

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

**Date of decision: 15.07.2025**

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"Vatika One on One"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5922/2023	Dhiren Bammi V/S Vatika One On One Pvt. Ltd. & Vatika Limited	Shri Umesh Gulati, Advocate And Shri Venket Rao, Advocate
2.	CR/5923/2023	Dhiren Bammi V/S Vatika One On One Pvt. Ltd. & Vatika Limited	Shri Umesh Gulati, Advocate And Shri Venket Rao, Advocate

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman  
Member**

**ORDER**

1. This order shall dispose of all the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and

functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "*Vatika One On One*," 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 complaints, reply to 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:

<b>Project Name and Location</b>	<b>"Vatika One On One", Sector 16, Village-Silokhera, Gurugram, Haryana.</b>
<b>Assured return clause</b> 15. The Developer may, where the Buyer has paid 100% of the Total sale consideration and other charges for the Commercial Unit, <u>upon signing of this Agreement pay Rs. 151.65/- (Rupees One hundred fifty-one and sixty-five paise only) per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial Unit as per its policy, from the date of execution of this agreement till the construction of the Said Commercial Unit is complete.</u>	

**17. Possession Clause**

*17. The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit **within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.*

[Page 49 & 51 of complaint]

**OC: 06.09.2021**

**Offer : Not offered**

Complaint No.	CR/5992/2023	CR/5923/2023
Date of BBA	30.08.2016 (Page 31 of complaint)	30.08.2016 (Page 31 of complaint)
Unit no. and area	402, 4 <sup>th</sup> floor, block- 2, 1000 sq. ft. (Page 27 & 33 of complaint)	401, 4 <sup>th</sup> floor, block- 2, 750 sq. ft. (Page 27 & 33 of complaint)
Due date of possession	30.08.2020 [as per BBA clause 17]	30.08.2020 [as per BBA clause 17]
Total sale consideration and amount paid	TC- 1,28,79,010/- (page 27 & 34 of complaint)  AP- 1,33,29,765 /- (page 34 of the compliant)	TC-96,59,257/- (Page 27 & 34 of complaint)  AP-99,97,324/- (page 34 of the compliant)
Assured return paid	No amount of assured return received till date	No amount of assured return received till date

1. Direct the respondent to pay monthly assured return
2. Direct the respondent to pay monthly rental along with interest
3. Refund of 6 months rental security deposit along with interest.

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

TC: Total consideration

AP: Amount paid by the allottee(s)

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/3922/2023 titled as Dhiren Bammi V/s M/s Vatika One on One Pvt. Ltd. & Vatika Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.
- A. Project and unit related details**
6. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

***CR/3922/2023 titled as Dhiren Bammi V/s Vatika One on One Pvt. Ltd. & M/s Vatika Limited***



S. No.	Particulars	Details
1.	Name of the project	"Vatika One on One", sector -16, Vatika India Next, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	Area of the project	42452.291 sq. mtr
4.	DTCP license no.	05 of 2015 dated 06.08.2015
5.	RERA Registered/ not registered	Registered (For Vatika One on One phase-I) vide registration no. 237 of 2017 dated 20.09.2017, valid till 19.09.2022 [as per Registration certificate at Pg.24 of complaint]
6.	Unit No. and Area	402, 4 <sup>th</sup> floor, block-2, 1000 sq. ft. (super area) [Page 27 & 33 of complaint]
6.	Allotment letter dated	29.08.2016 [Page 27 of complaint]
7.	Date of buyer agreement	30.08.2016 [Page 31 of complaint]
8.	Date of start of construction	Not available
9.	Assured return Clause	<b>15. ASSURED RETURN IN FULL DOWN PAYMENT CASES</b>

		<p><i>The Developer may, where the Buyer has paid 100% of the Total sale consideration and other charges for the Commercial Unit, <u>upon signing of this Agreement pay Rs. 151.65/- (Rupees One hundred fifty one and sixty five paise only) per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial Unit as per its policy, from the date of execution of this agreement till the construction of the Said Commercial Unit is complete.</u></i></p> <p>[Page 47 of complaint]</p>
10.	Leasing Arrangement clause	<p><b>16. LEASING ARRANGEMENT (OPTIONAL)</b></p> <p><b>16.1.</b> <u>The Developer will pay to the Buyer Rs.130/- (Rupees One hundred and thirty only) per sq. ft. super area of the said unit per month as committed return upto three years from the date of completion of construction of the said Building or the said Unit is put on Lease, whichever is earlier.</u> The Buyer will start receiving lease rental in respect of the said Unit in accordance with the earlier. The Buyer will start receiving lease rental in respect of the said Unit in accordance with lease document as may be executed and as described hereinafter from the date of commencement lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent free period on count of fit-out by the lessee or any other account, then the Buyer shall not be entitled for any rent during the same.</p> <p><b>16.8.</b> During the tenure(s) of the lease(s) as well as during the intervening gaps, the said Unit shall be deemed to be in legal possession of the Buyer. However, the Buyer shall not</p>



		<p><i>demand or claim physical possession of the said Unit till it is on lease.</i></p> <p>[Page 48 of complaint]</p>
11.	Possession Clause	<p><i>17. The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit <b><u>within a period of 48 (Forty Eight) months from the date of execution of this Agreement</u></b> unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments</i></p> <p>[as per Builder Buyer Agreement at page 49 &amp; 51 of complaint]</p>
12.	Due date of possession	<p>30.08.2020</p> <p>[Calculated as per possession clause 48 months from execution of BBA i.e., 30.08.2016]</p>
13.	Basic sale consideration	<p>Rs. 1,28,79,010</p> <p>[Page 27 &amp; 34 of complaint]</p>
14.	Amount paid by the complainant	<p>Rs. 1,33,29,765/-</p> <p>(page 34 of complaint)</p>
15.	Offer of possession	<p>Not offered</p>

16.	Occupation certificate	06.09.2021 [Page 51 of reply]
217	Assured return	No amount of assured return received till date

## B. Facts of the complaint

7. The complainants have made the following submissions in the complaint: -

- a. That the present complaint has been filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation & Development) Act, 2017 for violation of Section 11(4)(a) of the Real Estate (Regulation & Development) Act, 2016 wherein it is inter-alia prescribed that the respondents shall be responsible for all obligations, responsibilities and functions under the provision of the Real Estate (Regulation & Development) Act, 2016 or the rules and regulations made thereunder or to the complainant as per the agreement for sale executed inter se.
- b. That the respondent no. 1 had got "One on One" registered with this Authority vide registration no. 237 of 217 dated 20.09.2017.
- c. That complainant had applied for purchase of commercial unit with the respondents. In pursuance of the same unit bearing no. 402, Block-2 in the commercial project developed by respondent no. 1 as the developer and the respondent no. 2 being confirming



party to the respondent no. 1 in the name of "One on One" in Sector-16, Gurugram, Haryana, were allotted to the complainant.

- d. That based on the representation and assurance by the respondents, complainant had made the booking towards the aforesaid unit in his name by making the payment against the commercial unit.
- e. That in pursuant to the elaborate advertisements, assurances, representations and promises made by respondents about the timely completion of a premium commercial project with impeccable facilities and believing the same to be correct and true, the complainant considered booking of aforesaid commercial unit. It was represented and assured by the respondents that they shall pay an Assured Return of Rs. 151.65/- per square feet per month to complainant from 37<sup>th</sup> month from the date of receipt of 100% of basic sale price from complainant till the completion of the said building and post completion of construction of the said building complainant shall be paid Assured Return of Rs. 130/- per square feet on super area up to three years from the date of completion of construction of the building or the said unit is put on lease, whichever is earlier.
- f. That complainant has made the complete payments towards the purchase of aforesaid commercial unit and the details of said payment is as follows:-

Unit No.	Sale Consideration (Rs.)	Date of Complete Payment
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402	1,34,58,555	07.07.2016
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- g. That after making the payment of aforesaid purchase price towards the commercial unit the respondent no. 1 had issued an allotment letter dated 29.08.2016 towards the said unit.
- h. That complainant had further entered into builder buyer agreement (hereinafter to be referred as "BBA") for the aforesaid commercial premises with both the respondents vide BBA dated 30.08.2016.
- i. That complainant had purchased the said commercial unit on assured return scheme offered by the respondents. The aforesaid Assured Return Scheme was duly mentioned in the term and conditions of the allotment letters by the respondent No. 1 and the said fact of aforesaid Assured Return Scheme was further reiterated by both the respondent companies in the BBA. The terms and conditions of Assured Return Scheme was duly agreed by both the respondent companies.
- j. That as per the terms agreed with respondent companies it was categorically agreed that the respondent no. 1 shall pay an Assured Return of Rs. 151.65/- per square feet per month to Complainant from 37<sup>th</sup> month from the date of receipt of 100% of basic sale price from complainant till the completion of the said building and post completion of construction of the said building complainant shall be paid Assured Return of Rs. 130/- per square feet on super area up to three years from the date of completion of construction of the said building or the said unit is put on lease,

whichever is earlier. In the event the achieved lease rent is less than Rs. 130/- per square feet, then complainant will be received amount calculated @ Rs. 133/- per square feet for every Re. 1/- by which achieved rent is less than Rs. 130/- per square feet and in the event the achieved lease rent is more than Rs. 130/- per square feet, then the respondents will be liable to pay additional sale consideration calculated @ Rs. 66.50/- per square feet on super area of said unit for every rupee of additional rent achieved over Rs. 130/- per square feet.

- k. That the complainant had duly paid the basic sale price for each of aforesaid premises. The respondent companies were liable to pay the Assured Return @ Rs. 151.65/- from the 37<sup>th</sup> month i.e. 22.07.2019. Unfortunately, from the aforesaid respective dates, the respondents did not pay the Assured Return, as promised. The complainant had written the letter dated 14.06.2019 just to remind that Assured Return will start from 22.07.2019 and also sought an update on building construction and leasing out progress, if any. While receiving the aforesaid letter by hand, an official of the respondent companies had given a note that the respondent companies had already sent an email dated 14.06.2019 for the same and a copy of the same was handed over wherein it was informed that regarding complainant's investment, the respondent companies were in the process of reconciling the accounts as of 30.06.2019 and details will be sent by or before 25.06.2019. An email dated 26.06.2019 was received

wherein an addendum agreement was attached while seeking amendment to the aforesaid BBA and the intent of the respondent companies were to wriggle out of the aforesaid Assured Return clauses. The complainant never signed the said alleged addendum agreement. In any case, again a letter dated 22.07.2019 was duly received on 23.07.2019 by the respondent companies and sought further details while reminding of payment of Assured Return. Subsequently, letter dated 19.08.2019, email dated 19.11.2019, letter dated 21.11.2019, emails dated 21.12.2019, 24.10.2020, 04.11.2020, 01.12.2020, 10.05.2021 & 25.05.2021 were duly sent regularly seeking an update regarding construction as well as payment of Assured Return, unfortunately, no reply was ever made by the respondent companies.

1. That it was on 05.01.2022 an update from an email address [noreply@vaticagroup.com](mailto:noreply@vaticagroup.com) was received. In this email the respondent companies had informed that it was having discussion with Google Connect Services India Private Limited that they have terminated the agreement to lease and sought the refund of security deposit, in as much as it was further alleged that there have been many force majeure events in the last twenty-one months. This step taken at the very belated stage came as a shock to complainant. The complainant had been waiting for an update since July 2019 and the respondent companies come out of reply only 05.01.2022 from email address wherein one cannot even reply to this email.

- m. That the respondent companies are bound with the letter of allotment/BBA/its contract and now at this stage making false and frivolous ground just to wriggle out of their liabilities are not called for. Under the circumstances the Google has terminated its contract with the respondent companies than complainant shall not be responsible for the same. The respondent companies make the mention of "Time is of the Essence" in the BBA but it allegedly makes complainant only responsible for the same but it is further categorically submitted that the agreement cannot be one sided and, in such circumstances, the aforesaid principle shall also apply on the respondent companies. In the same way, complainant also apprehends which the respondent companies have already mentioned in the email dated 05.01.2022 for invoking the force majeure clause in the BBA, it is submitted and it may be noted that no pandemic word has been used in the said clause. The covid-19 was not an Act of God. Without prejudice, it is categorically submitted that rest all other alleged occasions for invoking the force majeure clause were never invoked or even informed till date to complainant. In such circumstances the respondent companies are liable to pay the Assured Return as agreed with complainant.
- n. That the notice dated 01.02.2022 which was issued by the respondent no. 1 company to Google Connect Services India Pvt. Ltd., it has made lot of claims which are matter of record and in the same circumstances, the way the respondent companies are



making claims against the aforesaid multinational company, complainant also has a right to make its claim which the respondent companies had agreed for. Without prejudice to complainant's, the respondent companies must have claimed its monetary claims from the aforesaid company and maybe it has gone in litigation with it and complainant, being an investor, the respondent companies have a right to know the status of the litigation filed qua Google Connect Services India Pvt. Ltd., as such, this information may kindly also be communicated to complainant.

- o. That, as aforesaid and inspite of several meetings and follows ups with the respondents with regard to the non-receipt of Assured Returns, the respondents have till date not paid the said Assured Returns towards the respective units which is as follows: -

Unit No.	Start Date of Assured Return	Amount of Assured Return @Rs.151.65/- upto 31.03.2023
403	22.07.2019	68,14,140.00

That since till this time premises has not been leased out and it has not been in the knowledge that if completion certificate has been received by the respondents, in such circumstances and without prejudice to the rights and contentions, the complainant reserves his rights to recover the assured return in such change circumstances i.e. the completion certificate for project has been received and the premises has been leased out by the respondents.



- p. That a Legal Notice dated 05.07.2022 was issued by the complainant to the respondents seeking outstanding amount of assured return which was duly served on the respondents but unfortunately no reply has been received till this time and as such, having no other option, the complainant has sought to file the complaint before this Authority.
- q. That during the pendency of the said collective complaint, few subsequent facts have taken place which are important for adjudication of present complaint. The respondents sent an email dated 27.01.2023 disclosing that lease agreement has been signed for the unit. The respondents also shared an attachment along with the email wherein it was disclosed that monthly rent has been fixed @ Rs. 102/- per sq. ft., rental security deposit for 6 months received from tenant, brokerage @ 3 months' rent + GST shall be charged by respondents from the complainant, one time escalation cost @ Rs. 1,080 per sq. ft. shall be charged by respondents from the complainant, amongst others.
- r. That the respondents are also liable to pay Rs. 8,16,000/- to the complainant, which it has already received from tenant/Lessee on account of monthly rental w.e.f. 01.04.2023 to 01.11.2023. The respondents are also liable to pay Rs. 36,720/- to the complainant towards interest @ 12% per annum on amount of above monthly rental, which respondents have not paid to complainant till date.
- s. That an amount of Rs. 130/- per sq. ft. was promised by the respondents towards monthly rent at the time of signing of

agreement whereas now respondents had intimated monthly rent @ Rs. 102/- per sq. ft. Thus, the respondents are also liable to pay differential amount of Rs. 28/- per sq. ft. to the complainant, calculated @ Rs. 133/- per sq. ft. for every Re. 1/- by which achieved rent is less than Rs. 130/- per sq. ft. which amounts to Rs. 37,24,000/-.

- t. That the respondents are also liable to pay Rs. 6,12,000/- to the complainant, which it has already received from tenant/lessee on account of 6 months rental security deposit. The respondents are also liable to pay Rs. 48,960/- to the complainant towards interest @ 12% per annum on amount of six months rental security deposit, which respondents have not paid to complainant till date.
- u. That the respondents surprisingly have further demanded illegal amount of Rs. 3,06,000/- towards Brokerage, which is equivalent to 3 month's rent, GST being charged extra. The respondents are also demanding illegal amount of Rs. 10,80,000/- towards one time escalation cost @ Rs. 1,080/- per sq. ft. towards the said unit. Till date, complainant has not received a single penny w.r.t. said unit, as promised by the respondents. Other way round, instead of paying promised amount to the complainant, respondents are making false & frivolous claims, as aforesaid, and demanding money on account of rental unit, for which, not even a single document has been shared by the respondents to the complainant.
- v. That earlier multiple units were booked, hence, a collective Complaint was filed but the respondents had taken objection that

such complaint is not maintainable, accordingly, on 16.11.2023, while moving an application for withdrawal while seeking leave to file fresh individual unit wise complaints, as such, present complaint is being filed for unit no. 402 and for other units, separate complaints are also being filed independently.

- w. That the cause of action accrued in favor of the complainant and against the respondents on various dates when the complainant was first offered the unit, subsequently a letter of allotment was issued to the complainant and when again the respondents entered into their respective agreement to sell / builder buyer agreement, it also arose on each and every date till the date of filing of present complaint, when Assured Return, as agreed, was not paid and as such the cause of action is still continuing and subsisting on day to day basis

**C. Relief sought by the complainants:**

8. The complainant has sought following relief(s)
- a. That both the respondents herein be directed to pay total amount of Rs. 1,34,30,824/-, comprising of following: -
- i. An amount of Rs. 68,14,140/- towards the claim of Assured Return along with interest @ 12% amounting to Rs. 13,79,004/- from 22.07.2019 till 13.11.2023, and further till realization, to the complainant.
- ii. An amount of Rs. 8,16,000/- towards the claim of monthly rental along with interest @ 12% amounting to Rs. 36,720/- from

01.04.2023 till 13.11.2023, and further till realization, to the complainant.

iii. An amount of Rs. 37,24,000/-towards the claim of Differential in Monthly Rental from 01.04.2023 till 13.11.2023, and further till realization, to the complainant.

iv. An amount of Rs. 6,12,000/- towards the claim of 6 months rental security deposit along with interest @ 12% amounting to Rs. 48,960/- from 01.04.2023 till 13.11.2023, and further till realization, to the complainant.

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 no. 1 & respondent no. 2:**

10. The respondent contested the complaint on the following grounds:
- a. That the complainant has clearly stated that the respondent no. 2 is just a confirming party. Further, all the communications and payments with respect to the subject unit were sent or received by the respondent no.1. Hence, the respondent no. 2 has no liability against the complainant and no right of complainant can be imposed against the respondent no. 2 and the respondent no. 2 shall be deleted from the array of parties.
  - b. That the complainant herein being an investor having multiple units in the same project being developed by the respondent. it is

evident that the complainant is merely an investor who purchased the units for making steady monthly returns.

- c. That in the year 2016, the complainant being in search of investment opportunities learned about the project launched by the respondent no. 1 titled as **"ONE ON ONE"** at Sector 16, Gurugram and visited the office of the respondent no. 1 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.
- d. That after having dire interest in the commercial project constructed by the respondent the complainant decided to invest and thus had booked a Unit under the assured return scheme, vide application form dated 27.05.2016. The assured return scheme, the complainant upon own will paid the entire sale consideration amount to the respondent for making steady monthly returns.
- e. That on 29.08.2016, respondent vide allotment letter allotted unit no. 402 in block 2 measuring 1000 sq. ft. in the aforesaid project. On 30.08.2016, the builder buyer agreement, was executed between the complainant and the respondents for the unit, for a basic sale consideration of Rs. 1,28,79,010/- in the project, which was duly paid by the complainant. The respondent no 2 was just a confirming party in the said agreement and the rights, interest in the land has been acquired by the respondent no 1.



- f. That as per **Clause 2 and 3** of the allotment letter read with **clause 15 and 16** of the agreement, the respondent was supposed to pay Rs. 151.65/- per sq. ft, per month as assured return to the complainant, from the 37th month from the date of full payment till the completion of the building and Rs. 130/- per sq. ft. per month after completion of building up to 3 years or till the unit is put on lease, whichever is earlier. Further, the complainant vide same clauses, has authorised the respondent no. 1, to lease out the said unit and by virtue of the said leasing clause the unit in question was subject to lease upon completion.
- g. That as per the terms of the agreement, the unit was supposed to be leased out upon the completion as per **clause 16** of the agreement and in case the complainant wish not to lease the unit then as per the provision of clause 17, the unit was proposed to be handed over within an estimated period of 48 (forty-eight) months from the date of execution of agreement. The complainant had opted for leasing out and authorized the respondent to lease out the unit. The provision of **clause 16** read with **clause 16.8**, the unit in question were in deemed legal possession but the complainant was not entitled to claim the physical possession of the unit as it is on lease.
- h. That the unit in question was deemed to be leased out upon completion and the respondent has already put the unit on lease. As the complainant had mutually agreed and acknowledged that



upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.

- i. That the agreement, clearly stipulated provisions for "lease" and admittedly contained a "leasing clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainant is not a "Allottee" but investors who have invested the money for making steady monthly returns.
- j. That the complainant herein had authorized the respondent no. 1 to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of the respondent no. 1.
- k. That the respondent was committed to complete the development of the project and put the unit on lease with the proposed timelines. The developmental work of the project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
- l. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got

decelerated. The respondent was bound to adhere with the order and notifications of the Courts and the Government.

- m. That upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.
- n. That despite these obstructions and changes in the prevailing laws, the respondent was able to complete the construction in year 2020 and applied for Occupation Certificate on 12.08.2021, which was issued by concerned authority on 06.09.2021. It is pertinent to mention herein that the assured return was to be paid at Rs. 151.65/- from 37<sup>th</sup> month i.e. 22.07.2019 till **completion of construction** i.e. 2020 and Rs 130/- per sq. ft. after **completion of construction** up to three years or when the unit is put on lease, whichever is earlier.
- o. The respondent was determined to fulfil its obligations as per the agreement and was able to execute a lease agreement with Google Connect Services India Private Limited on 22.06.2020. The unit is already put on lease as per the agreed clauses in allotment letter and the agreement. So, the respondent alleged liability to pay the alleged assured return shall be till the unit is put on lease only.

- p. The complainant was to be paid assured return of Rs. 151.65/- per sq. ft. from 37<sup>th</sup> month of complete payment till completion of construction, that in the present complaint shall come out to be, year 2020. Further, as per agreed clauses, after completion of construction the complainant was to be paid, assured return of Rs. 130/- per sq. ft. per month, till 3 years or till unit is put on lease, whichever is earlier, and in the present complaint the unit has already been put on lease on 22.06.2020. Therefore, if any monetary relief is allowed, then **it shall be allowed as per the agreed clauses and facts of the present complaint.**
- q. That as per **Clause 3** of the allotment letter read with **clause 16.5** of the agreement, the respondent has to achieve a minimum lease rental of Rs. 130/- for the **first lease** only. Further, the compensation of Rs 133/- per sq. ft. for every Re 1/- by which achieved rental is less than Rs. 130/- per sq. ft., was only applicable if the **first lease rental** achieved is less than Rs. 130/- per sq. ft.
- r. That the respondent cannot pay "Assured Returns" to the complainants by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of Deposits under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties.
- s. That in the present complaint the respondent has offered assured returns to the complainant in lieu of advance payments received

in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as assured return over a period of time, which can be treated as passing on of discount as price realisation against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of projects.

- t. The BUDS Act, 2019 being a subsequent act from RERA Act, 2016 shall prevail over the provisions over the RERA Act. The matters pertaining to the assured return shall be regulated by the Competent Authority appointed under Section 7 of the BUDS Act. Therefore, the Authority has no jurisdiction over the assured return scheme matters.

11. Written submissions filed by the parties in each case are taken on record and considered by the authority while deliberating upon the relief sought by the complainants.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

**E. Jurisdiction of the authority**

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

***Section 34-Functions of the Authority:***

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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 Objection regarding maintainability of complaint on account of complainant being investor**

17. The respondents took a stand that the complainant is investors and not consumer 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;"*

18. 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.

**G. Findings on the relief sought by the complainants:**

**G.I. Direct the respondent to pay pending monthly assured return of Rs. 151.65/- per sq. ft. (Rs. 1,51,650/- per month) accrued from the 22.07.2019 till completion of construction of the building i.e. 06.09.2021 (date of receipt of OC) along with interest to the complainant.**

**G.II. An amount of Rs. 8,16,000/- towards the claim of monthly rental along with interest @ 12% amounting to Rs. 36,720/- from 01.04.2023 till 13.11.2023, and further till realization, to the complainant.**

**G.III. An amount of Rs. 37,24,000/-towards the claim of Differential in Monthly Rental from 01.04.2023 till 13.11.2023, and further till realization, to the complainant.**

19. The complainant is seeking assured returns on monthly basis as per the builder buyer agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. The respondent refused to pay the Assured return 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. 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)(I)(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.

20. The money was taken by the builder as a 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. 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)(l) deals with the exception wherein 2(4)(l)(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)(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.

21. 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 provisions for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
22. 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 complainant 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 complainant-allottee in terms of the builder buyer agreement.
23. 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 30.08.2016. The assured return is payable to the allottees as per clause 15 & 16 of the buyer's agreement dated 30.08.2016. The promoter had agreed to pay to the complainant-allottee Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till the construction of the unit. 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 respondent refused to pay the assured return by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.

24. However, admittedly, OC for that block has been received by the promoter on 06.09.2021 from the Competent Authority. The Authority is of the view that the construction be deemed completed on 06.09.2021 by the respondent promoter for the said project.
25. 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.151.65/- per sq. ft. on monthly basis from the date of execution of agreement till the completion of construction i.e. 06.09.2021 and thereafter Rs.130/- per sq. ft. on monthly basis up to three years from the date of completion of construction of the said Building or the said Unit is put on Lease, whichever is earlier in terms of clause 15 & 16.1 of the BBA dated 30.08.2016. Thereafter, the lease rentals shall be payable to the complainant in terms of clause 16.1 & 16.5 of the BBA.
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 @ 9.10% p.a. till the date of actual realization.

#### **G.IV. 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 been obtained by the respondent promoter on 06.09.2021. As on date, conveyance deed can be executed in respect of the subject unit, so, the respondent promoter is contractually and legally obligated to execute the conveyance deed. In view of above, the respondent shall execute the conveyance deed of the allotted unit within months 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) of the Act:

- i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 151.65/- per sq. ft. per month from the date the execution of agreement till completion of construction and thereafter, Rs. 130/- per sq. ft. per month after the completion of the building till three years or till the date the said unit is put on lease whichever is earlier. Thereafter, the lease rentals shall be payable to the complainant in terms of clause 16.1 & 16.5 of the BBA.
- ii. 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.
- iii. The respondent is directed to execute conveyance deed upon payment of requisite stamp duty by the complainant as per norms of the state government.
- iv. 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. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

31. Complaints stand 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)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 15.07.2025

