

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

Complaint no.: 8067 of 2022
Date of filing: 04.01.2023
Date of decision: 04.11.2025

Urvinder Singh Kwatra
Misty Kwatra
Sohni Singh
All are R/o: C-13/12, DLF City Phase 1,
Gurugram, Haryana

Complainants

Versus

M/s Vatika Limited
Both Regd. office: Unit No. A-002, INXT City
Centre, Ground Floor, Block-A, Sector 83,
Vatika India Next Gurugram-122012

Respondent

CORAM:

Shri Ashok Sangwan
Shri Phool Singh Saini

**Member
Member**

APPEARANCE:

Mr. Rohit Oberoi (Advocate)
Ms. Ankur Berry (Advocate)

**Counsel for Complainant
Counsel for Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the



Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Date of builder buyer agreement	16.02.2012 [Page 24 of complaint]
7.	Unit no. as per application form dated 14.11.2011	Unit no. 291B, 2 nd floor admeasuring 750 sq. ft. in Inxt City Centre [Page 23 of complaint]
	Unit no. as per BBA	2 nd floor, tower A admeasuring 750 sq. ft. in India Next City Centre [Page 26 of complaint]
	Unit no. as per letter dated 25.04.2013	629, 6 th floor block F in India Next City Centre [Page 32 of complaint]
	Unit no. as per letter of Completion of Construction dated 27.03.2018	COM-012, Tower- F-6-629, Block F, INXT City Centre measuring 750 sq. ft. [Page 33 of complaint]
8.	Possession clause	N/A
9.	Due date of handing over possession	16.02.2015 No possession clause is provided in BBA. Due date for handing over of possession is calculated as per Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 wherein it was observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them



		<p><i>and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract</i></p>
10.	Completion of construction for Block F dated	27.03.2018 [In respect of unit no. COM-012, Tower- F-6-629, Block F, INXT City Centre measuring 750 sq. ft.] Page 33 of complaint
11.	Assured return/ committed return as per clause 12 of BBA	<u>12. ASSURED RETURN AND LEASING ARRANGEMENT</u> Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 71.5/- per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks



involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party. It is further agreed that:

i. The Developer will pay to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial Unit as committed return for up to three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter.

ii. ...

iii. ...

iv. ...

v. The Developer expects to lease out the said Commercial Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs. 65/- per sq. ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.65/- per sq. ft. super area per month, then the Developer shall pay to the Buyer a one time compensation calculated at the rate of @ Rs.120/- (Rupees One



		<p>hundred Twenty Only) per sq. ft. super area for every one rupee drop in the lease rental below Rs.65/- (Rupees Sixty Five Only) per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/lease terms of the said Commercial Unit.</p> <p>vi. However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq. ft. super area, then, the Buyer shall pay to the Developer additional basic sale consideration calculated at Rs. 60/- (Rupees Sixty Only) per sq. ft. super area of the said Commercial Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.65/- (Rupees Sixty five Only) per sq. ft. super area.</p> <p>[Page 27-28 of complaint]</p>
12.	Basic sale consideration	Rs.32,91,000/- [As per clause 1 of BBA at page 26 of complaint]
13.	Amount paid by the complainants as per statement of account	Rs.32,91,000/- [As per clause 1 of BBA at page 26 of complaint] Rs.34,10,299/- [As per SOA dated 26.04.2017 at Page 30 of complaint]
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Amount of assured return paid by the respondent till September 2018	Rs.43,68,000/- [Page 5 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- a. That in 2011, respondent launched a project by the name of "Vatika Trade Centre" situated in Sector-82, Gurgaon, for developing commercial office and retail space. The respondent through their officials gave various representations, assurances and commitments to the complainants and were able to sway and induce the complainants into investing their life savings into the project which was marketed as "Vatika Trade Centre". The complainants had signed a booking form sometime around 2011 and had also paid the entire amount to the respondent vide cheque, which was duly encashed by the respondent who thereafter allotted unit no. 291 B on 2nd floor, tower A of the project.
 - b. That in November 2011 that the complainants signed the application form but the respondent thereafter requested the complainants to make further payments which they were forced to pay as the respondent officials kept on extending indirect threats that the entire amount as paid would be forfeited in case the complainants did not pay the balance amount. The complainants kept on requesting the respondent to issue allotment letters as well as get the builder buyer agreement executed. The respondent took the entire decided property consideration being a huge amount of Rs. 32,91,000/-, and signed the application form even prior to executing the builder buyer agreement, that too without issuance of the allotment letter by taking undue advantage of the gullible complainants.



- c. That the respondent had assured the complainants a high return on the amount so invested however, the builder buyer agreement failed to disclose anything it was only in the addendum agreement that the return finally disclosed was of Rs. 71.83 per Sq. Ft. of the unit till the time of completion of construction totaling an amount of Rs.53,625/- $(Rs.71.83*750= Rs.53,625/-)$ and that too after the complainants stuck to their ground and were not willing to accept the rate of Rs. 65/- as was being offered by the respondent. The complainants thereafter relented and gave in to the respondent's officials' persuasion and signed the addendum agreement. The addendum also envisaged that after completion the property would be let out at a minimum of Rs. 65 per sq. ft. The respondents had also assured as per the BBA and the addendum agreement that they shall be liable to get the property leased out and in case it shall not be leased out on the agreed rate, they shall be liable to pay damages at the amount as envisaged in the addendum agreement.
- d. That the respondent thereafter on 16.02.2012, invited the complainants to enter into a builder buyer agreement with them, however it is stated that the builder buyer agreement was in total derogation of the promises, commitments as made by the respondents' officials and the complainants feeling hopeless, stated that they be refunded their entire money. Vide the said BBA, the complainants were allotted unit no. 291 B on 2nd floor, tower A of the project. The respondent officials seeing that the complainants are innocent people and would be swayed by their representations tried to convince them to accept the BBA, thereafter inspite of maintaining a negative stance, the officials of



the respondent due to the persistent requests of the complainants got an addendum agreement executed with the complainants wherein the terms of offer as promoted to the complainants were recreated albeit only partially and not the amounts as were committed prior to having taken the entire money. In the builder buyer agreement as well as orally, the respondent had represented and committed that time was of the essence of the contract and being one of the top builders having immaculate reputation, the respondent ensured that the said project would be ready within a period of 3 years and latest by 16.02.2015. The respondent also assured the complainants that they would be getting the assured return as had been detailed in the addendum every month without fail till the time of handing over of possession.

- e. That the respondent thereafter, in 2012, again called the complainants and informed them that due to some reasons, which were never revealed inspite of the requests of the complainants, the project i.e. Vatika Trade Centre shall not be made and there is another project by the name of 'Vatika Inxt City Centre' which the respondent is constructing, which as per their representations was better located and construction work was already under way. The complainants even at the said time were not comfortable with the sudden change being done and that too without any reason having been ascribed to the same. However, as they did not have any options, they were forced to keep quiet and toe the line as was being thrust upon them.
- f. That the respondent sent another letter on 25.04.2013 wherein they informed the complainants that the unit in which they had

invested being unit no. 291 B on the 2nd floor, was now changed to a unit bearing no. 629 on the 6th floor in some Tower F of the project. The complainants were not even consulted prior to forcing on them such a decision and no reasons for doing the same were provided to the complainants. When the complainants contacted the concerned customer relation manager, they stated that the complainants have no option lest they be burdened with cancellation charges which would be very high. The respondent thereafter kept on paying the monthly commitment although there were certain irregularities however the same would be cured within a few months. The complainants time and again inquired from the respondent officials and customer relationship manager as to the progress of the project, who would scuttle the queries of the complainants and never provided the true and actual picture, albeit ensuring the assured return is paid even though it might be paid a little late.

- g. That in 2018 the complainants seeing that there is no sense of commitment from the respondent end and the period of construction is being increased endlessly as almost 4 years have passed over and above the committed date of delivery although the assured return was being paid, visited their office where they were informed that the site is ready for fit outs and the complainants can take the possession and lease it out to anyone they feel. The complainants inquired from the CRM as to why such statements are being made, when it is the respondent duty to lease out the premises and to ensure that the complainants get the proper returns. The said CRM was evasive in his answers and kept on

giving vague answers to the queries of the complainants. The complainants noticing that something is amiss went to the site and were aghast at what lay in front of them. The building which was stated to be complete was nowhere near completion and in fact construction work was still going on in the premises. The building was far from complete. The complainants feeling hopeless, again contacted the respondent, however no concrete response was forthcoming from their side. The respondent thereafter paid partially for the month of September and from 06.10.2018, stopped making the payments towards assured returns to the complainants who on multiple occasions tried to contact the respondent and seek their response for the same. It is stated that seeing that no response is forthcoming from the respondent side, the complainants were forced to write to the respondent on 16.11.2018 and requested the respondent to release the outstanding amounts as were due and payable to them. The complainants had also documented that the building which was claimed to be completed as on 01.03.2018, was actually till date not complete and ready for possession as was being falsely alleged by the respondent.

- h. That the respondent even thereafter did not start making the payments of assured returns to the complainants and in fact on 30.11.2018, the respondent sent an e-mail to the complainants wherein they on the basis misinterpretation of the laws and taking cover under that misinterpretation, stated that the respondent shall not be paying any further amounts towards the assured returns. The respondent inspite of multiple attempts having been

made by the complainants to contact the respondent and try and get back their entire amounts as are due from 01.10.2018 and payable by the respondent to the complainants, have been unable to get any positive response from their side. The respondent has not only failed in constructing the project which till date has not been completed inspite of over 4 years having passed from the assured date of completion, but have also failed to discharge their financial liability as was due and payable by them to the complainants. Now the respondent started evading the complainants and stopped responding to any and all communication as were being tried from the complainants.

- i. That on 02.12.2022, the complainants seeing that there was no sense of commitment from the respondent's side, who were neither paying the assured return nor giving the proper physical possession of the premises and that they are just interested in extracting money from the complainants and delaying adhering to their commitments were forced to send out a legal notice through their lawyer although the date was mentioned as 02.12.2022 was delivered on 05.12.2022.
- j. That in the notice the complainants requested, the respondent to complete the project Vatika Inxt City Centre and deliver the commitments as made in the builder buyer agreement and the addendums executed thereafter. The complainants requested that they be given an amount of Rs. 53,625/- per month, as assured to them as they were paid till 30.06.2019 as well as the difference of the amounts as paid from 01.07.2019 till 21.12.2022 being an amount of Rs. 21,98,625/- and the entire amount as has not been

paid thereafter being an amount of Rs.15,51,125/- to be paid to them along with interest @ 18% per annum, for flat bearing no. 629 F as is the commercial rate of interest due and payable by the Opposite Parties. The complainants be compensated for the financial loss, mental harassment caused to them due to the inordinate delay, false commitments and misleading facts disclosed with respect to the completion of the said project, however in the present petition, payment of the assured return as is due and pending for the period of June 2019 till the date of actual realisation and further till the actual proper physical possession is not handed over to the complainants.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to pay the outstanding amount of Rs. 37,49,750/- as is due and payable by the respondent along with interest of 18 % per annum to the complainant from June, 2019 till the actual proper physical possession is not handed over to the complainants.
 - b. Direct the respondent to release the assured return as is due and pending to complainants, as assured to them of the unit, which is due and payable till the time the respondent does not obtain Occupational Certificate of the project to complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
 - a. That the complainants have got no locus standi or cause of action to file the present complaint. The complaint is based on an

erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 16.02.2012, as shall be evident from the submissions made in the following paras of the present reply.

- b. That the complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before the Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of the Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the companies Act, 2013 and companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit". Section 2 (4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the *Explanation* to the Section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013.
- c. That as per Section 3 of the BUDS Act all unregulated deposit scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any

advertisements soliciting participation or enrolment in; or accept deposit. Thus, the Section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 collective investment schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- d. That further the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "***Vatika Limited Vs. Union of India & Ors.***", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing. In the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 17.05.2023. 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, the Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019.
- e. That further the Rajya Sabha, parliamentary committee on subordinate legislation on 24.03.2021, presented report no. 246.

Vide the said report, the committee observed upon the objectives of coming up with a special and comprehensive law i.e. to check illicit deposit schemes. The committee also focused on bringing clarity upon the deposit that constitute legitimate business transactions and thus fall within the “normal course of business”. The committee further expressed its dismay, on the fact that most of the States/UTs had shown lax and nonchalant attitude in implementation of the crucial legislation. The casual approach of the State/UT in not issuing the notification of the designated courts and their jurisdiction. The report of the parliamentary committee is noteworthy since the importance of jurisdictional designated court/authorities for implementation of BUDs Act, 2019 and the ambit of definition of “DEPOSIT” would be brought to light only upon institution of proper Rule and duly designated/jurisdictional Court to adjudicate upon issues of Assured Return Schemes/Collective Investment Schemes/Other similarly founded schemes.

- f. That the commercial unit of the complainants was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainants. Hence, the commercial space booked by the complainants’ is not meant for physical possession.
- g. That in the matter of *Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon’ble Authority has taken the same view as observed by Maharashtra



RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of assured return and hence the present complaint deserves to be dismissed at the very outset.

- h. That once this court has adjudicated upon the question of scope of powers of Authority constituted under the RERA Act, 2016, deciding therein that assured return matters do not come within the jurisdiction, then due to the doctrine of '*Prospective Overruling*' the Authority ought not decide matters of assured returns.
- i. That the complainants have come before the Authority with unclean hands. The complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainants have instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 16.02.2012. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- j. That the complainants entered into an agreement i.e., BBA dated 16.02.2012 with respondent owing to the name, good will and

reputation of the respondent. The respondent duly paid the assured return to the complainant till September, 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. Even though the respondents suffered from setback due to external circumstances, yet the respondents managed to complete the construction.

- k. The present complaint of the complainants' has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/ Developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.



- l. That in matter titled *Anoop Kumar Rath Vs M/S ShethInfraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the Allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- m. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. The complainants were sent the letter dated 27.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence, the complaint deserves to be dismissed.
- n. That, it is evident that the entire case of the complainants' is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainants deserves to be dismissed with heavy costs.
- o. That the various contentions raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead the Authority, for the reasons stated above. None of the

relief as prayed for by the complainants are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. Copies of all the relevant documents have been filed and placed on 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.
8. The written submissions filed by the parties are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

11. 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.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay the outstanding amount of Rs. 37,49,750/- as is due and payable by the respondent alongwith interest of 18 % per annum to the complainant from June, 2019 till the actual proper physical possession is not handed over to the complainants.

F. II. Direct the respondent to release the assured return as is due and pending to complainants, as assured to them of the unit, which is due and payable till the time the respondent does not obtain Occupational Certificate of the project to complainants.

13. The complainants are seeking unpaid assured returns on monthly basis as per the BBA at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said BBA. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of

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

14. 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.
15. 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 BBA.

16. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the BBA dated 16.02.2012.

17. On consideration of the documents available on the record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 16.02.2012, the construction of the subject unit was to be completed within a period of 3 years, from date of execution of agreement (No possession clause is provided in BBA. Due date for handing over of possession is calculated as per *Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018* wherein it was 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) therefore, the due date of possession comes out to be 16.02.2015. The assured return is payable to the allottees on account of provisions in the buyer agreement dated 16.02.2012. The assured return in this case is payable as per clause 12 of the buyer's agreement that is the developer had agreed to pay Rs. 71.5/-per sq.ft. on monthly basis till completion of the building and thereafter, the developer further agreed that to pay Rs. 65/- per sq.ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

18. Admittedly, the respondent has paid an amount of ₹43,68,000/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.5/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October 2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, thereafter ₹65/- per sq. ft. per month as committed

return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.

19. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.5/- per sq. ft. per month from the date the payment of assured return has not been paid till the completion of construction of the said building and thereafter ₹65/- per sq. ft. per month as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier in terms of clause 12 of the BBA.
 - b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.



- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 04.11.2025