

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of decision: 15.10.2025**

NAME OF THE BUILDER		M/S VATIKA LIMITED	
PROJECT NAME		Vatika High Street at INXT" situated at Sector- 83, Village Shikohpur, Sub-Tehsil Manesar, Gurugram	
Sr. No.	Case No.	Case title	Appearance
1.	CR/5687/2024	Ritu Malik and Rahul Malik V/S Vatika Limited	Mr. Manish Yadav (Advocate) Mr. Pawan Kumar Ray (Advocate)
2.	CR/5688/2024	Ritu Malik and Rahul Malik V/S Vatika Limited	Mr. Manish Yadav (Advocate) Mr. Pawan Kumar Ray (Advocate)

CORAM:

Shri Ashok Sangwan

Member**ORDER**

1. This order shall dispose of both the aforesaid complaints titled above filed before this 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 High Street at INXT" situated at Sector- 83, Village Shikohpur, Sub-Tehsil Manesar, District Gurugram being developed by the same respondent/promoter i.e., "M/s Vatika Limited." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges and assured returns.

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

Project Name and Location	"High Street at INXT", Sector- 83, Village Shikohpur, Sub-Tehsil Manesar, District Gurugram
Project area	14918.258 sq. mtrs.
DTCP License No. and validity	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
Name of licensee	Browz Technologies Pvt. Ltd. and others.
RERA Registered or Not Registered	Registered Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
Assured Returns Clause	"3. The developer shall remit an assured monthly return of Rs. 123.96 Per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and 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 soon." "4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises (@Rs.140/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than

			<i>Rs.140/- per sq. ft. the following would be applicable.</i> <i>a. If the achieved rental is less then Rs.140/- per sq. ft. then you shall be refunded @ Rs. 133.34/- per sq. ft. (Rupees One Hundred Thirty-Three and Thirty-Four Paise) for every Rs.1/- by which achieved rental is less then Rs. 140/- per sq. ft.</i> <i>b. If the achieved rental is more then 140/- per Sq. ft. shall be liable to pay additional sales consideration Rs.66.67/- Per Sq. ft. for every rupee of additional rental achieved."</i> (Allotment letter at page 54 of complaint)		
Occupation certificate			Not Obtained		
Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of allotment letter and execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Due date /OOP/AR paid by respondent to complainants
1.	CR/5687/2024 Ritu Malik and Rahul Malik Vs. M/s Vatika Limited DOF: 21.11.2024 Reply: 01.04.2025	076, Ground Floor, PVR Building Super area- 985 sq. ft. (Page no. 45 of reply)	Allotment Letter dated 09.01.2017 (Page no. 53 of complaint) BBA not executed	TSC-Rs. 90,25,000/- (SOA dated 28.11.2024 at page 49 of reply) AP-Rs. 46,86,962/- (SOA dated 28.11.2024 at page 49 of reply)	Due date: 09.01.2020 OOP: Not Offered AR paid by respondent to complainants: Rs.27,33,464.52 (As submitted by respondent at page no.6 of reply)
2.	CR/5688/2024 Ritu Malik and Rahul Malik Vs. M/s Vatika Limited DOF: 21.11.2024 Reply: 01.04.2025	078, Ground Floor, PVR Building Super area- 985 sq. ft. (Page no. 45 of reply)	Allotment Letter dated 03.02.2017 (Page no. 53 of complaint) BBA not executed	TSC-Rs. 91,20,000/- (SOA dated 26.11.2024 at page 51 of reply) AP-Rs. 46,31,962/- (SOA dated 26.11.2024 at page 51 of reply)	Due date: 03.02.2020 OOP: Not Offered AR paid by respondent to complainants: Rs.27,33,464.52 (As submitted by respondent at page no.6 of reply)

Due date of possession in both the cases have been calculated in terms of the **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018** wherein, the Hon'ble Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration."* In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

The complainants herein are seeking the following reliefs:

1. Direct the respondent to make the payment of the assured monthly return @ Rs.1,22,100.60/- per month since October 2018 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.
2. Direct the respondent to deliver the possession of the allotted units along with delay possession charges as per RERA, complete in all respects along with OC and CC.
3. Direct the respondent to pay Delay Penalty @ 18% per annum or at prescribed rate under HARERA on the amount due as assured rental w.e.f. from 01.10.2018 up to the date of actual delivery of assured monthly return.
4. Direct the respondent to provide the copy of the OC and CC of the project.
5. Direct the respondent to issue letter of possession in favour of the complainants.
6. Direct the respondent to provide the latest statement of account of complainants for the allotted units.
7. Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.

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

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer of Possession
OC	Occupation Certificate

4. The facts of all the complaints filed by the complainant- allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/5687/2024 titled as "Ritu Malik and Rahul Malik Vs. M/s Vatika Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

5. 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/5687/2024 titled as "Ritu Malik and Rahul Malik Vs. M/s Vatika Limited"

Sr. No.	Particulars	Details
1.	Name of the project	High Street at INXT, Sector- 83, Village Shikohpur, Sub-Tehsil Manesar, District Gurugram
2.	Project area	14918.258 sq. mtrs.
3.	Nature of the project	Commercial Unit
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of licensee	Browz Technologies Pvt. Ltd. and others.
6.	RERA Registered/ not registered	263 of 2017 dated 03.10.2017 valid upto 02.10.2022
7.	Unit no.	076, Ground Floor, PVR Building (Page no. 45 of reply)
8.	Unit area admeasuring	985 sq. ft. (Super Area) (Page no. 45 of reply)
9.	Application Form	04.10.2016 (Page no. 45 of reply)
10.	Allotment Letter	09.01.2017 (Page no. 53 of complaint)
	Date of execution of BBA	Not executed
11.	Possession clause	None
12.	Due date of possession	09.01.2020 <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018- Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</i> In view of the above-mentioned reasoning, the allotment letter dated 09.01.2017 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing

		over the possession of the unit comes out to be 09.01.2020.
13.	Assured Returns Clause	"3. The developer shall remit an assured monthly return of Rs. 123.96 Per sq. ft. till completion of the building It is stated that the project is in advance stages of construction and 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 soon." "4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the premises (@Rs.140/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs.140/- per sq. ft. the following would be applicable. a. If the achieved rental is less then Rs.140/- per sq. ft. then you shall be refunded @ Rs. 133.34/- per sq. ft. (Rupees One Hundred Thirty Three and Thirty-Four Paise) for every Rs.1/- by which achieved rental is less then Rs. 140/- per sq. ft. b. If the achieved rental is more then 140/- per Sq. ft. shall be liable to pay additional sales consideration Rs.66.67/- Per Sq. ft. for every rupee of additional rental achieved." (Allotment letter at page 54 of complaint)
14.	Basic Sale Price	Rs. 88,65,000/- (Page no. 53 of complaint)
15.	Total Sale Consideration	Rs. 90,25,000/- (SOA dated 28.11.2024 at page 49 of reply)
16.	Amount paid by the complainants	Rs. 46,86,962/- (SOA dated 28.11.2024 at page 49 of reply)
17.	Assured Returns paid by respondent to complainant	Rs. 27,33,464.52/- (As submitted by respondent at page no. 6 of reply)
18.	Occupation certificate /Completion certificate	Not obtained

19.	Offer of possession	Not offered
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B. Facts of the complaint

6. The complainants have made following submissions in the complaint:

- a) That enticed and allured in response to the said advertisement and the false promises made by the respondent, the complainants submitted applications for booking 2 commercial units ad-measuring super area 985 sq. ft. each in the aforementioned project High Street at INXT (Phase 1) @ Rs 9000/- per sq. ft. for total basic sale consideration of Rs.88,65,000/- for each of the commercial units.
- b) That the complainants paid a total sum of Rs.46,31,963/- and Rs.41,31,963/- against the booking of unit number 076 and 078 respectively which has been duly accepted and acknowledged by the respondent and which amount exceeds more than 50% of the total basic sale consideration. Rest of the amount in terms of the agreement was to be paid at the time of possession under the terms of the agreement. As an acknowledgement of the receipt of the aforesaid amount the respondent issued an allotment letter dated 09.01.2017 to the complainants.
- c) That as per the terms and conditions of both the allotment letters referred to above, the respondent had committed to remit an assured monthly return at the rate of Rs 123.96/- per square feet of the super area of the unit till completion of the building. It was also stated that based on the respondents' present plans and estimates the project is in an advanced stage of construction and the developer-respondent would be completing the construction of the said units soon. That along with the handing of the allotment letters, the complainants also received the assured return for the period 20.12.2016 to February 2017.

- d) That the salient features / terms and conditions of the allotment letter dated 09.01.2017 are:
- (i) **Allotted unit:** Unit no. 076 on ground floor having super area 985 Sq. Ft. in Commercial Project High Street Phase I at INXT (Now Known as V'Lante Phase I), Village Shikohpur Sub Tehsil Manesar , Sector 83,, Gurugram Haryana on Licensed Land measuring 182.796 Acre vide Lic. No. 113 of 2008 dated 01.06.2008 by DTCP Haryana and HARERA Reg. no. 263 of 2017 dated 03.10.2017.
 - (ii) **Total Price/ Cost of the Unit:** *The Total Sale Consideration for the units are inclusive of Government or Municipal Charges/ E.D.C./I.D.C at rates prevailing as on the time of booking. In the event there is revision/ increase in these charges henceforth, the same shall have to be borne by the Applicant(on pro-rata basis in proportion to the unit size)*
 - i. *The Total Sale Consideration does not include Interest Free Maintenance Security Deposits (IFMSD) towards Maintenance security and the Service tax/ Other taxes.*
 - (iii) **Due date of possession:** It was assured that the project would be completed within 36 months from the date of allotment but it is not mentioned in the allotment letter. That the Brochure assures the delivery of possession in year 2020. *Clause 3 of the terms and conditions: (Second Line) It is stated that the project is in advance stages of construction and 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 soon.*
 - (iv) **Delay Compensation: Clause 3 (First Line) -** *The Developer shall remit an assured monthly return of Rs.123.96 per Sq. Ft. till completion of the building. Page 1 of Allotment letter: In the event the Allottee does not pay the instalment within seven (7) days of the stipulated time mentioned in the Letter of Allotment/ payable as per payment plan/ Schedule of Payments/ Terms and Conditions mentioned below then penal interest @ 18% per annum shall be payable along with the amount due.*
- e) That further the complainants have also received assured return amounting to Rs.1,22,100.60/- per month @Rs123.96 per sq. ft. for each of the allotted units i.e., in total Rs.2,44,201.20/- per month (after deduction of TDS as per rules) for both the allotted units regularly from the respondent till the month of September 2018. That thereafter, since 01.10.2018, the respondent, has failed to remit the assured return and

the complainants have not received even a penny from the respondent towards the amount of assured return and neither till date the respondent has handed over the possession of the aforementioned unit to the complainants.

- f) That the complainants have at all times been ready and willing to comply with their part of the agreement, subject to the respondent handing over the actual physical possession of the aforesaid unit, is ready and willing to pay the respondent, the balance amount of the sale consideration, if any, after adjusting the unpaid amount of assured return / commitment charges from 01/10/2018 till date that remain outstanding on part of the respondent.
- g) That after waiting for almost 05 years, the complainants received an email dated 19.09.2020 from the respondent that the project is going to be completed by December, 2021 but till date the possession of the allotted units have not been handed over to the complainants.
- h) That the complainants raised their concern about the timely delivery of the project with the officials of the respondent/ developer since the passing of due date of possession as per email dated 19.09.2020 and demanded assured monthly return as well as delayed payment charges at RERA prescribed rate from the respondent/ developer but the genuine concerns of the complainant were unheard off and was compelled to get issued legal notice dated 24.09.2024 delivered on 25.09.2024 to the respondent seeking demand of due assured monthly returns since Oct. 2018 till Sep. 2024 along with possession of the allotted unit and OC and CC of the project and in case failure to redress the grievance of the complainants then in that condition to approach RERA for redressal of

their grievances but the complainants were not given any reply of the legal notice.

- i) That the respondent's aforementioned acts of omission severely and drastically affected the health of the husband and father of the complainants who went into a severe depression resulting in other health complications and eventually leading to a major surgery of intestines as a result of which he had to be hospitalized for months.
- j) That the allotted units are till date existing in the name of the complainants and the respondent is bound by the RERA Act, to fulfill all its obligations and responsibilities and commitments made at the time of booking and issuance of allotment letter towards the complainants which are mandatory conditions as per RERA Act and in which the respondent have completely failed.
- k) That as per the allotment letter and the terms agreed upon, the complainants were assured rental income for the commercial unit from the date of allotment till handing over of possession. However, the complainants have yet to receive the promised rental payments. That the respondent is legally bound to provide immediate payment of all pending rental dues, including any applicable interest or penalties as per the agreement. That the respondent has liability of payment of the assured monthly return @ Rs.1,22,100.60/- per month (including TDS) per unit booked since Oct. 2018 till Sep.2024) i.e., in total Rs. 87,91,243.20/- (including TDS) and the respondent was requested to make payment of the said amount to the complainants within 15 days of receiving the legal notice, which the respondent has failed to acknowledge, and the complainants were compelled to initiate requisite legal proceedings against the respondent.

- l) That the respondent failed to hand over the physical possession of the unit despite the receipt of substantial amount of the total sale price from the complainant. That the respondent failed to keep its assurance and promise made to the complainant and kept on minting money from the complainant like a cash cow without fulfilling obligations and duties on part of the respondent. That the complainant further reserves their right to seek rental loss, compensation for mental harassment and agony and litigation charges to be agitated before the Ld. Adjudicating Officer, HARERA for redress of the grievances against the respondent.

C. Relief sought by the complainants

7. The complainants have sought the following relief(s):

- I. Direct the respondent to make the payment of the assured monthly return @ Rs.1,22,100.60/- per month since October 2018 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.
- II. Direct the respondent to deliver the possession of the allotted units along with delay possession charges as per RERA, complete in all respects along with OC and CC.
- III. Direct the respondent to pay Delay Penalty @ 18% per annum or at prescribed rate under HARERA on the amount due as assured rental w.e.f. from 01.10.2018 up to the date of actual delivery of assured monthly return.
- IV. Direct the respondent to provide the copy of the OC and CC of the project.
- V. Direct the respondent to issue letter of possession in favour of the complainants.
- VI. Direct the respondent to provide the latest statement of account of complainants for the allotted units.

VII. Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.

8. 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

9. The respondent has contested the complaint on the following grounds.
- a) That the complainants herein are merely investors. It is evidently admitted by the complainants that they are merely investors who purchased the unit for making steady monthly returns.
 - b) That in the year 2016, the complainants in search of investment opportunities learnt about the project launched by the respondent titled as "High Street at INXT (Phase – 1) (Now known as V' Lante Phase 1)" at Sector 83, in Gurugram and visited the office of the respondent to know about the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.
 - c) That after having dire interest in the commercial project constructed by the respondent, the complainants decided to invest and thus had booked unit No. 076 on Ground Floor admeasuring super area of 985 sq. ft. under the assured return scheme, vide Application for Allotment dated 04.10.2016.
 - d) That the complainants paid a total amount of Rs. 46,86,962/- towards the said unit against the total sales consideration of Rs. 90,25,000/- to the respondent and was issued a letter of allotment dated 03.02.2017.
 - e) It is a matter of fact, that the unit in question was deemed to be leased out upon completion. As the complainants 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 and in the meanwhile the complainants shall be paid assured returns.

- f) That however the builder buyer agreement was never executed between the parties, the letter of allotment 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 complainants are not "allottees" but investors who have invested the money for making steady monthly returns.
- g) That the objective of the RERA, 2016 is to regulate the real estate sector in terms of the development of the Project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the RERA, 2016. The objective of the RERA, 2016 is very clear to regulate the Real Estate Sector and form balance amongst the Promoter, Allottee and Real Estate Agent. However, the entire RERA, 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- h) That as per clause 3 of the letter of allotment, the respondent was supposed to pay Rs. 123.96/- per sq. Ft. Super area of the unit by way of assured returns till the completion of construction of the said building. The agreed assured returns were being paid by the respondent to the complainant at the agreed rate i.e., a total of Rs.27,33,464.52/- have been paid to the complainants on account of assured returns.
- i) That the respondent(s) were committed to complete the development of the project and put the unit on lease with the proposed timelines. It is pertinent to apprise the Ld. Authority that the developmental work of the



said 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 [hereinafter referred to as 'GST'] 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.

- j) That due to above unforeseen circumstances and causes beyond the control of the respondent(s), the development of the project got decelerated. That it is pertinent to mention herein that such delay was not intentional. It is also submitted that the respondent(s) were bound to adhere with the order and notifications of the courts and the government. That after considering the above delay, the date of completion of the building has to be extended by approximately 1.7 years.
- k) That it is not out of the place to mention here that the respondent(s) are entitled for the extension of 6 months' time period on account of the delay so caused due to worldwide spread of covid-19, which the Authority and other courts had considered it as a force majeure circumstance and allowed extension of 6 months to the promoters at large on account of delay so caused as the same was beyond the control of the respondent(s). It is also required to be considered that the Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 had considered the period affected from the second wave of covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 (three) months extension to all the promoters. Therefore, the project of the respondent(s) herein was also affected by the second wave of covid-19, and therefore, the extension for a period of 3 months may be allowed.

- l) In the present case, if the relief of specific performance was sought before a civil court, which alone has the jurisdiction to grant relief in accordance with the Specific Relief Act, 1963, it would have been compulsory to plead and prove readiness and willingness and other statutory preconditions for the grant of specific relief, and the above admission would have been fatal to the grant of specific relief. In such circumstances, entertaining this kind of a complaint for specific performance under the Real Estate (Regulation and Development) Act 2016 is nothing but permitting the complainants to do indirectly, what he could not do directly, and the same ought to be nipped in the bud by this Authority. Therefore, this Authority not being a civil court could not assert to itself the jurisdiction to grant specific performance of the "Assured Returns" which is a relief under the Specific Performance Act, 1963.
- m) That the complainants have misguided themselves in filing the present complaint before the wrong forum. That the complainants are praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute arise between a builder and buyer with respect to the development of the project as per the agreement. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred to the allottee, if any.

n) The BUDS Act, 2019 being a subsequent act from RERA, 2016 shall prevail over the provisions over the RERA. 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.

10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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

12. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

13. 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) The promoter shall-

(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.

14. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.1 Objection regarding complainant being an investor.

15. The respondent has taken a stand that the complainants are the investor and not a consumer, therefore, they are not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 a buyer, and he has paid a total price of Rs.

46,86,962/- to the promoter towards the purchase of an apartment 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" about 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;"

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainants, it is crystal clear that the complainants are an allottee as the subject unit was allotted to him 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 the status of "investor". The ***Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in Appeal No. 0006000000010557 titled as "M/s Srushti Sangam Developers Pvt Ltd. Vs. Sarvapriya Leasing (P) Ltd. Anr."*** has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of a promoter that the allottee being an investor is not entitled to protection of this act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

17. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in ***CR/8001/2022*** titled

as "**Gaurav Kaushik and Another Vs. Vatika Limited**" has already 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 BUDS Act of 2019. Hence, the plea with respect to non-payment of assured return is hereby dismissed.

F.III Objection regarding delay due to force majeure circumstances.

18. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong. Furthermore, the respondent seeks an extension in the timeline for due date of possession in view of the Covid 19 pandemic. On perusal of records brought before this Authority, it is of the view that the allotment of the unit was done on 09.01.2017 though no specific timeline was specified as to the due date of handing over of possession, therefore, in view of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**" wherein the Hon'ble Apex Court observed that:

"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."

19. The due date of possession had to be calculated from the date of allotment; therefore, the due date becomes 09.01.2020. Therefore, the plea advanced in view of Covid 19 pandemic has no merit since the due date of possession for the complainant's unit was prior to the occurrence of the pandemic.

G. Findings on the relief sought by the complainants

- G.I Direct the respondent to make the payment of the assured monthly return @ Rs.1,22,100.60/- per month since October 2018 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.**
- G.II Direct the respondent to deliver the possession of the allotted units along with delay possession charges as per RERA, complete in all respects along with OC and CC.**
- G.III Direct the respondent to pay Delay Penalty @ 18% per annum or at prescribed rate under HARERA on the amount due as assured rental w.e.f. from 01.10.2018 up to the date of actual delivery of assured monthly return.**
- G.IV Direct the respondent to provide the copy of the OC and CC of the project.**
- G.V Direct the respondent to issue letter of possession in favour of the complainants.**
- G.VI Direct the respondent to provide the latest statement of account of complainants for the allotted units.**
- G.VII Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.**
20. The common issues with regard to assured return, delay possession charges and execution of conveyance deed is involved in the aforesaid complaints.
- G.I Assured return**
21. The complainants are seeking unpaid assured returns on monthly basis as per clause 3 of the allotment letter dated 09.01.2017 at the rates mentioned

therein. It is pleaded that the respondent has not complied with the terms and conditions of the said allotment letter. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and Anr. Vs. Vatika Ltd.** wherein the authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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.

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

approach the authority for redressal of his grievances by way of filing a complaint.

23. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
24. 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 complainant besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on.

G.II Delay possession charge.

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

"Section 18: - Return of amount and compensation

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

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

26. The builder buyer agreement was not executed between the parties. The due date is calculated to be 3 years from the allotment letter 09.01.2017 in terms of the "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*". Accordingly, the due date of possession comes out to be 09.01.2020. As per the allotment letter, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.

27. Admissibility of delay possession charges at prescribed rate of interest:

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

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

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

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

28. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(za) "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;"*

30. 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 possession of the subject unit was to be completed within a stipulated time i.e., by 09.01.2020.

31. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

32. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per "Clause 3 of the allotment letter". The rate at which assured return has been committed by the promoter is Rs. 123.96/- per sq. ft. of the super area per

month till the completion of the building which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs. 1,22,100.60/- per month till completion of building. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better as is encapsulated in the following table for all the complaints:

Sr. No.	Complaint no.	Assured return payable per month as per addendum agreement	Delay possession charges payable per month as per the RERA Act
1.	CR/5687/2024	₹1,22,100.60/-	₹42,377.94/-
2.	CR/5688/2024	₹1,22,100.60/-	₹41,880.65/-

33. By way of assured return, the promoter has promised that the allottee would be entitled for the specific amount of assured return till the said unit is put on lease and thereafter he shall be entitled for lease rental as agreed. The purpose of delayed possession charges under Section 18 of the Act after due date of completion of project is served on payment of assured return. The same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher.

34. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

35. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of allotment letter. As per clause 3 of allotment letter dated 09.01.2017, the promoter had agreed to pay to the complainant allottee Rs.123.96/- per sq. ft. on monthly basis till completion of the building. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the assured return was paid by the respondent-promoter till September 2018 at the rate of Rs. 123.96/- per sq. ft., but later on after September 2018, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
36. In the present complaint, OC/CC for the block in which unit of complainants is situated has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate as per the terms of the clause 3 of the allotment letter.
37. 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 complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G.III. Conveyance Deed



38. 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."

39. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Directions issued by the Authority:

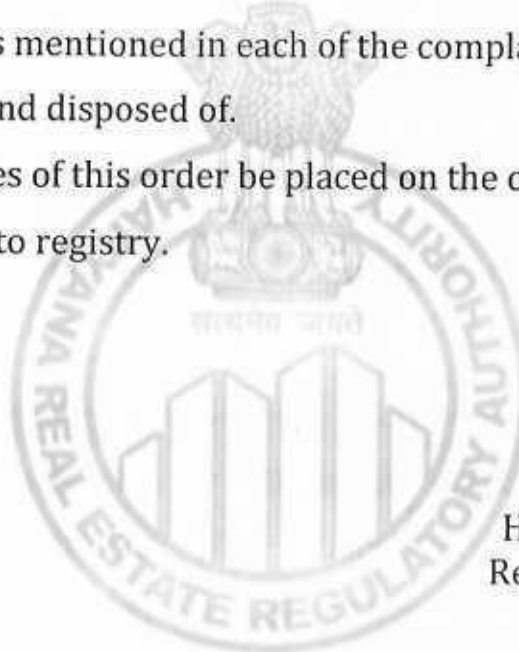
40. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to handover possession of the unit on obtaining the occupation certificate to the complainants, as per the terms of the allotment letter.
- II. The respondent is directed to pay the amount of assured return at the agreed rate as per clause 3 of the allotment letter i.e. at Rs. 123.96/- per sq. ft. per month on super area of the unit till completion of construction of the said building i.e., on receipt of occupation certificate from the competent authority. The amount of assured return already paid by the respondent to the complainants as mentioned in para 3 of the order above shall be deducted before paying the residual assured return.
- III. The respondent is directed to pay the outstanding accrued assured return amount till date along with interest rate of 8.85% per annum 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 @ 8.85% p.a. till the date of actual realization.
- IV. The complainants are directed to pay outstanding dues, if any, after adjustment of assured returns payable by the respondent to the complainants.
- V. The respondent is directed to issue a revised statement of account after adjustment of assured returns payable by the respondent to the complainants, and other reliefs as per above within a period of 30 days from the date of this order.
- VI. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the

receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.

- VII. The respondent shall not charge anything from the complainants which is not the part of the allotment letter.
41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit, amount paid by the complainant-allottees, and amount of assured return received by the complainants is mentioned in each of the complaints.
42. The complaints stand disposed of.
43. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.

Dated: 15.10.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM