

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

Decided on:

15.07.2025

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		Vatika INXT City Centre	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1545/2023	Jagdeep Singh V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
2.	CR/1553/2023	Gurdeep Kaur V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
3.	CR/1932/2023	Narender Singh V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
4.	CR/1934/2023	Mannat Sidhu V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
5.	CR/1935/2023	Kirat Singh & Ors. V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
6.	CR/1936/2023	Charanjot Singh Sidhu V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
7.	CR/1937/2023	Harveen Kaur Sidhu V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate

8.	CR/1938/2023	Harveen Kaur Sidhu V/S Vatika Limited	Shri. Parteek Aggarwal, Advocate And Shri. Venket Rao, Advocate
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CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairperson
Member

ORDER

1. This order shall dispose of all the 8 complaints titled above filed before the Authority under section 3 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*.
2. The core issue emanating from the them are similar in nature and the complainant(s) in the above referred matters are allottees of the project namely, "Vatika INXT City Centre" being developed by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid

assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.

3. The details of the complainants, reply to the status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:-

Project Name and Location	"Vatika INXT City Centre" at Sector-83, Gurugram, Haryana.
<p style="text-align: right;">Assured return clause</p> <p>Addendum to the agreement dated 23.05.2011 <i>"The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft., However, during the course of construction till such time the building in which your unit is situated offered for possession you will be paid an additional return of Rs.6.50/- per sq. ft. therefore your return payable to you shall be as follow:</i> <i>This addendum forms an integral part of builder buyer agreement dated 23.05.2011-</i> <i>A) Till Offer of possession Rs.71.50/- per sq. ft.</i> <i>B) After completion of the building Rs.65/- per sq. ft.</i> <i>You would be paid an assured return w.e.f. 23.05.2011 on a monthly basis before the 15th of each calendar month.</i> <i>The obligation of the developer shall be to lease the premises of which your flat is part of Rs.65/- per sq. ft. in the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be applicable.</i> <i>1) If the rental is less than Rs.65/- per sq. ft. than you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which achieved rental is less than Rs.65/- per sq. ft.....</i></p> <p>Possession Clause</p> <p>2. Sale Consideration <i>"The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement.....</i></p> <p style="text-align: right;">(Empasis Supplied [Page 44 & 28 of complaint])</p>	
<p>OC: Not Obtained Offer: Not offered</p>	

Sr. No.	Complaint no.	Date of BBA & Addendum/endorsement to the BBA	Unit no. and area	Due date of possession	Total sale consideration, amount paid and Assured Return received
1.	CR/1545/2023	23.05.2011 & 23.05.2011 (Page 25 & 44 of complaint)	901-F, 9 th Floor 500 sq. ft. (Page 44 of reply)	23.05.2014 (calculated as per BBA)	Rs. 25,00,000/- (page 28 of complaint) AP:- Rs.25,90,623/- (as per SOA dt 12.06.2023 at page 45 of reply) AR:- Rs.31,33,629/- (page 46-48 of reply)
2.	CR/1553/2023	29.04.2011 & 29.04.2011 (Page 26 & 45 of complaint)	914, 9 th Floor, Block-F 750 sq. ft. (Page 61 of complaint)	29.04.2014 (calculated as per BBA)	Rs. 37,50,000/- (page 29 of complaint) AP:- Rs.37,50,000/- (as per page 29 of complaint) AR:- Rs.47,42,075/- (page 44-46 of reply)
3.	CR/1932/2023	14.09.2011 & 14.09.2011 (Page 22 & 41 of complaint)	382A, 3 rd Floor, Tower-A 500 sq. ft. (page 25 & 42 of complaint)	14.09.2014 (calculated as per BBA)	Rs. 24,37,500/- (page 25 of complaint) AP:- Rs.25,00,266/- (as per page 25 of complaint) AR:- not annexed by respondent.
4.	CR/1934/2023	18.01.2012 (page 20 of complaint) & endorsed in favor of complainant on 09.01.2014 [as per assignment letter] (page 46 of the complaint)	419, 4 th Floor, Block F (page 51 of complaint)	18.01.2015 [As per "Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -SC);	Rs. 25,00,000/- (page 22 of complaint) AP:- Rs.25,64,375/- (as per page 22 of complaint) AR:- Rs.8,48,774/- to erstwhile allottee & Rs.20,15,000/- to subsequent allottee

				MANU/SC/0 253/2018]	(as per page 20-21A of reply)
5.	CR/1935/ 2023	19.01.2012 (page 20 of complaint)	305A, 3 rd Floor, 750 sq. ft. (page 49 of complaint)	19.01.2015 [As per "Fortune Infrastructu re and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -SC); MANU/SC/0 253/2018]	Rs. 37,50,000/- (page 22 of complaint) AP:- Rs.38,46,563/- (as per page 22 of complaint) AR:- Rs.19,65,726/- to allottee no.1 & Rs.19,65,725/- to allottee no.2 (as per page 36-39 of reply)
6.	CR/1936/ 2023	19.01.2012 & Endorsed on 04.05.2022 (page 20 & 46 of complaint)	326, 3 rd Floor, Tower-C 500 sq. ft. (page 52 of complaint)	19.01.2015 [As per "Fortune Infrastructu re and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -SC); MANU/SC/0 253/2018]	Rs. 25,00,000/- (page 22 of complaint) AP:- Rs.23,64,375/- (as per page 22 of complaint) AR:- Rs.27,66,274/- to erstwhile allottee (as per page 37-38 of reply)
7.	CR/1937/ 2023	19.01.2012 & Endorsed on 20.04.2022 (page 20 & 46 of complaint)	420, Tower-F 500 sq. ft. (page 51 of complaint)	19.01.2015 [As per "Fortune Infrastructu re and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -SC); MANU/SC/0 253/2018]	Rs. 25,00,000/- (page 22 of complaint) AP:- Rs.25,64,375/- (as per page 22 of complaint) AR:- Rs.28,59,916/- to erstwhile allottee (as per page 58-59 of reply)

8.	CR/1938/ 2023	18.01.2012 (page 20 of complaint)	418, 4 th Floor, Block-F 500 sq. ft. (page 51 of complaint)	18.01.2015 [As per "Fortune Infrastructu re and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -SC); MANU/SC/0 253/2018]	Rs. 25,00,000/- (page 22 of complaint) AP:- Rs.25,64,375/- (as per page 22 of complaint) AR:- Rs.28,67,233/- to erstwhile allottee (as per page 48-49 of reply)
					Relief:- 1.
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>TC: Total consideration AP: Amount paid by the allottee(s) AR: Assured Return paid by the promoter</p>					

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/1545/2023 titled as Jagdeep Singh V/s M/s Vatika Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by the complainants-allottees.

A. Unit and project related details.

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

CR/1545/2023 titled as Jagdeep Singh V/s M/s Vatika Limited

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika INXT City Centre" at Sector-83, Gurugram.
2.	Project area	10.718 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 Valid upto 13.06.2016
5.	Name of Licensee	Trishul Industries
6.	Rera registered/ not registered and validity status	Not Registered
7.	Unit No.	901-F, 9 th Floor (New Unit) (page 44 of reply)
8.	Unit area admeasuring	500 sq. ft. (page 44 of reply)
9.	Application form	16.03.2011 (old unit) (page 22 of complaint)
10.	Allotment letter	23.05.2011 (old unit) (page 45 of complaint)
11.	Allocation of unit (Vatika Trade Centre to Vatika INXT City Centre)	31.07.2013 (New Unit) (page 44 of reply)
12.	Date of buyer agreement	23.05.2011 (page 25 of complaint)
13.	Addendum to the buyer's agreement	23.05.2011 & 30.11.2011 (page 44 & 48 of complaint)
14.	Assured Return Clause	Addendum to the agreement dated 23.05.2011 <i>"The unit has been allotted to you with an assured monthly return of Rs.65/- per sw. ft., However,</i>

		<p>during the course of construction till such time the building in which your unit is situated offered for possession you will be paid an additional return of Rs.6.50/- per sq. ft. therefore your return payable to you shall be as follow:</p> <p>This addendum forms an integral part of builder buyer agreement dated 23.05.2011-</p> <p>C) Till Offer of possession Rs.71.50/- per sq. ft.</p> <p>D) After completion of the building Rs.65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 23.05.2011 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part of Rs.65/- per sq. ft. in the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be applicable.</p> <p>2) If the rental is less than Rs.65/- per sq. ft. than you shall be refunded @Rs.120/- per sq. ft. for every Rs.1/- by which achieved rental is less than Rs.65/- per sq. ft.....</p> <p>(Empasis Supplied)"</p>
15.	Possession clause	<p>2 Sale Consideration</p> <p>"The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement.....</p> <p>(Empasis Supplied)"</p>
16.	Due date of possession	<p>23.05.2014</p> <p>(calculated from the date of execution of buyer's agreement)</p>
17.	Total Sale Consideration	<p>Rs.25,00,000/-</p> <p>(page 28 of complaint)</p>
18.	Amount paid by complainant	<p>Rs.25,90,623/-</p> <p>(as per SOA dt 12.06.2023 at page 45 of reply)</p>
19.	Occupation certificate	Not obtained
20.	Intimation of possession	Not offered
21.	Amount paid by respondent (as Assured return)	Rs.31,33,629/- till September 2018

B. Facts of the complaint

7. The complainant has made the following submissions in the complaint:
- a. That respondent has launched the project "Vatika Trade Centre" on subvention scheme (36 months) with an assured monthly return. The respondent made false representations and claims of being a big and reputed developer and thereby induced the complainant to book a 500 sq. feet unit in its project then known as "Vatika Trade Centre" by showcasing a fancy brochure which depicted that the project would be developed and constructed as a state of the art being one of its kind with all modern amenities and facilities. The complainant filed a pre-printed application form on 16.03.2011 and paid the booking amount of Rs. 1,00,000/-.
 - b. That complainant had further made the payment of Rs. 24,00,000/- vide cheque no. 043921 dated 18.05.2011 drawn on HDFC Bank at New Grain Market, Muktsar, Punjab toward balance sale consideration for the unit and payment of Rs. 64,375/- vide cheque dated 18.05.2011. On the copy of the cheques, the respondent has acknowledged the receiving of the above-mentioned cheques as full and final payment along with service tax. The complainant paid the entire sales consideration to the respondent including service tax amounting to Rs. 25,64,375/.
 - c. That the builder-buyer agreement dated 23.05.2011 was executed between the parties which specified the terms and conditions of the booking and allotment of the unit of the complainant. An allotment letter dated 23.05.2011 was also issued by the respondent stating that the complainant was allotted unit no. 352 having 500 sq. ft.

super area on the 3rd floor of the project. The letter further stated that the project would be complete and ready by 30.09.2012. The letter also mentions the cheque towards commitment charges for the month of May, June, and July w.e.f. 23.05.2011, while making the payment only for June and July 2011. An addendum dated 23.05.2011, which is part of the builder-buyer agreement was also executed between the parties which specified that the respondent was liable to pay assured monthly returns calculated @ Rs. 71.50/- per sq. ft. per month to the complainant till the completion of the building and would then be liable to pay monthly assured returns calculated @ Rs. 65/- per sq. ft. per month to the complainant post completion of the building. The said addendum contained terms and conditions regarding the leasing of the unit at specific rates and the consequences of the unit being leased at different rates. As per clause 32.2 of the BBA, the respondent was liable to pay a minimum rent of Rs. 65/- per sq. ft. per month to the complainant for up to 3 years post the completion or till the leasing of the unit whichever was earlier. The builder buyer agreement was a pre-printed booklet drafted by the respondent containing unilateral terms and conditions favouring the respondent and prejudicing the complainant and the complainant was never given the option of changing the same.

- d. That the respondent unilaterally issued a letter dated 17.08.2011 to the complainant changing the location of the project where the unit of the complainant was booked to "Vatika Inxt City Centre" located at Sector 83, Gurugram. The complainant was subsequently vide

letter dated 30.11.2011 and addendum BBA dated 30.11.2011 had unilaterally allotted unit no. 352 in the project "Vatika Inxt City Centre" located at Sector 83, Gurugram.

- e. That the respondent has been paying the assured monthly returns at the rate of Rs. 71.5/- per sq. ft. amounting to Rs. 35,750/- and after deduction of TDS, an amount of Rs. 32,175/- per month has been paid by the respondent to the complainant as per clause 32.2 and annexure A of BBA dated 23.05.2011. This amount of Rs. 32,175/- after deduction of TDS @Rs. 71.5/- per sq. ft. was paid till February 2018. The monthly assured return was to be paid @ Rs. 71.5 per sq. ft. till the offer of possession as per annexure A of BBA dated 23.05.2011.
- f. That as per clause 32.2 and annexure A of BBA dated 23.05.2011, the respondent was to pay the lease out the unit at the minimum rent of Rs. 65/- per sq. ft per month and in the event, respondent is unable to lease out the unit, it will be liable to pay a minimum rent of Rs. 65/- per sq. ft. per month amounting to Rs. 32,500/- and after deduction of taxes amounting to Rs. 29,250/- for the first 36 months (3 years) after the completion of the project or till the unit is the put-on lease, whichever is earlier. As the respondent could not lease out the unit, had paid the rent of Rs. 29,250/- after deduction of TDS @ Rs. 65/- per sq. ft. per month, initially from March 2018 till September 2018 for a period of 7 months only and unfortunately later on from October 2018, the respondent mischievously stopped paying the rental amount as promised till February 2021 for the balance period of the 29 months. That amount of Rs. 9,42,500/-

including TDS is outstanding as of date towards the rent of the balance 29 months from October 2018 till February 2021. Respondent has provided the complainant with Form No. 16A for tax deduction under the Income Tax Act, 1961, wherein it is shown the payment of Rs. 35,750/- per month including tax paid from June 2011 till February 2018 and thereafter payment of Rs. 32,500/- per month including tax from March 2018 being paid.

- g. That the respondent had never informed the complainant about the completion of the project and nor have received the completion/occupation certificate from the competent authority to date. Also, the respondent has not even offered possession of the unit to the complainant. The respondent was to pay the rent @ Rs. 65/- per sq. ft. only after the completion of the project and before it, but the complainant was never apprised regarding the status of the project and arbitrarily started to make the payment of the rent instead of assured monthly return @ Rs. 71.5 per sq. ft. per month till completion of the project and till offer of possession.
- h. The respondent had after unilaterally changed the project from "Vatika Trade Centre" to "Vatika Inxt City Centre" and allotted unit No. 352 in the latter, had again unilaterally changed the allotted unit to 910, tower F, 9th floor, as is evident from the letter dated 04.10.2013.
- i. That the respondent in furtherance of its malafide intentions and ulterior motives without assigning any reason stopped the payment of the monthly returns to the complainant from October 2018, as the last payment of monthly return was made on 07.09.2018 and then

approached the complainant with an offer to clear the arrears of assured returns on the condition that the complainant would execute an addendum agreement whereby which the complainant will have to forego any and all rights accrued in its favour as per clause 32 of the BBA. Furthermore, additional obligations were imposed on the complainant if the unit had to be leased. He was coerced into signing the addendum on the condition of payment of arrears of assured returns and on the misinformation that the building had received a completion/ occupation certificate from the competent authority and had no option to modify the said agreement. The complainant was falsely made to believe that the building where its unit is located is complete and ready and would be leased soon and so, no loss would actually be caused to if the addendum was signed. He was further informed that in view of the pending bill in Parliament of the BUDS Act, the complainant would lose its right to claim any further assured returns if the addendum was not signed. In fact, the respondent created such pressure on the complainant that it was made to believe that he had no option but to execute the addendum. After signing the addendum agreement, which is to take effect from 1st July 2019, no returns were paid to the complainant by the respondent, despite the fact that under clause 2 of the addendum agreement dated 01.07.2019, it is mentioned that "any amount due towards the allottee by the developer, including amounts payable under Annexure 'A' along with the BBA dated 23.05.2011, shall be settled and payable at the time of leasing of the unit or within ninety days from the date of execution of the

addendum agreement, whichever is earlier". The respondent has not provided a counter-signed copy of the addendum to the complainant to date.

- j. That despite several follow up by the complainant with the respondent regarding the payment of balance assured monthly return/commitment charges which they kept illegally and arbitrarily and with the intention to make wrong full loss to complainants and gain to themselves but to no avail. Even through email, no response was provided by the respondent. Lastly, vide email dated 19 January 2021, the respondent has responded to the complainant stating that they will be starting the payment from March 2021 onwards.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- a. Direct the respondent to pay the outstanding amount of Rs. 9,42,500/- including TDS for the balance period of 29 months from October 2018 to February 2021, as is due and payable by the respondent to the complainants on account of the monthly rent for Rs. 32,500/- including TDS per month @ Rs. 65/- per sq. ft. per month, for the first three years as per clause 32.2 of the BBA dated 23.05.2011 and clause 2 of the Addendum Agreement dated 01.07.2019.
- b. Direct the respondent to pay interest at the prevailing rate on the outstanding amount of Rs. 9,42,500/- from the due date till the actual realization.

- c. Direct the respondent to carry out the title registration/execution of conveyance deed of the unit and to handover the physical vacant possession of the unit with immediate effect.
9. 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.

10. The respondent has contested the complaint on the following grounds:
- a. That the complaint under reply is not maintainable as the complainant herein has filed the present complaint under '**CRA - II for Refund**' format but to the *contrary* has sought the relief of payment for the arrears of assured return, execution of conveyance deed along with other reliefs.
 - b. That the complaint filed by the complainant under reply fails to be under proper format as prescribed by the Authority. The complaint filed by the complainant fails to be under prescribed format and happen to in contravention with the the Haryana Real Estate Regulatory Authority, Gurugram (Adjudication of Complaints), Regulations, 2018 No. 02/RERA GGM Regulations 2018, passed by this Authority.
 - c. That the complainant herein along with his mother had invested money into the project of the respondent, respectively and thus has booked two separate units for making steady monthly returns. The complainant had erred gravely in filing the complaint and misconstrued the provisions of the RERA Act. The Real Estate

(Regulation and Development) Act, 2016 (*hereinafter referred to as 'RERA Act, 2016'*), was passed with the sole intention for regulation of the real estate projects, promoters and for the dispute resolution between builders and buyers. The complainant booked the unit with the respondent for the investment purposes. The complainant herein is not an "*Allottee*", as the complainant approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units.

- d. That in the year 2011, the complainant learned about the project launched by the respondent titled as "**Vatika Trade Centre**" (*herein referred to as 'Erstwhile Project'*) situated 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.
- e. That after having dire interest in the project constructed by the respondent the complainant booked a unit vide application form dated 16.03.2011, under the assured return scheme, on her own judgement and investigation. The complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.
- f. That on 23.05.2011, respondent vide allotment letter allotted the unit bearing no. 352, admeasuring 500 Sq. ft. at 3rd Floor to the complainant. Thereafter, on the same day, the builder buyer agreement dated 23.05.2011 was executed between the

complainant and the respondent for the erstwhile unit, for a total sale consideration of Rs. 25,00,000/- in the erstwhile project. However, upon knowing the assured return scheme, the complainant upon own will paid entire amount of Rs. 25,00,000/- for making steady monthly returns.

- g. That an Addendum, was also executed between the complainant and the respondent, wherein the respondent assured to provide assured return of Rs. 71.50/- per sq. ft., till the completion of the building and Rs. 65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier. The Addendum has to be read with Clause 32.2 of the agreement.
- h. That an Addendum to the builder buyer agreement dated 30.11.2011, was executed between the complainant and the respondent, to avail the benefit of strategically better location and for early completion of the project, wherein the complainant's unit was shifted from erstwhile project to INXT City Centre, situated at NH-8, Sector-83, Gurgaon.
- i. Thereafter the respondent vide letter dated 31.07.2013, the respondent herein allocated a new unit to the complainant and allotted a unit bearing no. 910, 9th floor, block 'F' admeasuring 500 Sq. Ft. in the INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favor of the complainants in place of the erstwhile unit.
- j. That the respondent herein was committed to complete the construction of the project and subsequently lease out the same as agreed under the agreement. However, the respondent in due compliance of the terms of the agreement has paid assured return

up till September, 2018. Since starting the complainant has always been in advantage of getting assured return as agreed by the respondent. It is an admitted fact that the complainant has received an amount of **Rs.31,33,629/-** as assured return right from the date of allotment upto September, 2018 from the respondent.

- k. That the respondent herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019 and other prevailing laws. The respondent had sent emails dated 31.10.2018 and 30.11.2018 to its customers and apprised them that the respondent will not be in a position to pay any returns in future due to change in law.
- l. That the complainant was well aware of the fact, that the commercial unit in question was deemed to be leased out upon completion and the same was evidently mentioned and agreed by the complainant in the agreement dated 23.05.2011. The unit in question was deemed to be leased out upon completion. The complainant had mutually agreed and acknowledged that upon completion for the unit the same shall be leased out at a rate as mutually decided among the parties.
- m. The complainant is an investor and seeks speculative gains. The agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". The complainant is not a "Allottee" but investor who has invested the money for making steady monthly returns. the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.

- n. That commercial unit contained a “Lease Clause” which empowers the developer to put a unit of complainant along with other commercial space unit on lease and does not have “Possession Clauses”, for physical possession.
- o. That further the Hon’ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as “Vatika Limited Vs. Union of India & Ors.”, 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 and the same has now been listed for 23.11.2023. Also, the Hon’ble Appellate Tribunal, while considering an Appeal bearing no. **647 of 2021**, titled as **‘Vatika Limited vs. Vinod Agarwal’**, has deferred the same as the jurisdiction of the Hon’ble Tribunal in the matters pertaining to assured returns is under challenge before the Hon’ble High Court.
- p. That the complainants are praying for the relief of “Assured Returns” which is beyond the jurisdiction that this Authority has been dressed with. The Act provides for three kinds of remedies in case of any dispute arise between a builder and buyer with respect to the development of the project as per the agreement. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of “refund” in case the allottee wants to withdraw from the project and the other being “interest for delay of every month” in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee.

- q. That the respondent cannot pay "Assured Returns" to the complainants by any stretch of imagination in the view of prevailing laws. That on 21.02.2019 the Central Government passed an ordinance "**Banning of Unregulated Deposits, 2019**", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits. Under this Act, **all the unregulated deposit schemes have been banned** and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination the respondent could have continued to make the payments of the assured returns in violation of the BUDS Act.
- r. That the respondent has offered assured returns to the complainants in lieu of advance payments received in respect to a unit booked in the project. Upon coming into force of the BUDS Act, any such unregulated deposits which are not approved has become illegal and continuing the same shall expose the respondent to strict penal provisions of the Act.
- s. That the respondent vide letter dated 27.03.2018, intimated the complainant regarding the completion of construction of the respective unit comprising in block F of the project and also stated that they are in discussions with various tenants and expect to lease out the unit in due course. That vide said letter dated 27.03.2018, the respondent also informed the complainant that the commitment charges payable under the agreement shall be revised to Rs. 65/sq. ft. per month w.e.f. 01.03.2018.
- t. That the complainant herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague,

wrong grounds and has misled this Authority, for the reasons stated above. That none of the reliefs as prayed for by the complainant is sustainable before this Authority and in the interest of justice.

u. All other averments made in the complaint were denied in toto.

11. Both the parties filed also their written submission as well. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

12. 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:

13. 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:

14. 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.

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objections regarding maintainability of complaint on account of complainant being investor.

16. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its

project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:-

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

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

18. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

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

"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification

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

G. Findings on the relief sought by the complainants.

G.I. Assured return

21. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement and Addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same

is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), and the Authority has no jurisdiction to deal with cases of assured returns. Though, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the Authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the Authority after detailed hearing and consideration of material facts of the case in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The Authority in the said matter very well deliberated 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. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the Authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)** as quoted earlier.

So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form.* Further, section 2(4)(1) deals with the exception wherein 2(4)(1)(ii) specifically mention that *deposit does not include an advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.* In the present matter 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 as agreed between the allottee and the builder in terms of buyer's agreement, MoU or addendum executed inter-se parties. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise

and altered his position, then the person/promisor is bound to comply with his or her promise. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. 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)(ii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

22. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
23. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.

24. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 23.05.2011. The assured return is payable to the allottees as per addendum to the buyer's agreement dated 23.05.2011. The promoter had agreed to pay to the complainants allottee Rs.71.50/- per sq. ft. on monthly basis during the course of construction till offer of possession and Rs.65/- per sq. ft. on monthly basis after completion of the building. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till May 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.
25. However, admittedly, OC/CC for that block has not been received by the promoter till this date. 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 respondent promoter for the said project. Admittedly, the respondent has paid an amount of ₹31,33,629/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.71.50/- per sq. ft. on monthly basis from the date the assured return has not been paid i.e., September 2018 till offer of possession i.e., the valid offer of possession after the OC is received from the competent Authority and thereafter Rs.65/- per sq. ft. on monthly basis for the first 36 months after

completion of project or till the said unit is put on lease, whichever is earlier in terms of the clause 32.2 of BBA & Addendum agreement dated 23.05.2011. The respondent has not put on record any document for occupation certificate of the project has been obtained and hence, any lease, if any, which is prior to obtaining of Occupation Certificate cannot be considered as valid lease.

26. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 10.90% p.a. till the date of actual realization.

G.II. Conveyance deed

27. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

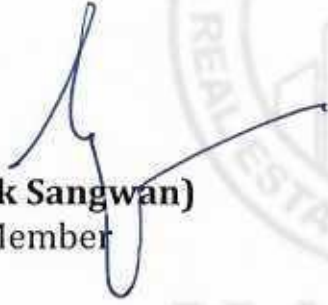
28. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the

subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the Competent Authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the Concerned Authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Directions of the authority

29. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., Rs.71.50/- per sq. ft. on monthly basis from the date the assured return has not been paid i.e., September 2018 till offer of possession i.e., the valid offer of possession after the OC is received from the Competent Authority and thereafter Rs.65/- per sq. ft. on monthly from the date of completion of the building i.e., up on receipt of OC from competent authority in terms of the Addendum to the agreement dated 23.05.2011.
 - b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 10.90% p.a. till the date of actual realization.

- c. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
30. The decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
32. File be consigned to the registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 15.07.2025