

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

Complaint no.: 3623 of 2023
Date of filing: 16.08.2023
Order pronounced on: 15.07.2025

1. Pratibha Khan
2. Afzal Ahmed Khan

R/o:- H. No. A-602, Prateek Edifice Sector-107, Noida 201304 **Complainants**

Versus

M/s Vatika Limited

Regd. Office at: - Unit no. A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next,
Gurugram-122012

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Ms. Anshul Sharma (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. N.	Particulars	Details
1.	Name and location of the project	"High Street by INXT" at Sector-83, Gurugram.
2.	Project area	14918.258 sq. mtrs.
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
5.	Name of Licensee	C/o M/s Vatika Limited
6.	Rera registered/ not registered and validity status	Registered Vide no. 263 of 2017 dated 03.10.2017
7.	Unit No.	123, 1 st Floor, (page 42 of complaint)
8.	Unit area admeasuring	975 sq. ft. (Super Area) (page 42 of complaint)
9.	Application form	03.08.2016 (as alleged in complaint at page 37 of compliant)
10.	Allotment letter	07.09.2016 (page 42 of complaint)
11.	Date of buyer agreement	Not Executed
12.	Possession clause	NA
13.	Due date of possession	07.09.2019 " <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.</i> " (12.03.2018-SC); <i>MANU/SC/0253/2018</i> Hon'ble Apex Court

		<p>observed that <i>"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."</i></p> <p>In view of the above-mentioned reasoning, the date of the allotment letter dated 07.09.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 07.09.2019.</p>
14.	Assured return clause	<p>3 of Allotment letter</p> <p><i>"The developer shall remit an assured monthly return of Rs.81.66/- per sq. ft. till completion of the building.</i></p>
15.	Total Sale Consideration	<p>Rs.68,25,000/-</p> <p>(as rate Rs.7,000/- per sq. ft. mentioned in the allotment letter at page 42 of complaint)</p>
16.	Amount paid by complainant	<p>Rs.50,56,625/-</p> <p>(as alleged by the complainant at page 38 of complaint and admitted by the respondent in para no.12 in its reply)</p>
17.	Assured return paid by respondent	<p>Rs.24,18,382/-</p> <p>Till November, 2018</p> <p>(as per details at page 17-20 of reply)</p>
18.	Occupation certificate	Not obtained
19.	Offer for possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. That the complainants are the allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent's company, **M/s Vatika Ltd.** is limited company incorporated under the Companies Act, 1956.

- b. That in 2015, the respondents company issued an advertisement announcing a commercial complex "High Street" at Sector - 83, Gurugram was launched by M/s. Vatika Limited, under the license no. 113 of 2018 dated 01.06.2008, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the project. The respondents confirmed that the projects had got building plan approval from the Authority.
- c. That the complainants booked a unit in the project by paying an booking amount towards the booking of the unit bearing no. 123, 1st Floor, in Sector-83, having super area measuring 975 sq. ft. to the respondents dated 03.08.2016 and the same was acknowledged by the respondents. The respondents sent allotment letter dated 07.09.2016 to the complainants providing the details of the project, confirming the booking of the unit dated 03.08.2016, allotting a unit no. 123, 1st floor measuring 975 Sq. Ft (super built-up area) in the project of the developer for a total sale consideration of the unit i.e. Rs. 68,25,000.00, which includes basic price, EDC and IDC, car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- d. That, when the complainants received said copy of the allotment letter it was very shocking to the complainants that respondents acting arbitrarily changed the agreed terms and conditions of the booking in allotment letter. Thereafter, complainants raised the objection to same and respondents provided false assurance to the complainants that it is just for the formality, terms and conditions

agreed at the time of booking will prevail. As per clause of the allotment letter and payment plan respondents assured of getting the builder buyers agreement within 30 days from the date of the allotment letter but till date failed to execute the same.

- e. That at the time of purchasing the unit, the complainants were assured that the possession of the unit would be delivered within the promised period of 3 years from the date of allotment letter i.e. by 07.09.2019.
- f. That as per clause of the allotment letter booking application form, the respondents undertake to make the payment of commitment amount/assured return of Rs. 81.66/- per Sq. Ft. per month on super area of 975 Sq. ft. from the date of allotment letter i.e. 07.09.2016 till the completion of the construction of the unit. Further, as per clause of the allotment letter respondents promised that post the completion of the construction of the said building, complainants will be paid committed return of Rs. 100/- per sq. ft. per month on super area from the date of completion of construction of building. Further, as per clause of the allotment letter form also undertake to enter into buyer's agreement with the complainants. Till date respondents has failed to execute the buyer's agreement and also failed to offer/handover the possession the said unit even after delay of more than 4 year. Even till date respondents has also failed to pay assured return as promised as per the clause of allotment letter.
- g. That as per clause of the allotment letter form the respondents agreed to put the said unit on lease @ Rs.100/- per sq. ft. per month

and to effectuate the same. But till date respondents has failed to abide and honour the clause of the allotment letter by not leasing out the above unit till date.

- h. That the respondents was liable to handover the possession of the unit on or before 07.09.2019, therefore, the respondents was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery and the complainants as per clause of the booking application form is also entitled to get the monthly assured amount till the completion of the construction of building and also post the completion of the construction of the building, complainants will be paid committed return of Rs. 100/- per Sq. ft. per month on super area from the date of completion of construction of building.
- i. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 50,56,625.00 towards the said unit against total sale consideration of Rs. 68,25,000/-.
- j. That the allotment of the unit was made on 07.09.2016, after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. The respondent has charge the complainants on the super area i.e. 975 Sq. Ft. @ Rs. 7000/- per Sq. Ft. which is against the provisions of the RERA Act, 2016 and the rules, 2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the

respondent to charge on the carpet area instead of the super area of the unit. The respondent was under liability to sell the unit at carpet area not on the super area of the unit but in the respondents has sold the unit on super area i.e.975 Sq. Ft.

- k. That as per 13 of the RERA Act, respondents cannot accept the sum more than 10% of the total coats the unit but in present case respondents has collected 90% amount. The case respondent has collected Rs.50,56,625/- till date without executing the builder buyer agreement. Further, such acts of the respondents are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- l. That the complainants went to the office of respondents several times and requested them to allow them to visit the site and when the respondents will get buyers agreement executed and also the assured return the complainants is entitled to but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- m. That that at the time of booking layout plan was handed over to the complainants as per same said unit was shown to be in front of the excavators but now respondents in violations of the provisions of the RERA Act,2016 without obtaining the prior consent of the complainants changed the layout plan and now the location of the

unit has been changed arbitrarily without any prior intimation or consent.

- n. That that such clauses of allotment letter are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as ***Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)*** as also in the judgment of Hon'ble Supreme Court in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***.
- o. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act and also the monthly assured amount till the handing over of possession or first lease of the unit.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - a. Direct the respondents to lease out the unit in question, in terms of the allotment letter and hand over the symbolic and constructive possession of unit in question with all amenities and specifications as promised, in all completeness without any further delay.
 - b. Direct the respondents to execute a builder buyer agreement and submit the date of possession in respect of the unit in question in favour of the complainants.
 - c. Direct the respondents to pay the interest on the total amount paid by complainants at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
 - d. Direct the respondent not to change the location of the unit.

- e. Direct the respondent to pay monthly assured return amount till the unit in question is so leased out in terms of the allotment letter and to pay monthly assured rental after the completion of the unit as per allotment letter.
- f. Direct the respondent to pay the amount due on account of interest to complainants.
- g. Restrain the respondent from raising fresh demand for payment under any head.
- h. Direct the respondent to handover the possession and lease out the unit as per terms and conditions of the allotment letter.
- i. Direct the respondent not to force the complainants to sign any indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.
- j. Direct the respondent to provide exact layout of the unit.
- k. Direct the respondent to pay monthly assured rental amount w.e.f. the date of completion of the construction of the building as per clause of the allotment letter.
- l. Penal action against the respondent for violation of various provisions of the RERA Act, 2016.
- m. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the complainants.
- n. Pass such other or further order(s), which this Authority may deem fit and proper in the facts and circumstances case.

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 filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
 - b. That the complaint under reply is not maintainable as the term "Assured Return" has not been defined under the Real Estate Regulatory Act, 2016 and therefore any such complaint is not maintainable under the present Act. The complainant in this case should have approached civil court being proper forum to adjudicate upon such disputes.
 - c. That as per the judgment in the case of Brhimjeet & Anr Vs M/s. Landmark Apartments Pvt Ltd. (complaint no. 141 of 2018) and Sh. Bharam Singh & Anr. Vs Ventain LDF Projects LLP (complaint no. 175 of 2018) decided on 07.08.2018 and 27.11.2018, it was held that the Authority has no jurisdiction to deal with cases of assured returns.
 - d. That the respondent had entered into an agreement of assured return with the complainant in the year 2016 however the government has enacted Banning of Unregulated Deposit Scheme Act, 2019 thereby putting a sanction on all such commitments

made by the builder under the agreement of assured return. Therefore, as per Section 2 (j) of the Contract Act "A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable" and therefore all such contracts after enactment of BUDS Act have been void contracts and therefore such agreements have no enforceability in the eyes of law.

- e. That the complainant herein along with his mother had invested money into the project of the respondent, and has not purchased the unit for residential use.
- f. That the complainant booked the commercial unit with the respondent for 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. After having dire interest in the project constructed by the respondent the complainant booked a commercial unit 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. The complainant has booked unit in the project "V'Lante" located in Sector 83 Gurgaon for a total consideration of 68,25,000/-.
- g. That since starting the respondent had always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project. However, the respondent herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019.

- h. That the booking is for commercial project not residential unit. Therefore, the relationship between the complainant and the respondent is not that of a builder-buyer. The complainant is an investor and seeks speculative gains.
- i. That the objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the Real Estate Sector and form balance amongst the promoter, allottee and real estate agent. However, 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.
- j. That the complainant is merely trying to hoodwink the Authority by concealing facts which are detrimental to this complaint at hand. Therefore, the allotment of the 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.
- k. That the issue pertaining to the ***relief of assured return*** is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '***Vatika Limited vs. Union of India and Anr.***' in CWP No. 26740 of 2022, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the respondent herein, for seeking recovery

against deposits till next date of hearing and the same has now been listed for 23.11.2023.

- l. That any orders or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent act passed post the RERA Act, which, is not violating the obligations or provisions of the RERA Act. Therefore, enforcing an obligation on a promoter against a Central Act which is specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.
 - m. 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 objections raised by the respondent.

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

12. 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"

13. 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.

14. 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.

15. 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”

16. 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.

17. The complainants are seeking unpaid assured returns on monthly basis as per the allotment letter dated 07.09.2016 at the rates mentioned in clause 3. It is pleaded that the respondent has not complied with the terms and conditions of the allotment letter. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) it was held by the Authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, 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)(I) deals with the exception wherein 2(4)(I)(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 allotment letter 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)(l)(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.

18. 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, the allotment letter defines the builder-buyer relationship. So, it can be said that the allotment letter for assured returns between the promoter and allottee arises out of the same relationship.
19. 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 allotment letter dated 07.09.2016.

G.II. Delay Possession Charges

20. 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"

21. Further, the Authority observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018***, the Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the

flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Since no BBA has been executed between the parties therefore the due date of possession is deemed to be calculated as 3 years from the date of allotment letter i.e., 07.09.2016. Accordingly, the due date of possession comes out to be 07.09.2019.

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

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

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

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

23. 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., 15.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

24. 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 07.09.2019.
25. 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?
26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the allotment letter dated 07.09.2016. The assured return in this case is payable as per clause 3 of "allotment letter". The promoter had agreed to pay to the complainants allottee ₹81.66/- per sq. ft. on monthly basis till the completion of the project and thereafter the promoter shall the unit along with ₹100/- per sq. ft..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 ₹79,618/- per month whereas the delayed possession charges are payable approximately ₹45,931/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said

unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

27. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
28. 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 allotment letter issued thereto along with interest on such unpaid assured return. As per allotment letter dated 07.09.2016, the promoter had agreed to pay to the complainants allottee ₹81.66/- per sq. ft. on monthly basis till completion of the project and the developer shall lease the unit along with premises@ ₹100/- per sq. ft. 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 08.10.2018

but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

29. Admittedly, the respondent has paid an amount of ₹24,18,382/- to the complainants as assured return till 08.10.2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹81.66/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 08.10.2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, ₹100/- per sq. ft. per month when the said unit is put on lease after the completion in terms of allotment letter.
30. 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.III Execute BBA

31. The respondent is directed to execute the BBA with the complainants within a period of 90 days from the date of this order.
32. That the rest of the reliefs were not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the

complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned reliefs.


H. Directions of the authority

33. 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 execute buyer's agreement within a period of 90 days from the date of this order.
 - b. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹81.66/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of offer of possession and thereafter, ₹100/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease after the completion of the project, whichever is earlier in terms of allotment letter dated 07.09.2016.
 - c. 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.

- 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.

34. Complaint stands disposed of.

35. File be consigned to registry.


(Ashok Sangwan)
Member
(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 15.07.2025

