and

reconciliation of all dues by June, 2019, and issued communication regarding Addendum Agreement containing revised clauses excluding assured return / committed return clause alternatively giving option to allottees to shift to another project and also gave option to the allottees to shift to alternate project with quarterly return benefits, yet the complainant chose to ignore the option and thereby letting go of her rights to monthly assured returns.

- q) The respondent on 14.06.2019, issued update to all allottees regarding reconciliation of accounts as of 30.06.2019 and issuance of Addendum-Agreement for revising the clause of assured return and finally stopping the future returns. The allottees who chose to cancel the allotment were also provided required document emails and were refunded investments. Thus, it is observed that, the respondent admittedly paid assured returns from the date of execution of BBA till June, 2018 and at the time of stoppage of assured return in June 2018, the respondent timely provided detailed communication to all allottees in the project.
- r) That the respondent further sent communication to its allottee including the present complainant on 25.02.2020, regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the Project INXT City Centre.
- s) That the complainant were sent the letter dated 26.03.2018 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. All other averments made in the complaint were denied in toto.
8. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority observes that it 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, 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:

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)(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 complainant at a later stage.

F. Findings on the objection raised by the respondent no.1.**F.I Objection regarding maintainability of complaint on account of complainants being the investors.**

13. The respondent took a stand that the complainants are the investors and not the consumers and therefore, is not entitled to 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 acknowledgement letter, it is revealed that the complainant is a buyer and has 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 builder buyer agreement executed between the parties on 04.04.2012, it is crystal clear that the complainants are not the allottees 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 an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

15. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in **CR/8001/2022** titled as **"Gaurav Kaushik and Anr. Vs. Vatika Ltd."** has already 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)(I)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

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

16. The respondent has raised an objection that the **Hon'ble High Court of Punjab & Haryana** in **CWP No. 26740 of 2022** titled as **"Vatika Limited Vs. Union of India & Ors."**, took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing.
17. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in **CWP No. 26740 of 2022 (supra)**, whereby the Hon'ble Punjab and Haryana High Court has stated 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."

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

G. Findings on the relief sought by the complainants.

- G.I Direct the respondent to handover possession of the commercial unit no. 136, tower D, 1st floor, INXT City Centre.
- G.II Declare the addendum dated 22.03.2022 as null and void.
- G.III Direct the respondents to continue paying assured returns to the complainants at the agreed rate i.e., Rs.32,500/- per month from the date of BBA i.e., 04.04.2012 after deducting the amount already paid on account of assured return against the unit till the actual delivery of possession of the said unit along with OC and CC of the project.
- G.IV Direct the respondent to pay arrears of assured returns at the interest of 11.10% p.a. till the actual date of realisation.
- G.V Direct the respondent to ensure return on leasing out premises @ Rs.65/- per sq. ft. per month as per clause 12 of the BBA dated 04.04.2012 from the date of completion of the said unit.
- G.VI Direct the respondent to pay delay possession charges per month at the prescribed rate against the paid-up amount for every month of delay from the due date of possession till the actual delivery of physical possession of the unit as per Section 18(1) of the Act, 2016 read with Rule 15 of the Rules, 2017. Further, the respondent also be directed to pay interest on the arrears of such interest.

18. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

(I) Assured returns

19. 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 no.1 has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent no.1 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 no.1 is not sustainable in view of the aforesaid reasoning and case cited above.

20. 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 complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

21. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. It is not disputed that the respondent no.1 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 allottees later on. In view of the above, the respondent no.1 is liable to pay assured return to the complainant-allottees in terms of the agreement dated 04.04.2012.

22. Subsequently, a new Addendum was executed inter se parties on 28.03.2022 whereby complainants agreed that amounts payable under clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) upto 30.06.2019, shall be settled and payable at the time of leasing of the unit or within 90 days from the date of execution of the present Addendum Agreement whichever is earlier. The relevant clauses of the Addendum are reproduced as under:

*"1. This Addendum Agreement shall become **effective from 1st July 2019.***

2. Notwithstanding anything to the contrary contained in the said agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under clause 12 (ASSURED RETURN AND LEASING ARRANGEMENT) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety days from the date of execution of the present Addendum Agreement whichever is earlier.

3. A fresh Clause 12 as mentioned hereinbelow replaces, substitutes and supersedes the erstwhile Clause 12 (Assured Return and Leasing Arrangement) of the Agreement w.e.f. 1st July 2019...
(Emphasis supplied)

23. The complainants in its complaint are alleging that the respondent no.1 on 28.03.2022 got an addendum signed by the complainants and modified clause 9, 10, 11 and 12 of the Agreement.

24. It is worth noting that except the said contention in the complaint, the complainants have not challenged the said Addendum Agreement at any point

of time and not even post the execution of the said Addendum Agreement, thus the complainants cannot raise the objection at such a belated stage. It is not a disputed fact that the aforesaid addendum was duly signed by the complainants and its execution is admitted by both the parties. Moreover, the complainants have failed to put forth any document to show that the Addendum agreement dated 28.03.2022 was executed under protest. It is matter of fact that the unit of the complainants have not been leased out by the respondent no.1 till date. Thus, the aforesaid Addendum becomes binding on both the parties and accordingly, the respondent no.1 is liable to pay assured returns till 30.06.2019 and the same was payable within 90 days from the date of execution of addendum agreement dated 28.03.2022, being earlier.

(II) Delay possession charges.

25. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges with respect to the subject unit 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. In the present case, the builder buyer agreement was executed on 19.01.2012. However, there is no delivery period stipulated in the agreement for completion of the project. Therefore, the due date of completion of the project is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D'Lima and Ors (12.03.2018)*** wherein the 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.** In view of the above-mentioned reasoning, the date of signing of Builder buyer agreement dated 04.04.2012, ought to be taken as the date for calculating due date of completion of the project. Therefore, the due date of handing over of the possession of the unit and completion of the project comes out to be 04.04.2015.

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. *ibid*. 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, *ibid* 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., 03.09.2025 is 8.85%.

Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

30. On consideration of documents available on record and submissions made by the complainants and the respondent no.1, the authority is satisfied that the respondent no.1 is in contravention of the provisions of the Act. The construction of the project was to be completed by 04.04.2015.

31. 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?

32. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per the Agreement dated 04.04.2012 read with "Addendum Agreement dated 28.03.2022" and the respondent is liable to pay assured return to the complainant-allottees @ ₹65/- per sq. ft. on monthly basis till 30.06.2019. 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 at

Rs.32,500/- per month till completion of the building whereas the delayed possession charges are payable approximately Rs.16,593.75/- per month.

33. By way of "the Agreement dated 04.04.2012" read with "Addendum Agreement dated 28.03.2022", the respondent is liable to pay assured return to the complainant-allottee ₹65/- per sq. ft. on monthly basis till 30.06.2019. The purpose of delayed possession charges after due date of completion of project is served on payment of assured return. 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 without prejudice to any other remedy including compensation.
34. The Authority further observes that the respondent no.1 has failed to complete the construction of the project and to obtain occupation certificate in respect of the project where the unit of the complainants is situated. As delineated hereinabove, the assured return is payable till 30.06.2019 as agreed between the parties vide "the Agreement dated 04.04.2012" read with "Addendum Agreement dated 28.03.2022". However, the liability to pay delay possession charges as per proviso to section 18(1) of the Act is still continuing and the same is payable w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority.
35. Accordingly, the respondent no.1 is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.65/- per sq. ft. per month from the date the payment of assured return has not been paid till 30.06.2019. The respondent is directed to pay the outstanding assured return amount, if any, 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 @ 8.85 % p.a. till the date of actual realization. Further,

the respondent no.1 is directed to pay delay possession charges @ 10.85% p.a. on the amount paid by the complainant(s) w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules, *ibid*.

36. However, it is further observed that no directions are being issued in the matter qua respondent no.2 i.e., "Mr. Gautam Bhalla, Director of M/s Vatika Limited" because of his key managerial role. After going through the documents available on record as well as submissions made by the parties, the Authority is satisfied that in the directors of the promoter cannot be held personally liable in their individual capacity except in case of tort, fraud or breach of duty which is not a case in the instant matter. Further, all the demands against the unit in question were demanded by respondent no.1 and were paid to it as well and there is no privity of contract between the complainants and the respondent no. 2. Moreover, the complainants in the present complaint has not sought any relief against the respondent no.2. In view of the above, the respondent no.2 is hereby deleted from the array of parties.

III) Possession and Declaration of addendum as null and void.

37. With respect to the aforesaid reliefs, the authority observes that there is no clause in the entire BBA which obligates the respondent to handover physical possession of the unit to the complainants. Furthermore, as per clause 12 of the agreement dated 04.04.2012 read with Addendum Agreement dated 28.03.2022, it was agreed between the parties that on completion of the

project the developer shall put the said unit on lease and the unit shall be deemed to be legally possessed by the complainants. The authority further observes that the complainants have failed to put forth any document to show that the agreement and addendum thereto was executed under protest. Also, no objection/protest whatsoever, was made by the complainants at any point of time since the execution of the BBA/addendum. Accordingly, handing over the physical possession was never the intent of the respondent no.1 rather the unit was to be leased out.

G.VII Direct the respondent to refund the excess amount of Rs.56,489/- paid by the complainants to the respondents on 30.03.2012 along with interest at the prescribed rate.

38. The grievance of the complainants is that the total sale consideration of unit is Rs.21,93,750/-, however and amount of Rs.22,50,239/- has been paid by the complainants to the respondent no.1.
39. On the other hand, respondent no.1 states that the respondent no.1 issued cheque no. 173335 dated 09.07.2012 for an amount of Rs.1,14,075/- in lieu of the extra paid-up amount and the assured return. Therefore, the said amount is already refunded to the complainants.
40. Perusal of application form at page no. 32 of the complaint and BBA at page no. 42 of the complaint reveals that the total sale consideration of unit is Rs.21,93,750/- and it is admitted by both the parties that the complainants have paid an amount of Rs.22,50,239/- to the respondent no.1 against the said unit. Although the respondent no.1 has contended that a refund of Rs.1,14,075/- was made via cheque no. 173335 dated 09.07.2012, no conclusive documentary evidence has been placed on record by the respondent no.1 to establish the encashment or receipt of the said amount by the complainants. Hence, the contention of respondent no.1 cannot be accepted.



41. In view of the above findings, it is directed that respondent no.1 shall refund the excess amount of Rs.56,489/- paid by the complainants.

G.VIII Direct the respondent to execute conveyance deed within 3 months from the date of completion of the said project and upon receiving the CC/OC of the project.

42. With respect to the conveyance deed, clause 6 of the BBA provides that the respondent no.1 shall sell the said unit to the allottee by executing and registering the conveyance deed.

43. 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 favor 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."

44. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent no.1 till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent no.1 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 no.1 shall execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of

requisite stamp duty by the complainants as per norms of the state government.

G.IX Direct the respondent not to charge any further amount from the complainants that is not part of the buyer's agreement dated 04.04.2012.

45. The respondent no.1 shall not charge anything from the complainants which is not the part of the buyer's agreement read with Addendum Agreement dated 28.03.2022.

G.X An order may be passed in favour of the complainants for compensation due to mental agony, and harassment caused by the respondents to the tune of Rs.3,00,000/- along with litigation cost to the tune of Rs.1,50,000/-.

46. In the above-mentioned relief, the complainants sought the compensation and Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357)*, has held that an allottee is entitled to claim compensation 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, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

H. Directions of the authority

47. 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):

- I. The respondent no.1 is directed to pay the amount of assured return at the agreed rate i.e., @ 65/- per sq. ft. per month from the date the payment of assured return has not been paid till 30.06.2019. The respondent no.1 is directed to pay the outstanding assured return amount, if any, 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 @ 8.85% p.a. till the date of actual realization.
- II. Further, the respondent no.1 is directed to pay delay possession charges @ 10.85% p.a. on the amount paid by the complainants w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules.
- III. The respondent no.1 is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.
- IV. The respondent no.1 shall not charge anything from the complainants which is not the part of the builder buyer agreement.

V. A period of 90 days is given to the respondent no.1 to comply with the directions given in this order and failing which legal consequences would follow.

48. Complaint stands disposed of.
49. File be consigned to registry.

Dated: 03.09.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM