

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

Complaint no.: 2833 of 2023
Date of filing: 21.06.2023
Order pronounced on: 05.08.2025

Rajesh Kumar Batra HUF

R/o: - E-58, South Extension part-1, New Delhi

Complainant

Versus

M/s Vatika Limited

Regd. Office at: - Vatika India Next City Center,
Ground floor, Block-A, Sector 83, Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Harshit Goyal (Advocate)
Ms. Ankur Berry (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottees 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:

S.no.	Particulars	Details
1.	Name of the project	"Vatika INXT City Centre", situated at sector-83, Gurugram.
2.	Nature of the project	Commercial Colony
3.	Allotment letter	Not provided
4.	Unit no.	1533, 15th floor, tower A (as per BBA at page 23 of complaint)
5.	Change in Unit no.	315 on 3 rd floor of block-B in India Next City Centre (as per letter dated 17.09.2013 at page 40 of the complainant)
6.	Unit area	750 sq. ft. (super area) (page 23 & 40 of the complaint)
7.	Date of builder buyer agreement with original allottee	16.04.2010 (page 20 of complaint)
8.	Addendum to the agreement	16.04.2010 (page 36 of complaint)
9.	Allocation of unit in INXT City Centre	17.09.2013 (page 40 of complaint)
10.	Agreement to sell and purchase (between complainant and original allottees)	07.03.2020 (page 36 of reply)
11.	Endorsement in favour of complainant	22.07.2020 (page 42 of complaint)
12.	Completion clause	2. <i>The Developer will complete the construction of the said complex within three (3) years from the date of</i>

		<p>execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement the Developer further undertakes to make payment of Rs refer annexure-A (Rupees... ..) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</p> <p style="text-align: right;">[Emphasis Supplied]</p> <p>(page no.23 of complaint)</p>
13.	Assured return clause	<p>This addendum forms an integral part of the builder buyer agreement dated 16.04.2010</p> <p>a) Till completion of the building Rs.71.50/-</p> <p>b) After completion of the building Rs.65/- per sq. ft.</p> <p>(page 36 of complaint)</p>
14.	Due date of possession	<p>08.09.2013</p> <p>(calculated from the execution of builder buyer agreement)</p>
15.	Total sale consideration	<p>Rs.30,00,000/-</p> <p>as per clause 1 of the agreement</p> <p>(page 23 of complaint)</p>
16.	Amount paid	<p>Rs.30,00,000/-</p> <p>as per clause 2 of the agreement and as per receipts provided by the complainant</p> <p>(page 23 of complaint)</p>
17.	Assured return paid by respondent	<p>Not available</p>
18.	Letter for completion by respondent	<p>29.03.2016</p> <p>(page 44 of complaint)</p>

19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
- a. The builder buyer agreement was duly executed between the original allottees and respondent on 16.04.2010 in respect of unit no 1533, 15th floor, tower A which later changed to unit no. 315, 3rd floor, tower B measuring 750 sq. ft super area in real estate project in question namely INXT City Centre. The builder buyer agreement was successfully endorsed in favour of complainant.
 - b. The respondent also issued change of unit letter dated 17.09.2013 informing change from allotted unit no 1533, 15th floor, tower A to unit no. 315, 3rd floor, tower B measuring 750 sq. ft super area at real estate project namely INXT City Centre, Gurugram. As per clause 2 and annexure a of builder buyer agreement dated 16.04.2010, the respondent was liable to pay assured return of Rs. 71.50/- per sq. ft. per month from the date of 16.04.2010 till the date of completion of the building.
 - c. The respondent has failed to offer lawful and legal possession of the booked unit along with Occupation Certificate to the complainant till date and also failed to pay pending promised assured return from the month of September 2018. The respondent company also issued unlawful letter dated 29.03.2016 informing about completion of construction of tower B where booked unit is situated without obtaining occupation certificate of tower B. The respondent has failed to obtain occupation certificate of tower B till date.

- d. As per clause 32.2 and annexure A of the builder buyer agreement dated 16.04.2010. In the event the developer being unable to finalize lease, the respondent was also liable to pay assured return of Rs. 65/- per sq. ft. per month as minimum guaranteed rent for first 36 months from the date of completion of project or till the date the said unit is put to lease whichever is earlier.
- e. As per clause 2 of the builder buyer agreement dated 16.04.2010, the respondent company was liable to deliver possession of the booked unit within a period of 3 years from the date of execution of agreement. Therefore, the due date of possession was 16.04.2013. The respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date.
- f. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.
- g. Therefore, the present complainant is forced to file present complaint before this hon'ble authority under Section 31 of Real Estate Regulation and Development Act, 2016 read with Rule 28 of Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):

- a. To direct the respondent to pay pending assured monthly return of Rs. 71.50/- per sq. ft. (Rs 53,625 per month) pending from the Month of September 2018 along with Interest to the complainant.
 - b. To direct the respondent to pay delayed possession charges from due date of delivery of possession i.e. 16.04.2013 till date of final offer of possession along with Occupation Certificate.
 - c. To direct respondent to deliver possession of the booked unit.
 - d. To direct the respondent to execute and register the conveyance deed of the booked unit.
 - e. To restrain respondent company from creation of third-party interest and maintain status quo in respect of booked unit.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
- a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers' agreement dated 16.04.2010, as shall be evident from the submissions made in the following paras of the present reply. Further it is pertinent to submit that the complainant is a subsequent purchaser and the unit was assigned in favour of the Complainant on 25.08.2020. That at the time of purchase of the unit in question the Complainant was well aware of the status of the

stoppage of assured returns by the Respondent and thus now in 2023 the Complainants who became allottee on 25.08.2020 cannot claim a relief which to its knowledge did not exist.

- b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before the Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
- c. That section 2(4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the Explanation to the section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013. The Companies Act, 2013 in section 2 (31) defines "Deposit" as "deposit includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank

of India". The Legislature while defining the term "deposit" intentionally used the term prescribed so as to further clarify and connect the same to be read with rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Further the Explanation for the clause (c) of section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

- d. That as per section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- e. 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.", 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. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 22.11.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.
- f. That further in view of the pendency of the CWP 26740 of 2022 before the Hon'ble High Court of Punjab & Haryana, the Hon'ble Haryana Real Estate Appellate Tribunal, in Appeal No. 647 of 2021 while hearing the issue of assured return, considered the factum of pendency of the writ, wherein the question regarding jurisdiction of any other authority except the competent authority under Section 7 of the Banning of Unregulated Deposits Schemes Act, 2019. That the Hon'ble Haryana Real Estate Appellate Tribunal after consideration of the pendency of the pertinent question regarding its own jurisdiction in assured return matters, adjourned the matter simpliciter understanding that any order violative of the upcoming

judgment of the Hon'ble High Court would be bad in law. Thus, the Hon'ble Authority should consider the act of Hon'ble Haryana Real Estate Appellate Tribunal and keep the present matter pending till final adjudication of CWP 26740 of 2022.

g. That further the Rajya Sabha, Parliamentary Committee on Subordinate Legislation on 24.03.2021, presented Report No. 246. That vide the said Report, the Committee observed upon the objectives of coming up with a special and comprehensive law i.e., to check illicit deposit schemes. The Committee also focused on bringing clarity upon the deposit that constitute legitimate business transactions and thus fall within the "normal course of business." The Committee further expressed its dismay, on the fact that most of the States/UTs had shown lax and nonchalant attitude in implementation of the crucial legislation. The casual approach of the State/UT in not issuing the notification of the Designated Courts and their jurisdiction. The Report of the Parliamentary Committee is noteworthy since the importance of Jurisdictional Designated Court/Authorities for implementation of BUDs Act, 2019 and the ambit of definition of "DEPOSIT" would be brought to light only upon institution of proper Rule and duly designated/jurisdictional Court to adjudicate upon issues of Assured Return Schemes/Collective Investment Schemes/Other similarly founded schemes.

h. That it is also relevant to mention here that the commercial unit of the Complainant was 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. Hence, the commercial space booked by the Complainant's is not meant for physical possession and rather is for commercial gain only.

- i. That in the matter of Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd. (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of Assured Return and hence the present complaint deserves to be dismissed at the very outset.
- j. That further in the matter of Bharam Singh & Ors vs. Venetian LDF Projects LLP (Complaint No. 175 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns. That further in the matter of Jasjit Kaur Grewal vs. M/s MVL Ltd. (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.
- k. That it is pertinent to note that the Respondent Company has always been devoted towards its customer and have over the years kept all its allottees updated regarding the amendments in law, judgments passed by the Hon'ble High Courts and the status of development activities in and around the project. It is highly pertinent to note that vide email dated 31.10.2018, the Respondent Company sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investor of assured return-based projects. That in furtherance the said email, the Respondent Company 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 on 28.12.2018, the Respondent gave all its allottees an option to move to another project of the Respondent which was SEBI registered and gave benefits of the committed (quarterly) returns yet the allottees chose to sit and not get their units transferred in project which ensured committed returns. 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. Further the Respondent intimated to all its allottees that in view of the legal changes and formation of new laws the amendment to BBA vide Addendum would be shared with all the allottees to safeguard their interest. Thereafter on 25.02.2020, the Respondent Company issued communication to all its allottees regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the Project INXT City Centre.

- I. That the Complainant has come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the Complainant just to harass the Respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal

way and to attempt to gain financially at the cost of others. The Complainant has instituted the present false and vexatious complaint against the Respondent Company who has already fulfilled its obligation as defined under the BBA dated 16.04.2010 and issued completion of construction letter on 29.03.2016. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- m. It is submitted that the erstwhile allottees entered into an agreement i.e., BBA dated 16.04.2010 with Respondent Company owing to the name, good will and reputation of the Respondent Company. That it is a matter of record and admitted that theerstwhile allottees received assured returns till September, 2018 and thereafter the same were stopped .. Further when the Complainant purchased the unit from the erstwhile allottees the information and knowledge regarding stoppage of assured returns was passed on to the complainant who being aware of the stoppage of assured return scheme chose to buy the commercial the unit.
- n. The present complaint of the Complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to

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

- o. That in matter titled Anoop Kumar Rath Vs M/S ShethInfraworld Pvt. Ltd. in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the Promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- p. That the Complainant is attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the Respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent Company. 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, since the claim/relief of the Complainant for pending assured return is ipso facto void.

- q. That the Hon'ble Authority ought to consider that even though the Assured return schemes were stopped in the year 2018, yet the Complainants chose to sit till 2023 (i.e., filing of the present complaint). The delay in claiming the relief of recovery of dues on account of assured return non-payment, suffered from severe delay of 5 years. That the onus is upon the Complainants to show that they ever received any amount of assured returns and was there any cause of action in favour of the Complainant. That the Complainants is attempting to harass the Respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent Company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainants' and against the Respondent and hence, the complaint deserves to be dismissed.
- r. That, it is evident that the entire case of the Complainant' is nothing but a web of lies and the false and frivolous allegations made against the Respondent are nothing but an afterthought, hence the present complaint filed by the Complainant deserves to be dismissed with heavy costs.
- s. The prayer of refund combined with the relief of arrears of assured return would cause the Respondent to suffer from double jeopardy and the Hon'ble Authority, in the interest of justice and in terms of law of the land, ought not do it.

t. That the various contentions raised by the Complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the Complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. 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:

8. 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:

9. 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:

10. 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.

11. 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 relief sought by the complainants.

F.I. Assured return

12. The complainant is seeking unpaid assured returns on monthly basis as per the addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum 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), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd.,

complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

13. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
14. 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.

15. 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 BBA dated 16.04.2010.

F.II. Delayed possession charges

16. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

17. As per clause 2 of the BBA the due date of possession is calculated 3 years from the date of agreement. Accordingly, the due date of possession comes out to be 16.04.2013. (*inadvertently mentioned as 08.09.2013 in POD dated 05.08.2025)
18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso

to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

19. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
20. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 16.04.2013.
21. In the present situation the original allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. However, complainant was well aware about the fact that the construction of the

tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. Further, it still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, it has not suffered any delay as the subsequent allottee/complainant herein came into picture only on 07.03.2020 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 07.03.2020 i.e., date on which the complainant stepped into the shoes of the original allottee.

22. 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?
23. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of addendum to BBA dated 16.04.2010. The assured return in this case is payable as per "addendum agreement dated 16.04.2010" the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis from the date of agreement till completion of building and ₹65/- per sq. ft. on monthly basis after the completion of the building for up to 3 years from the date of completion of construction till the said unit is put on lease, whichever is earlier. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹53,625/- per month from the date of agreement i.e.,

16.04.2010 till the said unit is complete i.e., the date the occupation is received from the competent Authority whereas the delayed possession charges are payable approximately ₹27,250/- per month from the date the complainant stepped into the shoes of original allottee i.e., 07.03.2020. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease and thereafter he shall be entitled for lease rental as agreed. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

24. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
25. In the present complaint, the respondent has intimated the complainants that the construction of Block B is complete wherein the subject unit is located vide letter dated 29.03.2016. 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. On consideration of the documents available on the record and submissions made by the parties,

the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per addendum agreement dated 18.01.2012, the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till completion of building i.e., after receipt of occupation certificate from the competent authority and ₹65/- per sq. ft. on monthly basis after the completion of the building up to three years from the date of completion of building or till the said unit is put on lease.

26. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of completion of building i.e., till the date of receipt of OC from the competent Authority and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of clause 32 of the BBA.
27. 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 @ 8.90% p.a. till the date of actual realization.
28. With regard to the relief sought concerning possession, the Authority notes that the Builder Buyer Agreement (BBA) executed between the parties does not contain any clause stipulating the handing over of possession of the said unit to the complainant. Instead, the agreement

reflects a leasing arrangement between the parties, as is evident from Clause 32 of the BBA.

F.III. Conveyance deed

29. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
30. 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”

31. 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 from the final offer of possession 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. Directions of the authority

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

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of completion of building i.e., till the date of receipt of OC from the competent Authority and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of clause 32 of the BBA.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.90% p.a. till the date of actual realization.
- c. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the valid offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.



- d. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- e. 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.
33. Complaint stands disposed of.
34. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.08.2025

(Arun Kumar)
Chairperson