



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	268 of 2025
Date of filing:	25.02.2025
Date of first hearing:	03.04.2025
Date of decision:	09.10.2025

Suraj Kumar S/o Sh. Prabhat Kumar
R/o House No. A3/601, Olive Country, Sector-5,
Vasundhara, Ghaziabad -201012.

....COMPLAINANT(S)

VERSUS

1. Vatika Limited.
Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India Next, Gurugram-122012
2. Vatika I.T Parks Pvt Limited.
Flat no. 224-A, 2nd floor,
Devika Tower, 6, Nehru Place
New Delhi-110019

....RESPONDENT(S)

CORAM:

Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member
Member

Present: -

Ms. Shreya Narayan, Counsel for the complainant
through VC
Ms. Navneet, Counsel for the respondent through VC.

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ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint was filed on 25.02.2025 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	C-207

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5	Unit area	500 sq. ft.
6.	Date of builder buyer agreement	21.05.2014
7.	Due date of offer of possession	21.05.2018
8.	Possession clause	<i>Clause 13 Subject to the aforesaid and subject to timely payment by the buyer of the sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the Developer, the developer contemplates to complete construction of the said unit within 48 months of execution of agreement.</i>
9.	Total sale consideration	₹ 39,00,000/-
10.	Amount paid by complainant	₹ 40,44,700/-
11.	Offer of possession	No offer.
12.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Complainant booked a commercial unit bearing no. 207 measuring 500 sq. ft. on 2nd floor, tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration of ₹ 39,00,000/- on 05.07.2014 by paying Rs 40,44,700/-. Builder buyer agreement was executed between the parties on 21.08.2014. By way of the said agreement, respondent agreed to pay monthly assured returns to the complainant at the rate of Rs 65 per sq. ft. per month on super

area of 500 sq. ft. of the unit and to deliver the possession within 48 months, i.e. upto 21.08.2018.

4. That the respondent even after receipt of Rs 40,44,700/- failed to complete the construction of unit and had payment of assured returns only upto September,2018.

5. That on lapse of due date, the complainant went to the office of respondent and met its representatives who assured that the complainant that they would soon complete the construction and they would keep making payments towards the assured return. That there is inordinate delay in developing the project well beyond what was promised and assured to the complainant. Moreover, as per respondent's own admission, the Occupation Certificate for Tower-C has not been obtained.

6. That respondent no. 2 is the owner of the property. Respondent no. 2 is believed to have authorised respondent no. 1 by way of a joint venture agreement to construct the property. Respondent no. 1 having caused to construct the units and apartments in the above project comes within the definition of 'promoter' as per Section 2 (zk) of the RERA Act. Respondent no. 2 had also applied for license to statutory authorities to construct the units as stated in the builder buyer agreement. The respondents being promoters are jointly and severally liable to refund the money to the complainant who has withdrawn from the project.

7. That complainant made several enquiries to ascertain the status of construction work at the site and payment of assured return, however, no satisfactory response is received from the officials of respondent-builder. Respondent has failed to handover actual possession of unit and to execute the conveyance deed in favor of the complainant. Complainant is aggrieved by the act of respondent in having failed to complete the construction of the unit within stipulated time. Therefore, complainant is praying for refund of paid amount with interest.

C. RELIEF SOUGHT

8. Complainant in its complaint has sought following relief:
- i. Respondent is liable to refund the amount of Rs 23,33,430/- paid by the complainants along with interest on the amount paid by the complainants at the rate prescribed in RERA Act,2016 and Haryana RERA Rules,2017 from the date of each payment till the date of realization.
 - ii. Till the time the amount as claimed in the present complaint is refunded back to the complainants, the respondent be restrained from creating any third party right on the unit in question.
 - iii. Any other relief as deem fit by this Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1



Learned counsel for the respondent filed detailed reply on 06.08.2025 pleading therein:

9. That present complaint is not maintainable for the reason that Authority does not have jurisdiction to decide the complaint pertaining to unregistered project- 'Vatika Mindscape'.
10. That the completion of construction for Block C wherein unit of the complainants is located had already been intimated to the complainant vide letter dated 12.03.2018. Present complaint for refund is not maintainable at such a belated stage when the construction had been completed and the respondent had invested huge sum in the project.
11. That the agreement between the complainants and Vatika Ltd. was in form of investment agreement and the complainant had made investment in the project of the respondent by purchasing a unit for speculative gains and not for getting possession of unit which is evident from clause 15 and 16 of builder buyer agreement. Therefore, there does not exist relation of allottees and promoter between the parties as complainant herein is not allottee but mere investor.
12. That as per agreement, the physical handover of the unit was contingent upon non-leasing arrangements. However, the complainant opted for leasing the unit, which meant they were not entitled to the physical possession of the unit. The complainant now claims refund based on the



pretext of non-receipt of the Occupation Certificate as they opted for a leasing arrangement, which explicitly excludes entitlement to physical possession. Commercial space booked by the complainant is not meant for physical possession. Unit in question is a virtual unit and was never intended to be physically possessed by the complainant. Further, as per clause 5.1 of the agreement the charges for maintenance of the unit in question is payable by the buyer of the unit.

13. That respondent has paid each and every penny of assured returns amounting to Rs 21,56,301/- till 01.10.2018. However, assured returns cannot be further paid to complainant due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants. Copy of assured return computation sheet is annexed as Annexure R-2 and R-3.

14. Further, Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 titled "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 next date of hearing. Said matter is listed before the Hon'ble High Court for 25.08.2025. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

15. Respondent has further taken a plea that complainant is speculative buyer, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bharti Knitting vs DHI, by Hon'ble Apex Court.

16. As per office record, respondent no. 2 has not filed its reply till date.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

17. Learned counsel for complainant has submitted that possession of the booked unit was to be handed over by 21.08.2018, however, till date project



is not complete. Occupation certificate has not been issued by competent authority with respect to tower in question i.e. tower C. Since project-Vatika Mindscape has been mortgaged time and again with banks and financial institutions by the respondent, conveyance deed cannot be executed. Without prejudice to interest of the complainant, it is averred that complainant is not desirous of waiting endlessly for a valid possession of unit and are therefore, praying for relief of refund of paid amount along with interest.

18. At the outset, learned counsel for complainant stated that complainant do not want to continue with the project and as such is pressing for relief of refund of the paid amount along with interest. Further, she argued that amount of assured return should not be deducted as is done by the Hon'ble Authority in all of refund cases pertaining to Vatika Mindscapes. Said amount was paid by respondent in compliance of agreed terms and conditions of agreement so complainant is entitled to retain said amount. In respect of assured return, she referred to previous order dated 07.08.2025 wherein she had already given a statement to withdraw the relief pertaining to assured returns.

19. Learned counsel for respondent stated that an application has been filed in registry on 18.08.2025 same be considered for passing of final order. Further, she argued that paid amount for assured return be allowed to be deducted from the amount to be refunded.



F. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the paid amount along with interest?

G. OBSERVATIONS OF THE AUTHORITY:

20. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that the respondent has taken objection w.r.t the maintainability of complaint. Therefore, the Authority deems to give its findings/observations w.r.t maintainability issue which is as follows:

- i. An application dated 18.08.2025 has been submitted by the respondent, Vatika Ltd through their counsel, stating as following:-

- a. That present complaint is now listed for pronouncement on 09.10.2025.
- b. That case was listed on 07.08.2025 whereby complainant's counsel made oral submission to withdraw the relief of Assured return.
- c. The Hon'ble Authority on 07.08.2025, while noting that the reply filed by respondent had not yet come on record and without hearing any arguments from either side, proceeded to fix the matter for pronouncement of order solely on the basis of the statement made by the complainant's counsel regarding the withdrawal of the

relief pertaining to Assured return, i.e. partial withdrawal of relief sought in complaint.

- d. On said date, proxy counsel appeared and specifically stated that arguing counsel is engaged before Hon'ble High Court and prayed for an opportunity to address the arguments or at very least to pass over matter for some time. However, this Hon'ble Authority did not consider the request of the proxy counsel to put forth its submissions and instead fixed the matter for pronouncement of the final order.
- e. That the opportunity of being heard is a sacrosanct principle of natural justice and its denial amounts to grave injustice to the respondent. The respondent has a statutory right to be heard, especially in adjudicatory proceedings under The RERD Act, 2016.
- f. That the right to a fair hearing is not merely a procedural formality but a fundamental aspect of ensuring justice and fairness in all legal and administrative proceedings. Also, Section 38(2) of the RERA Act mandates that the Authority shall be guided by the principles of natural justice. The denial of the opportunity to argue the case amounts to a violation of this mandate.
- g. That it is pertinent to mention here that principle of audi alteram partem applies to all administrative and quasi judicial proceedings

affecting rights. In the present case, respondent was denied a fair opportunity to address their arguments which constitutes a clear violation of principles of natural justice, particularly the rule of audi alteram partem-the right to be heard.

- h. Hence, it is prayed that-Grant the respondent an opportunity to address oral arguments before the matter is fixed for pronouncement of the order.

In respect of objection raised by Id. Counsel for respondent towards not providing an opportunity of oral arguments in the complaint, it is observed that a detailed order considering request of respondent was passed on hearing dated 07.08.2025. Relevant part of the order is reproduced below for reference:-

1. Today, Id. counsel for complainant pressed upon relief of refund along with interest stating that unit in question pertains to Tower-C and respondent has not yet obtained Occupation Certificate for said tower. She further made a statement that relief of assured returns be allowed to be withdrawn.
2. In reply, Id. counsel for respondent argued that date be given for arguments as reply has just been filed on 06.08.2025. Further, she stated issue of Assured returns is pending before Hon'ble High Court on 25.08.2025.
3. In these circumstances, Authority observes that respondent was granted time to file reply, i.e. upto 06.07.2025 vide previous order dated 03.04.2025. However, reply has been filed by respondent on 06.08.2025 i.e one month late. Now, respondent wants more time to argue the case. Relevant part of the previous order is reproduced below for reference:-



" It is pertinent to mention here that captioned cases notices stand delivered to the respondents in month of March, 2025 and all are heard today, i.e., 03.04.2025 where the respondents sought time to file reply, and are now adjourned to 07.08.2025, thereby providing over five months for the respondents to file their replies. In summary proceedings, strict adherence to stipulated timelines is vital to harmonize the principles of natural justice with the objective of swift adjudication. Parties are expected to file their submissions within the prescribed period to avoid unwarranted delays and facilitate the fair and efficient resolution of the matter.

Therefore, Authority gives another opportunity to the respondents to file the reply by 6th July 2025 with an advance copy supplied to the respective complainant. Complainants are at liberty to file rejoinder, if any, with an advance copy supplied to the respondent by 26th July 2025. These dates may be adhered to strictly.

Cases are adjourned to 07.08.2025." (underlining and extra emphasis provided).

4. Since March 2025, the respondent is aware of the present complaint and sufficient time of over four months has already been given to respondent to file reply/submissions/claim. After availing the opportunity, respondent chose to file a reply in registry on 06.08.2025. At this stage, case cannot be simply adjourned to next date (for 2 months) for arguments/presenting the case. Authority is duty bound to deal with complaint cases in summary manner and relevant documents/submissions have already been placed on record by the parties. Matter will now be considered/decided on merit on the basis of available record.

5. **Case is adjourned to 09.10.2025 for final consideration.** "

As clarified in aforesaid order that respondent after availing/utilising sufficient time period of over five months i.e 150 days chose to file his written reply on 06.08.2025. Since the written reply already came on record after more than 120 days, the Authority observes that in summary proceedings, it had enough material on record to decide the issue. A

frivolous adjournment for another 2 months would unnecessarily delay justice. It is important to discuss the fundamentals of the principles of natural justice (Audi Alteram Partem).

As such, principles of natural justice are primarily based on three key rules:-

1. Hearing Rule (Audi Alteram Partem)- No person should be judged without a fair opportunity to be heard.
2. Rule against Bias (Nemo Judex in Causa Sua)- No one should be a judge in their own case to prevent bias.
3. Reasoned decision (Speaking orders)-Every decision should be based on valid reasons to ensure transparency and accountability.

First of the principle/rule, i.e. Audi Alteram Partem ensures that no individual should be condemned or punished without having a fair opportunity to present their case. It mandates that all relevant parties must be informed of any allegations or decisions affecting them and must be given a fair chance to respond; enabling the party to prepare their defence. In specific fair hearing include: Proper notification of the proceedings, an opportunity to present the evidence/ submissions and an unbiased adjudicating authority.

The first right i.e *Right to Notice* has been affirmed by the courts, stating clearly the conditions under which the notice becomes adequate. The term 'notice' originates from the Latin word 'notitia' which means 'being



known'. Notice is the starting of any hearing. Unless a person knows the formulation of subject and issues involved in the case, he cannot defend himself. A notice must be adequate and contain:

- Time, place and nature of hearing
- Legal authority under which hearing is to be held and
- Statement of specific charges (or grounds) and proposed action (or grounds) which the person has to meet.

The test of adequacy of notice will be whether it gives sufficient information and material so as to enable the person concerned to put up an effective defence. However, the requirement of notice will not be insisted upon as a mere technical formality, when the concerned party clearly knows the case against him, and is not thereby prejudiced in any manner in putting up an effective defence. Therefore in *Keshav Mills Co. V Union of India*, the court did not quash the order of the government taking over the mill for a period of 5 years on the technical ground that the appellants were not issued notice before this action was taken, because, at an earlier stage, a full-scale hearing had already been given and there was nothing more which the appellant wanted to know.

In reference to the present case, it is pertinent to mention here that notice of the case was issued to respondent on 06.03.2025 and same stands delivered successfully on 10.03.2025. Vide same notice, date of first hearing as

03.04.2025 stands conveyed to the parties. Accordingly, on first hearing, i.e. 03.04.2025, respondent sought more time to file the reply. *Considering the factum of service of notice along with copy of complaint in March, 2025, specific date- 06.07.2025 was given for filing of reply. Relevant part of order dated 03.04.2025 has already been reproduced in aforesaid paras.* Thereafter, case was taken up for hearing on 07.08.2025. On said date, it was noted that respondent filed its reply on 06.08.2025, just a day before the hearing. Then it was prayed that case be adjourned for next date for arguments. Detailing of aforesaid circumstances, establishes that key elements for fair hearing was properly followed. Respondent was duly notified of the complaint and was provided adequate opportunity to present his case. Had it been the case, respondent had adhered to timelines for filing of reply then the case could have argued on 07.08.2025 itself. Opportunity was utilised by the respondent for filing of reply. Despite lapse of specific date for filing of reply, written statement filed by the respondent is duly taken on record and considered at the time of passing of this final order. Moreover, no one can argue or plead beyond the written submissions and said submissions have already been taken into cognizance.

The second right under this principle is ***Right To Know The Evidence Against Him***. Every person before an administrative authority exercising adjudicatory powers has the right to know the evidence to be used against

him. This principle was firmly established in *Dhakeshwari Cotton Mills Ltd V. Cit.* In this case the appellate income tax tribunal did not disclose the information supplied to it by the department.

Regarding this, there is no doubt that the entire complaint with all evidence and annexures has been duly supplied to the respondent months ago. It is only after considering all that, the respondent filed a detailed reply.

The final important right that accrues is the *Right To Present Case And Evidence.*

This can be done through writing or orally. *The courts are unanimous on the point that oral/personal hearing is not an integral part of fair hearing.* Thus, in the absence of a statutory requirement for oral hearing courts will decide the matter taking into consideration the facts and circumstances of every case. In *Union of India V. J. P. Mitter* the Hon'ble Apex Court refused to quash the order of the President of India in a dispute relating to the age of high Court judge on the ground that the *President did not grant oral hearing even on request. The court was of the view that when the person has been given an opportunity to submit his case in writing, there is no violation of the principles of natural justice if oral hearing is not granted.*

Taking a view based upon the above discussion, it is observed that principles of natural justice are to be applied based on the facts and



circumstances of each case, it cannot be considered as a straightjacket formula to every case. To the case in hand, no breach of any kind has been caused by affirming that the case will be decided on merits on the basis of available record. In support, judgement dated 16.11.2021 passed by Hon'ble Supreme Court in Civil appeal no. 8223 of 2009 titled as *The Chairman, State Bank of India and another versus M.L. James* is relied upon. Relevant part of the order is reproduced below for reference:-

22. *Traditional English Law recognized and valued the rule against bias that no man shall be a judge in his own cause, i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard, i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasized that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak and others v. Union of India and Others, the Constitutional Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of law under*



which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.

23. Legal position on the importance to show prejudice to get relief is also required to be stated. In **State Bank of Patiala and Others v. S.K. Sharma**, a Division Bench of this Court distinguished between 'adequate opportunity' and 'no opportunity at all' and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words:

32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. **Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.** "

Based on the above, the following points are reiterated

- Notice was served upon the respondent on 10.03.2025
- On first hearing, i.e. 03.04.2025, respondent sought more time to file the reply even though one almost one month had elapsed and all details and evidence had been provided to the respondent.



- Thereafter the respondent was ordered to file a reply latest by 06.07.2025 i.e after another 90 days. In violation of the orders of the Authority, the respondent did not file the reply on the appointed date. Rather, the reply was filed on 06-08-2025 i.e a full 30 days late. The case was fixed for hearing on 07-08-2025. The only inference for this blatant violation of the order of the Authority that can be drawn is to deliberately delay justice. It is clear that when a reply is filed one night before the date, arguments cannot take place.
- By now the respondent had taken more than 120 days to file a reply and that too in summary proceedings.
- Once everything was on record and months of opportunity had been provided the Authority gave a date for final consideration and decision on the matter, for 09-10-2025.
- In total more than 7 months i.e 210 would have elapsed by the time the final consideration would be made. If this opportunity is not enough, then justice can never be served and the Authorities and Courts will be held to ransom by parties by deliberately delaying the proceedings.

Therefore, the plea of the respondent is rejected and the case is decided on merits as under.

ii. The respondent has taken a stand that the complainant is a speculative buyer who had invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter



contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are an aggrieved persons who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

iii. In view of the above-mentioned definition of "allottee" as well as upon careful perusal builder buyer agreement dated 21.08.2014, it is clear that complainant is an "allottee" as unit bearing no. C-205 in the real estate project "Vatika Mindscape", Faridabad was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or



building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

iv. Respondent has also raised a plea that complainant had applied for allotment of a unit in respondent's project as an investor for steady rental income by opting the leasing out arrangement as per clause 16 of agreement. Clause 16 of agreement has been referred which is reproduced below for reference:-

"16. At the request of the buyer as aforesaid, the developer agrees to put the said unit, individually or in combination with other adjoining units, on lease, as and when the said unit is ready and fit for occupation.."

Above referred clause was subject to condition when 'project is ready for possession' and that stage of possession has not been reached by respondent as occupation certificate for the tower C has not yet been received from the competent authority. Further, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that the allottee gets a perfect title in the property, however, it is a matter of fact that the title was



never perfected as no conveyance deed has been executed. That this stage of delegating/respondent's right to lease out property/unit does not arise. Thus, there is no doubt regarding the fact that complainant is only an allottee.

v. The objection of the respondent that the project in which the complainant is seeking relief is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. It is pertinent to mention here that the project in which the unit in question is situated is registered with the Authority vide Registration no. 196 of 2017 dated 15.09.2017. The issue that whether this Authority has jurisdiction to entertain the complaint if the project is not registered with the Authority has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of*



respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."

vi. Complainant in present case has impleaded two respondents, i.e, Vatika Ltd as respondent no. 1 and Vatika I.T Parks Pvt Ltd. as respondent no. 2. Perusal of record reveals that all the transactions pertaining to unit in question inclusive of issuing receipt of paid amount and execution of builder buyer agreement were carried out between the complainant allottee and Vatika Ltd. Further, the respondent no. 1, i.e. M/s Vatika Ltd since the respondent no. 1 has solely received the payments from the complainant on account of booked unit. Considering said statement of the counsel and fact that no relief in particular is sought against respondent no. 2, this order is passed by issuing directions against respondent no. 1 only.

vii. Admittedly, complainant in this case had purchased the booking rights qua the unit in question in the project of the respondent in the year 2013 by

making payment of total sale consideration amounting to ₹39,00,000/-. Thereafter, builder buyer agreement for Unit no. C-205, 500 sq ft was executed with complainant on 21.08.2018. As per clause 13 of it, the possession of unit was supposed to be delivered upto 21.08.2018 (within 48 months). Fact remains that respondent has not issued any offer of possession till date as it is yet to receive the Occupation Certificate for tower in question. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

viii. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of unit till date as unit is not meant for physical possession. Complainant has duly accepted such type of builder buyer agreement for the reason that complainant has invested his money for monetary gains which in this case is assured returns. Said returns were duly paid to the complainants till October, 2018 and were stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant had purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by



respondent on the total sale consideration amount paid by complainant in one-go. Assured returns were paid till October, 2018 but stopped thereafter due to enactment of BUDS Act, 2019. Complainant had filed the complaint in year 2025 for seeking refund of paid amount, i.e., after 6 years of non-payment of assured returns. Complainant herein is aggrieved of arbitrary acts of respondent ;first in not handing over possession of the unit till date and secondly stopping the payments of assured returns. Complainant who had already paid whole of total sale consideration in year 2014 got stuck with respondent without any definite timelines of delivery of possession w.r.t. unit booked. If we look at the intent of allottee-complainant, he has chosen to invest in a tangible property-showroom space in a commercial project developed under a license issued by DTCP and Haryana Development and regulation of Urban Areas Act, 1975, not in any open share market where there is no definite/precise mode of transaction to be carried out. Investment in commercial property does not imply that complainant-allottee never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent states the unit to be virtually possessed and has not specified any clause for physical delivery of possession of unit. Furthermore, the reason that complainant is now exiting out from the project is that there exists no scope of a valid offer of possession and execution of conveyance deed even in near future due to various mortgages created by respondent.



Complainant rightly is under apprehension that his title of property will never be perfected. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today has clearly highlighted that possession of unit cannot be given to complainant as there is no clause of handing over of physical possession, on the other hand, refund of paid amount with interest also should not be awarded to complainant as unit was only meant for monetary gain-assured returns and for reason that there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault of respondent. Hence, the complainant is not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERD Act, 2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong (by not delivery possession of unit till date). By virtue of Section 18 of RERD Act, 2016, the respondent is obligated to refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainant is seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022 the prices in real estate market is seeing a upward slide. So, this contention of respondent does not hold any merit.

ix. The complainant is insisting upon refund only for the reason that occupation certificate has not yet been received and further the legal and



valid title of the property is not possible as conveyance deed of the unit would not be executed because of the several mortgages of project by the respondent to banks and financial institution. So, there is no hope of getting a valid offer of possession and legal title of unit with the complainant even in near future. Therefore, Authority cannot keep the complainant waiting endlessly for possession. Further, Hon'ble Supreme Court in the matter of **"Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others"** has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of *ibid* judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of



the paid amount along with interest on account of delayed delivery of possession.

x. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

xi. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

xii. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short



MCLR) as on date i.e. 09.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

xiii. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) 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".

xiv. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 40,44,700/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the

actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.10.2025
1.	40,44,700/-	05.07.2014	49,47,582 /-
2.	Total=40,44,700/-		Total= 49,47,582 /-
3.	Total Payable to complainant	4044700+4947582 =	89,92,282/-
Respondent shall make the payment of refund after deduction of paid amount of assured return			

xv. In respect of amount of assured return (liable to be deducted), the respondent in its para 11 of reply claimed to have paid an amount of Rs 21,56,301/- till October,2018. As per para 20 of reply, respondent claimed to have paid an amount of Rs 37,04,734.05/- till March,2018. Computation sheet is attached as Annexure R-3. In said sheet, total amount is not clearly reflected. Aforesaid two figures do not tally with any documentary evidence filed by the respondent. Complainant has nowhere in complainant mentioned the amount of assured return received by them. In these circumstances, the exact/correct figure of assured return cannot be determined. Therefore, parties are directed to



comply with the directions issued vide this final order by duly taking into consideration the deduction of assured return.

xvi. Regarding relief of assured return/lease rental, it is observed that complainant wants to withdraw from the project and wants paid money to be refunded back along with interest. But it is the argument of Id. Counsel of complainant that amount of assured return should not be deducted. As a matter of fact, assured return and lease rental was payable by respondent by virtue of clause 15 and 16 of builder buyer agreement respectively. Now, complainant is withdrawing out from the project meaning thereby that the complainant is acting against the terms of 'builder buyer agreement' as said agreement duly provides for allotment of specific unit for a sale consideration along with terms of assured returns/lease rentals. Complainant is no longer interested in having possession of said allotted unit so the terms of agreement at this stage have no meaning. By virtue of seeking refund, complainant is coming out of the relationship with respondent-promoter as an allottees of a booked unit. In the above referred circumstances, the builder buyer agreement does not hold the sanctity of an agreement as complainant wishes to withdraw his allotment out of project in question. The terms of allotment/agreement (amount of assured returns) can be pressed upon only in cases where



complainant is still interested in having possession of unit. Offer of paying assured returns/lease rentals was made by respondent only qua the possession of unit. Moreover, under Section 18 of RERA Act, 2016 where the complainant demand refund of amount, promoter is liable to refund the same along with interest. In cases of the withdrawal from the project, the complainant is not entitled to other benefits such as assured returns/lease rentals attached thereto, he can only be allowed refund along with interest after deduction of the monetary benefit, if any received from respondent. Therefore, plea of complainant of not allowing deduction of assured return stands rejected.

xvii. Ld. Counsel for complainant neither argued nor pressed upon relief clause no. iii and iv.

G. DIRECTIONS OF THE AUTHORITY

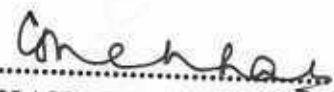
21. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent no. 1 is directed to refund the entire amount of Rs 40,44,700/- with interest of Rs 49,47,582 /- to the complainant after deducting paid amount of assured return. It is

further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

22. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]