

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**
**Date of decision: - 12.11.2025**

<b>NAME OF THE BUILDER</b>		<b>Vatika One On One Private Limited</b>	
<b>PROJECT NAME</b>		<b>"Vatika One on One", Sector 16, Gurugram Haryana</b>	
<b>Sr.No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/3918/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
2.	CR/3919/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
3.	CR/3920/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
4.	CR/3921/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
5.	CR/3922/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
6.	CR/3923/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)
7.	CR/3924/2024	Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	Adv. Vivek Kumar (Complainant) Adv. Venkat Rao (Respondent)

**CORAM:**

Shri Ashok Sangwan

**Member**

## ORDER

1. This order shall dispose off all the seven complaints titled as 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"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, "Vatika One On One" situated at Sector 16, Gurugram being developed by the same respondent- promoter i.e. "Vatika One On One Private Limited." The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to pay assured return as per the terms of the builder buyers' agreement, seeking pending assured return along with interest.
2. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

### Vatika One On One Sector-16

#### Possession Clause:

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

#### Clause 15. Assured Return

**"15. The Developer may, where the Buyer has paid 80% of the total sale consideration and other charges for the Commercial unit, upon signing of this Agreement pay Rs. 137.22/- per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme."**

**Occupation certificate received on 06.09.2021**

Sr. No.	Complaint No./Date of filing/ Reply status	Unit/ shop no. and area	Date of execution of builder buyer's agreement	Due date of possession	Total Sale Consideration, Paid-up amount and Assured return paid by respondent to complainant (in Rs.)
1.	<b>CR/3918/2024</b> Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited DOF:- 12.08.2024 DOR:- 05.03.2025	520, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	<b>TC -Rs.82,50,000/-</b> (SOA at Page 41 of complaint)  <b>AP- Rs.68,44,728/-</b> (SOA at Page 41 of complaint)  <b>AR -41,16,600/-</b> (till September 2018) - (As pleaded by respondent at page 32 of reply )
2.	<b>CR/3919/2024</b> Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited DOF:- 12.08.2024 DOR:- 05.03.2025	521, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	<b>TC-Rs.1,03,12,500/-</b> (SOA at Page 41 of complaint)  <b>AP- Rs.84,73,410/-</b> (SOA at Page 41 of complaint)  <b>AR- Rs.51,45,750/-</b> (till September 2018) - (As pleaded by respondent at page 32 of reply )
3.	<b>CR/3920/2024</b> Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited DOF:- 12.08.2024 DOR:- 05.03.2025	514, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	10.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	<b>TC -Rs.82,50,000/-</b> (SOA at Page 41 of complaint)  <b>AP -Rs. 68,44,728/-</b> (BBA at Page 41 of complaint)  <b>AR- Rs.41,16,600/-</b> (till September 2018) - (As pleaded by respondent at page 32 of reply )
4.	<b>CR/3921/2024</b> Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited	513, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	<b>TC -Rs. 82,50,000/-</b> (SOA at Page 41 of complaint)  <b>AP- Rs. 68,44,728/-</b> (BBA at Page 41 of complaint)

	DOF:- 12.08.2024  DOR:- 05.03.2025				AR- Rs.41,16,600/- (till September 2018) - (As pleaded by respondent at page 32 of reply )
5.	<b>CR/3922/2024</b>  Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited  DOF:- 12.08.2024  DOR:- 05.03.2025	519, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	TC - Rs.82,50,000/- (SOA at Page 45 of complaint)  AP- Rs.68,44,728/- (BBA at Page 45 of com- plaint)  AR- Rs.41,16,600/- (till September 2018) - (As pleaded by respondent at page 34 of reply )
6.	<b>CR/3923/2024</b>  Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited  DOF:- 12.08.2024 DOR:- 05.03.2025	511, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	TC-82,50,000 (SOA at Page 45 of complaint)  AP-68,44,728/- (BBA at Page 45 of com- plaint)  AR- Rs.41,16,600/- (till September 2018) - (As pleaded by respondent at page 34 of reply )
7.	<b>CR/3924/2024</b>  Surinder Kumar Sawhney VS. Vatika One On One Private Limited and Vatika Limited  DOF:- 12.08.2024 DOR:- 05.03.2025	512, 5 <sup>th</sup> floor, block no. 4 1,000 sq. ft.	04.02.2016	04.02.2020 (Calculated to be 48 months from the date of agreement)	TC - 82,50,000 (SOA at Page 45 of complaint)  AP - 68,44,728/- (BBA at Page 45 of com- plaint)  AR- Rs.41,16,600/- (till September 2018) - (As pleaded by respondent at page 34 of reply )

**List of Abbreviations used:**

<b>BBA</b>	Builder Buyer Agreement
<b>SOA</b>	Statement of Accounts
<b>DOF</b>	Date of Filing
<b>DOR</b>	Date of Reply Received
<b>TC</b>	Total Consideration
<b>AP</b>	Amount Paid
<b>AR</b>	Assured Returns

**Relief sought by the complainant in all cases:-**

1. Assured Return

2. Direct the respondent to pay interest at the prescribed rate on the unpaid assured return calculated from the date of monthly returns became due till the date of actual payment.

3. Direct the respondent to execute the CD.

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/3918/2024** titled as "**Surinder Kumar Sawhney Vs. Vatika One On One Private Limited and Vatika Limited**" are being taken into consideration for determining the rights of the allottee(s).

**A. Unit and project-related details**

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

**CR/3918/2024 titled as Surinder Kumar Sawhney Vs. Vatika One On One Private Limited and Vatika Limited**

S.no.	Particulars	Details
1.	Name of the project	"Vatika One on One", Sector 16, Gurugram
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.12125 acres
4.	DTCP License no. and validity status	License no. 05 of 2015 dated 06.08.2015 valid upto 05.08.2020.
5.	Registered/ not registered	Registration no. 237 of 2017 dated 20.09.2017 valid upto 19.09.2022
6.	Allotment letter	13.10.2014 (page 50 of complaint)
7.	Date of builder buyer agreement	04.02.2016 (page 54 of complaint)
8.	Unit no.	520, 5 <sup>th</sup> floor, Block no. 4 admeasuring 1000 sq. ft. (page 57 of complaint)
9.	Provision regarding assured return	<b>Clause 15. Assured Return in full down payment cases</b> "The Developer may, where the Buyer has paid 80% of the total sale consideration and



		<p><i>other charges for the Commercial unit, upon signing of this Agreement pay Rs. 137.22/- per sq. ft. super area per month by way of assured return to the Buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the said commercial unit is complete. Such policy of the Developer may change from time to time where the Developer may withdraw the assured return scheme."</i></p> <p>(BBA dated 05.02.2016 at page 71 of complaint)</p>
10.	Due date of possession	<p>04.02.2020 (Calculated to be 48 months from the date of execution of agreement dated 04.02.2016)</p> <p><b>Clause 17 of the BBA</b></p> <p><i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments."</i></p> <p>(BBA dated 04.02.2016 at page 75 of complaint)</p>
11.	Basic sale consideration	<p>Rs.82,50,000/- (As per SOA dated 22.08.2024 at page no. 41 of reply)</p>
12.	Paid up amount	<p>Rs.68,44,728/- (As per SOA dated 22.08.2024 at page no. 41 of reply)</p>
13.	Assured returns received by complainant till September 2018	<p>Rs.41,16,600/- (As pleaded by respondent at page no. 32 of reply)</p>
14.	Lease Deed entered into by the respondent with Air India	<p>19.08.2022 (Page 4 of Affidavit dt. 26.09.2025 submitted by respondent on 29.09.2025)</p> <p><i>*Note: The date of execution of lease deed had been inadvertently</i></p>

		recorded to be 24.03.2023 in proceedings dated 12.11.2025. Same is a factual error and the date of execution of lease deed shall now be read as "19.08.2022".
15.	Occupation Certificate	06.09.2021 (page 47-48 of reply)
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

5. The complainant has made the following submissions:

- That based on the respondent's advertisements, assurances, representations and promises made by the respondents in the brochure circulated by them about the timely completion of a premium project with impeccable facilities *inter-alia*, monthly assured returns / committed returns / lease rentals and believing the same the complainant applied for a unit on 13.10.2014. It was represented and assured by the respondents that the project including the unit would be completed by the respondents within 48 months i.e., latest by October 2018, as per the clause 17 of the builder buyer agreement.
- That the complainant got lured by the false picture shown by the respondents and paid an amount of Rs.68,44,728/- towards the booking of a commercial unit in the project by way of a letter of request for allotment to the respondents and thereby the complainant by way of an allocation letter were informed that a unit bearing no. 520, admeasuring 1000 sq. ft. area, fifth floor of block 4 is allocated to them in the project of the respondent.
- That the respondents had further lured the complainant to book the unit in the project by assuring them that the said project would be one of its kind whereby the respondents undertook that upon furnishing an amount of 80% of the total consideration, the respondents shall pay monthly assured returns of Rs.137.22/- per sq. ft super area per month

from the date of allotment of the unit till the completion of the project/building. Furthermore, the respondents also assured the complainant that the leasing facility will also be made available to the complainant commencing after the completion of the unit subsequent to which the complainant shall be entitled to earn either committed returns or lease rentals.

- d) That the respondents after a delay of 1.5 years from the date of booking the commercial unit had executed the agreement on 04.02.2016 after making the payment of more than 80% of the total consideration amounting to Rs.68,44,728/- to the respondents.
- e) That the respondents at the time of booking of the unit represented to the complainant that upon purchase of units having area of more than 5000 sq. ft shall entitle the complainant to a lockable unit. Complainant has booked 7 units totalling to more than 7250 sq. ft. solely upon the said assurance of the respondents to obtain a segregated lock and key area. That the complainant issued various emails dated 30<sup>th</sup> January 2022 & 7<sup>th</sup> July 2022 to the respondents for seeking the possession of lockable unit. However, the respondents have clearly failed to offer the possession of lockable unit to the complainant till date. Further, on the contrary the respondent vide email dated 4<sup>th</sup> July 2022 have categorically stated that they cannot offer physical possession of the combined area which constitutes to lockable units. Therefore, it becomes apparent from the aforesaid that the respondents have made various false promises & assurances to the complainant to entice the complainant into purchasing the unit(s) in the project.
- f) That the complainant also agreed to avail the lease facility in accordance with the clause 16 of the agreement and in that respect the agreed terms and conditions of such availed lease facility were enumerated in the

annexure 1 of the agreement. The Clause 16 of the agreement and the additional terms mentioned in annexure-1 of the agreement are reproduced hereinbelow for the ready reference of the authority.

g) that the respondents made the payment of assured return to the complainant till September 2018 as per the operating clause of the agreement. However, to the utter shock of the complainant, the respondents started making default in payment of assured returns from the month of October 2018. The complainant started following up with the respondents through telephonic calls and emails for seeking their legitimate monthly assured returns, that adds up to Rs.49,39,920/- as per the clause 15 of the agreement. However, the respondents did not respond to any such issues and kept the complainant in dark. after a silence of one long year, the respondents in the guise of the changed Real Estate laws tried to mislead the complainant despite the fact that such laws were not applicable in the case of payment of assured returns that are due to the complainant. The default on the part of the respondents in paying assured returns as per clause 15 of the builder buyer agreement dated 04.02.2016 continued till respondents received the occupation certificate that was on 11.09.2021.

h) That the respondents, after failing to pay the promised assured returns/lease rentals for almost a year, vide email dated 26.07.2019 issued a tabulated sheet containing accrued data of assured returns pending in favour of the complainant as of October 2018. Further, the respondents also stated that the pending assured returns shall be adjusted against the balance consideration of 20% payable by the complainant at the time of possession. Therefore, it is submitted that, in light of the pending assured returns payable by the respondents & said communication made by the respondents, the complainant was

absolved from paying balance sale consideration towards the unit to the respondents. However, the respondents, in complete contradiction to its promise made via email dated 26.07.2019, shared an addendum agreement with the complainant vide email dated 15.10.2019 whereby the respondents tried to avoid payment of pending assured returns / committed returns / lease rentals / compensation / security deposit as per the terms of the agreement to the complainant. further the respondents also tried to impose a unilateral addendum agreement on the complainant containing various arbitrary clauses which were in complete contradiction with the agreed terms of the builder buyer agreement dated 04.02.2016.

- i) That the complainant not only felt duped and cheated for the failure of the payments of assured returns but also the false promises made to the complainant in terms of the lease facility / payment of committed returns / lease rentals / compensation / security deposit as agreed in accordance with clause 15, 16, 16.1 & 16.5 of the agreement and the additional terms listed in the annexure-1 to that very agreement. That the respondents were obligated as per the agreement to pay to the complainant, the committed returns @ *Rs. 130/-* from the date of completion of the unit till achieving the lease for the unit. The respondents at the outset in the month of October 2021, tried to lure the complainant by showing a possibility of entering into an agreement for lease with Google Connect Services India Private Limited. However, it is submitted that the said alleged lease arrangement entered by the respondent with Google Connect Services India Private Limited was a mere sham & an attempt by the respondents to mislead the complainant. Further, the said lease arrangement entered with Google Connect Services India Private Limited was a mere sham lease which becomes

apparent as the respondents communicated to the complainant in the month of January 2022, i.e. after mere three months of entering into the said alleged sham lease, that the said purported lease agreement has been unlawfully terminated by Google Connect Services India Private Limited and that the respondents have initiated the appropriate legal actions against them. Furthermore, it is pertinent to mention that no lease rentals and/or security deposit were paid by the respondents to the complainant for the term during which the alleged lease arrangement was entered between the respondents & Google Connect Services India Private Limited.

- j) That the respondents after receiving the occupancy certificate in respect to the project in September 2021, as per clause 6.1 of the agreement, was obligated to pay committed returns to the Complainant at the rate of Rs.130/- per sq. ft. of the super area of the Unit per month. However, the respondents, solely in order to avoid paying the said committed returns to the complainant, had fabricated the alleged lease arrangement with Google Connect Services India Private Limited, which as submitted above was a mere sham. Therefore, the respondents have failed to pay the agreed committed returns to the complainant from October 2021 onwards till achieving the lease for the unit.
- k) That the complainant since January 2022 onwards had constantly chased the respondents regarding the due payments of the committed returns as per the clauses of the agreement. Thereafter, the respondents after consistently failing in making payments of the said committed returns to the complainant since October 2021 onwards, vide email dated 26.12.2022, communicated to the complainant about the execution of the lease terms with Air India and shared the terms and conditions related to that lease with the complainant. However, it

submitted that the lease terms shared therein by the respondents contained several arbitrary terms which were in total contrast to the builder buyer agreement dated 04.02.2016 signed between the complainant & the respondents. Thus, it is submitted that the respondents thereby again failed to act in accordance with the agreement and very conveniently ignored the payment of committed returns amounting to Rs.22,10,000 calculated for the period between October 2021 onwards till February 2023 i.e., till the execution of the lease agreement with Air India, as the respondents had failed to lease out the unit during the said term via any legitimate leasing arrangement. Furthermore, it is also pertinent to mention that the terms of lease entered between the respondents and Air India was severally prejudicial and had caused grave injustice to the complainant as the lease commencement date is 19.08.2022, however the rent commencement date is 01.03.2023, that is after 8 months of the lease commencement date.

- I) That the respondents were obligated as per the clause 16 and annexure-1 of the agreement to lease the premises at the rate of Rs.130/- per sq. ft. and it was also mentioned that in case the achieved rental is lower than Rs.130/- then the respondents shall be refunded at the rate of Rs.133/- for every Rs.1/- by which the achieved rental is less than Rs.130/- per sq. ft. Therefore, as per the terms and conditions of the lease with Air India as shared by the respondents, the rate of lease was fixed at Rs.102/- only per sq. ft only. Hence, according to the above referred binding clause of the agreement, the complainant is entitled to a one-time compensation at the rate of Rs.133/- for every Rs.1/- by which achieved rental is less than Rs.130/-. Thus, in accordance with clause 16.5 of the builder buyer agreement dated 04.02.2016 the respondents

are obligated to pay lease rentals to the complainant amounting to Rs.54,58,000/- [amount includes Lease Rentals with respect to Air India for the term between March 2023 till July 2024 along with one time compensation as per clause 16.5 of the agreement].

m) That the respondent after failing to pay the committed returns/lease rentals / security deposit / compensation to the complainant as per the terms of the agreement had issued six frivolous and baseless invoices dated 29.03.2024 against the complainant whereby the respondent demanded arbitrary payment of property tax, recovery, brokerage money, asset management fees, insurance money and electrical equipment fees from the complainant. Additionally, the respondent vide invoice dated 11.05.2024 has also demanded payment of maintenance charges from the complainant. It is pertinent to mention that the respondent promoter had failed to lease out the unit as per the terms of the agreement while also failing to pay the agreed assured returns / committed returns / lease rentals / compensation / security deposit to the complainant. Furthermore, no lease rentals and security deposit earned by the respondent promoter from Air India were ever paid to the complainant except for the month August 2023. Further, it will not be out of place to mention herein that as per Clause 16.14 of the agreement, the respondents were obligated to pay proportionate share of the rental security deposit received by the respondents from Air India to the complainant. However, out of the said amount, the respondents had only paid Rs.1,02,000/- to the complainant towards security deposit in June 2023 & thus, the respondents have failed to pay the remaining proportion of the security deposit to the complainant, which is a direct violation of clause 16.14 of the agreement. Therefore, all the said payments demanded by the respondent vide invoices dated 29.03.2024

& 11.05.2024 are nothing but arbitrary bills raised to the complainant without fulfilling its obligations of paying assured returns / committed returns / lease rentals / compensation / security deposit as per the terms of the builder buyer agreement dated 04.02.2016.

- n) That the above-described conducts of the respondents were in clear violation of Section 11(4)(a) of the Act and the Authority has jurisdiction to deal with such case as these dues are arising out of the same contractual relationship between the complainant and the respondents in terms of the builder buyer agreement dated 04.02.2016.
- o) That the respondents already mounted pressure on the complainant that they had to agree to such arbitrary act of the respondents. However, the respondents in utter disregard to the same, miserably failed to pay the assured returns as per the agreement. Furthermore, at the outset the respondents misguided the complainant about the lease facility followed by imposing unjustifiable and arbitrary terms on the complainant in case of the lease facility with Air India. That the respondents, since inception had the malafide intention to defraud & dupe the complainant and it is apparent that the respondents with their ill motive have cheated the complainant by extorting their hard-earned money. In view of the same, the complainant seeks the payment of pending assured returns and the one-time compensation related to the lease rental as agreed by the respondent in the agreement. hence, the present complaint.

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

6. The complainant has sought the following relief(s):

- I. Direct the respondents to pay the interest as prescribed by law calculated from due date till realization on the total outstanding amount(s) due & payable by the respondents to the complainant

towards the assured returns, committed returns, lease rentals and security deposit claimed herein.

- II. Direct the respondents to pay assured returns to the complainant at the rate of Rs. 137.22/- per sq. ft. super area per month as per clause 15 of the builder buyer agreement dated 04.02.2016 for the period between 01.10.2018 till 30.09.2021.
- III. Direct the respondent to clear all dues of assured return with interest.
- IV. Direct the respondents to pay committed returns to the complainant at the rate of Rs. 130 per sq. ft. super area per month to the complainant as per clause 16.1 of the builder buyer agreement dated 04.02.2016 for the period between 01.10.2021 till 28.02.2023.
- V. Direct the respondents to pay the lease rentals to the complainant as per clause 16.5 of the builder buyer agreement dated 04.02.2016 for the period between 01.03.2023 till 31.07.2024 against the failure of the respondents to pay the agreed lease rentals as per the terms of the agreement.
- VI. Direct the respondents to pay remaining due towards outstanding proportionate share of the rental security deposit to the complainant, in accordance with clause 16.14 of the builder buyer agreement dated 04.02.2016, with respect to the leasing arrangement entered by the respondents with Air India.
- VII. Direct the respondents to not levy any other cost on the complainant for the purpose of lease of the unit with Air India and act in conformity with the agreement.
- VIII. Direct the respondent to register the subject unit bearing no. 520, admeasuring 1000 sq. ft., located on fifth floor, block 4 of the project in name of the complainant and for execution of conveyance deed with regards to the said unit in the name of the complainant.
- IX. Direct the respondents to pay the compensation in conformity with the agreement at the agreed rate of Rs.133/- for every Rs.1/- by which achieved rental is less than Rs.130/- per sq. ft. per month.
- X. Direct the respondents, to pay a sum of Rs.5,00,000/- to the complainant towards compensation for mental agony caused by the respondent.
- XI. Direct the respondents, to pay a sum of Rs.2,00,000/- to the complainant towards litigation costs;

7. 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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no.1.**

8. That respondent no.1 filed a reply and contested the complaint on the following grounds vide its reply dated 05.03.2025:

- a) That the complainant has filed the present complaint with oblique motive of harassing the respondent no.1 and to extort illegitimate money while making absolute false and baseless allegations against the respondent no.1.
- b) That the builder buyer agreement executed in between the complainant and the respondent no.1 is dated 04.02.2016. The date of executing of the BBA is much prior to the coming into force of the RERA, 2016. The obligations of the aforementioned agreements were as per the applicable laws at that point of time.
- c) That the complainant herein being an investor having multiple units in the same project being developed by the respondent no.1. it is evident that the complainant is merely an investor who purchased the units for making steady monthly returns.
- d) That the complainant booked the unit with the respondent for investment purposes. The said complainant herein is not an "allottee", as the complainant approached the respondent no.1 with an investment opportunity in the form of a steady rental income from the commercial units.
- e) That in the year 2016, the complainant being in search of investment opportunities learnt about the project launched by the respondent no. 1 titled as "One On One" at Sector 16, Gurugram and visited the office of the respondent no.1 to know the details of the said project.

- f) That after having dire interest in the commercial project constructed by the respondent no.1 the complainant decided to invest and thus had booked a unit under the assured return scheme, vide application form. Further, upon knowing the assured return scheme, the complainant upon own will paid the entire sale consideration amount to the respondent no.1 for making steady monthly returns.
- g) That the complainant was aware of the status of the project and invested in the project of the respondent without any protest or demur, to make steady monthly returns upon their own judgement and investigation.
- h) That on 13.10.2014, respondent vide allotment letter allotted priority no. P-224 admeasuring 1000 sq. ft. in the aforementioned project. Further, on 04.02.2016, the BBA was executed between the complainant and the respondent no.1 for the unit no. 520 in block no. 4 on the 5<sup>th</sup> floor admeasuring 1000 sq. ft., for a basic sale consideration of Rs.76,09,000/- in the project.
- i) That the complainant paid a total amount of Rs.68,44,728/- towards the said unit against the total sales consideration to the tune of Rs.86,92,728/- to respondent.
- j) That as per clause 2 and 3 of the allotment letter read with clause 15 and 16 of the BBA, the respondent no. 1 was supposed to pay Rs.137.22/- per sq. ft. per month as assured return to the complainant, from the date of execution of the BBA till the construction completion of the unit, and Rs.130/- per sq. ft. per month after completion of building up to 3 years or till the unit is put on lease, whichever is earlier. Furthermore, the complainant vide same clauses, has authorised the respondent no.1, to lease out the said unit and by virtue of the said

leasing clause the unit in question was subject to lease upon completion.

- k) That as per the terms of the BBA, the unit was supposed to be leased out upon the completion as per Clause 16 of the BBA and in case the complainant wishes not to lease the unit then as per the provision of clause 17, the unit was proposed to be handed over within an estimated period of 48 months from the date of execution of BBA. But, in the present complaint, it is an undisputed fact that the complainant had opted for leasing out and authorized the respondent no. 1 to lease out the unit.
- l) That as per the provision of clause 16 read with clause 16.8, the unit in question were in deemed legal possession but the complainant was not entitled to claim the physical possession of the said unit as it is on lease
- m) That the unit in question was deemed to be leased out upon completion and the respondent has already put the unit on lease. As the complainant had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.
- n) That the BBA clearly stipulated provisions for "Lease" and admittedly contained a "Leasing Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant is not "Allottee" but investors who have invested the money for making steady monthly returns.
- o) That the complainant herein had authorized the respondent no. 1 to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of the respondent no. 1 and the same are explained in detail herein below:

- That the respondent no.1 was committed to complete the development of the project and put the unit on lease with the proposed timelines. 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.
- That due to above unforeseen circumstances and causes beyond the control of the respondent no. 1, the development of the project got decelerated. That such delay was not intentional. That the respondent no. 1 was bound to adhere with the order and notifications of the Courts and the Government.

The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc. are highlighted in the table below

S. NO	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 – 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 – 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee Department of Environment,	Order/Notification dated 14.06.2018	14.06.2018 – 17.06.2018 (3 days)

	Government of NCT of Delhi /14.06.2018		
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018-26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019-30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr.Bhure Lal, Chairman	Complete Ban	01.11.2019-05.11.2019 (5 days)
9.	Supreme Court - 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019-14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India - Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021	3 months
<b>TOTAL</b>		<b>1.7 years (approx.)</b>	

p) That as per the table shown hereinabove, the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date of completion of building. That after considering the above delay, the date of completion of the building has to be extended by approximately 1.7 years. That considering the above, it can conclusively be said that the COVID-19 pandemic was an act of God and therefore is Force majeure.

q) Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. the respondent no.1 also

has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.

- r) That the respondent no.1 is 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 no. 1. 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, as the project of the respondent no. 1 herein was also affected by the second wave of Covid-19, and therefore, the extension for a period of 3 months may be allowed.
- s) Further, the promoter is also entitled for a 70 days extension till 2021 when construction was banned by NGT and EPCA. Further, while computing the date, the grace period for the inadvertent delay so caused on account of *force majeure* conditions may also be considered and allowed in view of the Judgement of the Hon'ble Supreme Court in '*M/S Supertech Ltd. vs. Rajni Goyal, Civil Appeal No. 6649-50 of 2018*', wherein keeping in view the bans imposed by NGT and other Government Authorities etc., the promoter was allowed for the grace period enshrined under the agreement.
- t) That all these factors being *force majeure* may be taken into consideration for the calculation of the period of the construction of the

Project. It may also be noted that the respondent no.1 had carried out its obligations in agreement with utmost diligence.

- u) That despite these obstructions and changes in the prevailing laws, the respondent no.1 was able to complete the construction in 2020 and applied for occupation certificate on 12.08.2021, which was issued by concerned authority on 06.09.2021. It is pertinent to mention herein that the assured return was to be paid at Rs. 137.22/- from the date of execution of the BBA till construction completion of the unit, i.e., 2020 and Rs.130/- per sq. ft. after completion of construction up to three years or when the unit is put on lease, whichever is earlier
- v) The respondent no.1 was determined to fulfil its obligations as per the BBA and was able to execute a BBA, to lease with Google Connect Services India Private Limited on 22.06.2020. That the unit is already put on lease as per the agreed clauses in allotment letter and the BBA. So, the respondent no.1 alleged liability to pay the alleged assured return shall be till the unit is put on lease only.
- w) That as per agreed clauses, the complainant was to be paid an assured return of Rs. 137.22/- per sq. ft. from the date of execution of BBA till completion of construction of the Unit, that in the present complaint shall come out to be, in year 2020. Further, as per agreed clauses, after completion of construction the complainant was to be paid, assured rental of Rs. 130/- per sq. ft. per month, till 3 years or till unit is put on lease, whichever is earlier, and in the present complaint the Respondent already entered into an agreement to lease on 16.10.2023. Therefore, if any monetary relief is allowed, then it shall be allowed as per the agreed clauses and facts of the present complaint
- x) That as per clause 3 of the allotment letter read with clause 16.5 of the BBA, the respondent no. 1 has to achieve a minimum lease rental of

Rs.130/- for the first lease only. Further, the compensation of Rs 133/- per sq. ft. for every Rs.1/- by which achieved rental is less than Rs. 130/- per sq. ft. was only applicable if the first lease rental achieved is less than Rs.130/- per sq. ft.

- y) The complainant herein has claimed a compensation for the differential rental month, by alleging that as per clauses of allotment letter and builder buyer agreement, the respondent no.1 is obligated to pay Rs.133/- per sq. ft. for every Rs.1/- by which the rental achieved is less than Rs.130/- per sq. ft. per month. It is pertinent to mention herein that the complainant is claiming the said relief amount on the basis of the lease rental achieved for 2<sup>nd</sup> lease as per email dated 04.04.2024. As per the clauses of allotment letter and BBA, the said compensation is only applicable on first lease. Hence, the claim of compensation on the basis of the rental value achieved for the second lease is not as per the BBA and therefore shall be dismissed.
- z) That as per the agreed clauses, the respondent no. 1 was only obligated to achieve minimum lease rental of Rs.130/- for the first lease only and the compensation was only supposed to be paid if the first lease rental achieved is less than the Rs.130/- per sq. ft. per month, which is not the case herein. The lease rent of Rs.130/- per sq. ft. was not a mandatory minimum lease rental for the second lease and therefore the complainant is not entitled to any compensation as per the terms and conditions of the BBA.
- aa) That the relief of assured return is beyond the jurisdiction of the Authority. Also, the payment of assured return was stopped by virtue of Banning of Unregulated Deposits Schemes Act, 2019, which is explained in detail herein below.

bb) That the issue pertaining to the *relief of assured return* is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of 'Vatika Limited vs. Union of India and Anr.' in CWP No. 26740 of 2022, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing and the same has now been listed for 11.03.2025.

cc) That a reading of the entire complaint on a demurrer reveals that the true nature of the relief sought is specific performance of the assured returns commitment. That nowhere in the said provision the Authority has been dressed with jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns.

dd) That the payment of assured return is not maintainable before the Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act]. BUDS Act is a Central Act came subsequent to the Companies Act and the RERA Act, 2016, any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme".

ee) That the respondent no.1 herein was committed to complete the construction of the project and subsequently lease out the same as agreed under the agreement. However, the respondent no.1 in due compliance of the terms of the BBA has paid assured return till

September 2018, and the same has been very well accepted by the complainant in the complaint under reply.

- ff) That since starting the complainant has always been in advantage of getting assured return as agreed by the respondent. That the complainant has received an amount of Rs.41,16,600/- as assured return right from the date of allotment upto September, 2018.
- gg) The BUDS Act, 2019 being a subsequent act from RERA Act, 2016 shall prevail over the provisions over the RERA Act. The matters pertaining to the assured return shall be regulated by the Competent Authority appointed under Section 7 of the BUDS Act. Therefore, the Authority has no jurisdiction over the assured return scheme matters.

9. All other averments made in the complaint are denied in toto.

#### **E. Written submission made by the complainant.**

10. The complainant had made the following additional submissions by way of its written statement dated 03.09.2025:

- a) That under the terms of the agreement, the respondents were required to hand over possession of the unit and execute the conveyance deed by 13.10.2018. Despite repeated assurances, they have failed to deliver lawful possession or complete the conveyance, violating their contractual obligations. Further, in breach of clause 15 of the agreement, the respondents stopped paying the assured returns of Rs.137.22 per sq. ft. per month from September 2018, causing continuous financial loss to the complainant. These defaults are ongoing and constitute a continuing cause of action, entitling the complainant to compensation, interest, and damages under the applicable law.
- b) Even after obtaining the occupation certificate on 11.09.2021, the respondents failed to pay the committed returns as mandated by

clause 16. Although they gained the right to commercially exploit the project, they have not honoured their payment obligations, thereby breached the agreement and unjustly enriched themselves at the complainant's expense. To further evade responsibility, the respondents falsely claimed that the unit was leased to Google Connect Services Pvt. Ltd., later contradicting this statement and admitting termination of the lease, resulting in no payment of rent or security deposit. Subsequently, they entered into a lease with Air India at a rate lower than that agreed in the contract but failed to pay the compensation for the shortfall as required under clause 16.5.

- c) The respondents' continuous failure to pay lease rentals, security deposits, and compensation demonstrates a deliberate and persistent disregard for their contractual duties. Their actions have caused severe financial and legal prejudice to the complainant, depriving him of both his rightful property benefits and the assured and committed returns promised under the agreement.
- 11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

#### **F. Jurisdiction of the authority:**

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

##### **F. I Territorial jurisdiction**

- 13. 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 the 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 complete territorial jurisdiction to deal with the present complaint.

#### **F. II Subject matter jurisdiction**

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

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

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

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

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

15. 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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

#### **G. Findings on the objections raised by the respondent:**

##### **G.I Objection regarding maintainability of complaint on account of complainant being investor.**

16. The respondent no.1 took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any

provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant are buyers, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

**G.II Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return**

18. The respondent no.1 has raised an objection that 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.

19. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in **CWP No. 26740 of 2022 (supra)**, whereby the Hon'ble Punjab and Haryana High Court has stated that-

*"...there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification."*

Thus, in view of the above, the authority has decided to proceed further with the present matter.

#### **G.III Objections regarding force Majeure.**

20. The respondent no.1 has raised the contention that the construction of the unit of the complainant 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.

#### **G.IV Objection regarding delay in completion of construction of project due to outbreak of Covid-19.**

21. The Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020 dated 29.05.2020 has observed as under:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

22. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 04.02.2020. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

#### **H. Findings on relief sought by the complainant.**

- H.I. Direct the respondents to pay the interest as prescribed by law calculated from due date till realization on the total outstanding amount(s) due & payable by the respondents to the complainant towards the assured returns, committed returns, lease rentals and security deposit claimed herein.**
- H.II. Direct the respondents to pay assured returns to the complainant at the rate of Rs.137.22/- per sq. ft. super area per month as per clause 15 of the builder buyer agreement dated 04.02.2016 for the period between 01.10.2018 till 30.09.2021.**
- H.III. Direct the respondent to clear all dues of assured return with interest.**
- H.IV. Direct the respondents to pay committed returns to the complainant at the rate of Rs.130 per sq. ft. super area per month to the complainant as per clause 16.1 of the builder buyer agreement dated 04.02.2016 for the period between 01.10.2021 till 28.02.2023.**

23. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint. Therefore, the above-

mentioned relief(s) H.I, H.II, H.III and H.IV being interrelated are taken together for adjudication.

### **I. Assured returns**

24. The complainant is seeking unpaid assured returns on monthly basis as per addendum to builder buyer agreement dated 04.02.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum to builder buyer agreement. 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 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)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent no.1 is not sustainable in view of the aforesaid reasoning and case cited above.

25. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. 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.

26. 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.

27. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant 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. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the builder buyer agreement dated 04.02.2016.

## **II. Delay possession charges.**

28. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges with respect to the subject unit 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."*

29. The subject unit was allotted to the complainant vide builder buyer agreement dated 04.02.2016. The due date of possession had to be calculated to be 48 months from the date of execution of the builder buyer agreement. Accordingly, the due date of possession comes out to be 04.02.2020 . As per the builder buyer agreement, the respondent no.1 was under an obligation to further lease out the unit of the complainant post completion.

**30. 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. *ibid*. 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."*

31. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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., 12.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

32. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent no.1 is in contravention of the provisions of the Act. The construction of the project was to be completed within a stipulated time i.e., by 04.02.2020.

33. 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?

34. 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 buyer's agreement dated 04.02.2016. The assured return in this case is payable as per clause 15 of the "builder buyer agreement" wherein the promoter had agreed to pay to the complainant-allottee Rs.137.22/- per sq. ft. on monthly basis till the completion of construction of the building and Rs.130/- per sq. ft. on monthly basis after the completion of the 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/3918/2023	₹1,37,220/-	₹61,887.749/-
2.	CR/3919/2023	₹1,37,220/-	₹76,613.748/-
3.	CR/3920/2023	₹1,37,220/-	₹61,887.749/-
4.	CR/3921/2023	₹1,37,220/-	₹61,887.749/-
5.	CR/3922/2023	₹1,37,220/-	₹61,887.749/-

6.	CR/3923/2023	₹1,37,220/-	₹61,887.749/-
7.	CR/3924/2023	₹1,37,220/-	₹61,887.749/-

35. 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 committed returns and lease rentals 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.

36. 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 till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

37. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the builder buyer agreement. As per the builder buyer agreement dated 04.02.2016, the promoter had agreed to pay to the complainant allottee Rs.137.22/- per sq. ft. on monthly basis till completion of the construction 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, 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. However, 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.

38. In the present complaint, Occupation Certificate for the block in which unit of complainant is situated has been received by the promoter on 06.09.2021. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid assured returns to the complainant till September 2018.

39. The respondent no.1 has raised an objection in its reply, that on 22.06.2020 the respondent company has allegedly executed a lease agreement with Google Connected Services Pvt. Ltd. (at para 43 on page 15 of reply). However, there is no document on record to substantiate the claim of the respondent. Further, the occupation certificate in respect of the concerned unit was received on 06.09.2021 and the said lease agreement was alleged to be executed on 22.06.2020 i.e., before obtaining of occupation certificate. Therefore, even if the said lease agreement has been executed, the same cannot be held valid in the eyes of law. Further, during the course of proceedings dated 03.09.2025, the respondent was directed to submit on affidavit of Director of respondent, the details of the lease agreement signed with respect to the unit of the complainant along with copy of lease agreements. An affidavit in compliance of order of the Authority dated 03.09.2025 had been filed by the Director of the respondent no.1 on 29.09.2025 placing on record only the relevant extracts/details of the lease agreements pertaining to the units under question as the said lease agreement is confidential and privileged and for that reason it cannot be displayed in public domain. It is important to note that the only lease deed

placed on record by respondent no.1 was lease deed dated 19.08.2022 executed between the respondent no.1 and Air India Limited.

40. Therefore, considering the facts of the present case, the respondent no.1 is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.137.22/- per sq. ft. per month from the date the payment of assured return has not been made i.e. from October 2018 till the date of completion of construction of the unit, i.e., till the date of receipt of occupation certificate on 06.09.2021, and thereafter, Rs.130/- per sq. ft. per month as committed return up to 3 years from the date of receipt of occupation certificate after the completion of the said building (06.09.2024) or till the date the said unit is put on lease to Air India (19.08.2022), whichever is earlier. Therefore, the committed returns are payable @Rs.130/- per sq. ft. per month from 06.09.2021 till 19.08.2022. It is important to note that the Authority declines to order payment of any amount on account of delayed possession charges as their interest has been protected by granting assured returns till completion of construction of the unit and thereafter also up to 3 years at different rate from date of completion of the said building or the said unit is put on lease, whichever is earlier.

41. Accordingly, the respondent no.1 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.

**H.V. Direct the respondents to pay the lease rentals to the complainant as per clause 16.5 of the builder buyer agreement dated 04.02.2016 for the period between 01.03.2023 till 31.07.2024 against the failure of the respondents to pay the agreed lease rentals as per the terms of the agreement.**

**H.VI. Direct the respondents to pay remaining due towards outstanding proportionate share of the rental security deposit to the complainant, in accordance with clause 16.14 of the builder buyer agreement dated**

**04.02.2016, with respect to the leasing arrangement entered by the respondents with Air India.**

**H.VII. Direct the respondents to not levy any other cost on the complainant for the purpose of lease of the unit with Air India and act in conformity with the agreement**

42. The complainant is further seeking relief with respect to payment of lease rental as per the builder buyer agreement dated 04.02.2016. Vide clause 16.5 of the agreement for lease rental dated 04.02.2016, the complainant has authorised the respondent to negotiate and finalize the leasing arrangement in respect of the unit, individually or in combination with other adjoining units, with any suitable tenant/s, for whatever period and for whatever rent and with whatever conditions as may be negotiated by the respondent no.1 with the intending lessee(s). Further, vide clause (d) of the said agreement, it was agreed that the lease document will stipulate payment of rent by the lessee to the respondent, who in turn will remit the proportionate rent to the complainant after deducting expenses/costs of managing the leasing arrangement and collection of rentals which presently work out to Rs.7/- per sq. ft. per annum of the unit super area leased.

43. As per documents placed on record by the respondent by way of affidavit dated 26.09.2025, the respondent entered into lease deed with Air India Ltd. on 19.08.2022 for commercial space admeasuring 1,69,850 sq. ft. against a total transaction value of Rs.22,59,45,360/-. Therefore, the authority is of view that the builder buyer agreement executed between the parties i.e., the respondent and the allottee consisting of the lease rental clause, is binding on them. Accordingly, the respondent is directed to pay the lease rental and rental security in term of the builder buyer agreement to the complainant along with interest. It is important to note that in case the unit in question is leased out by the respondent no.1 at the rate lower/higher than as is fixed by the respondent, the respondent no.1 is obligated to settle the same in terms of clause 16.5 and clause 16.6 of the

builder buyer agreement dated 04.02.2016. The said clause 16.5 and 16.6 is reproduced below:

16.5 *The Developer expects to lease out the Said Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.130/- 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.130/- per sq. ft. super area per month, then the Developer shall pay to the Buyer a onetime compensation calculated at the rate of Rs.133/- (Rupees One hundred and thirty three only) per sq. ft. super area for every one rupee drop in the lease rental below Rs.130/- (Rupees One hundred and thirty three only) per sq. ft. super area per month. This proviso shall not apply in case of second and subsequent leases/lease terms of the said Unit.*

16.6 *However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. — per sq. ft. super area, then, the Buyer shall pay Refer Annexure-1 only) per sq. ft. super area of the said Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs. — (Rupees Refer Annexure-1 only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/lease terms of the said Unit.*

44. Further, the respondent no.1 shall not charge anything from the complainant which is not part of the buyer's agreement executed between them.

**H.VIII. Direct the respondent to register the subject unit bearing no. 520, admeasuring 1000 sq. ft., located on fifth floor, block 4 of the project in name of the complainant and for execution of conveyance deed with regards to the said unit in the name of the complainant.**

45. 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."*

46. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter from the competent authority on 06.09.2021. The respondent no.1 promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent no.1 shall execute the conveyance deed of the allotted unit within a period of 30 days from the date of this order.

**H.IX. Direct the respondents to pay the compensation in conformity with the agreement at the agreed rate of Rs.133/- for every Rs.1/- by which achieved rental is than less Rs.130/- per sq. ft. per month.**

**H.X. Direct the respondents, to pay a sum of Rs.5,00,000/- to the complainant towards compensation for mental agony caused by the respondent.**

**H.XI. Direct the respondents, to pay a sum of Rs.2,00,000/- to the complainant towards litigation costs;**

47. The above-mentioned relief(s) H.IX, H.X and H.XI as sought by the complainant are being taken together same being interrelated.

48. The complainant is seeking relief of compensation w.r.t litigation expenses and mental agony. The Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*** (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged

by the Adjudicating Officer having due regard to the factors mentioned in Section 72.

**I. Directions issued by the Authority:**

49. 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 no.1 is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.137.22/- per sq. ft. per month from the date the payment of assured return has not been made i.e., from October 2018 till the date of completion of construction of the project, i.e., 06.09.2021, and thereafter, committed return @ Rs.130/- per sq. ft. per month from 06.09.2021 till 19.08.2022.
- II. The respondent no.1 is directed to pay lease rental to complainant in terms of clause 16.5 and 16.6 of the builder buyer agreement. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent no.1 is obligated to settle the same in terms of clause 16.5 and 16.6 of the said agreement.
- III. The respondent no.1 is directed to pay the outstanding accrued assured return amount along with lease rentals 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.

IV. The respondent no.1 is directed to execute the conveyance deed of the allotted unit within a period of 30 days from the date of this order.

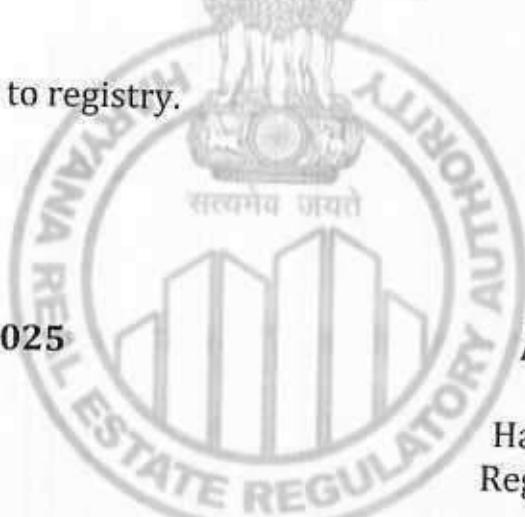
V. The respondent no.1 shall not charge anything from the complainant which is not part of the buyer's agreement.

50. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

51. Complaint as well as applications, if any, stands disposed off accordingly. True certified copy of this order shall be placed in the case file of each matter.

52. File be consigned to registry.

**Dated: 12.11.2025**

  
**Ashok Sangwan**  
**(Member)**

Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**