

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of decision:** 21.11.2025

NAME OF THE BUILDER		VATIKA ONE ON ONE PVT. LTD. & VATIKA LTD.	
PROJECT NAME		VATIKA ONE ON ONE	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3104/2024	Apurv Sharma & Anant Sharma V/s Vatika One on One Pvt. Ltd. & anr.	Sh. Chaitanya Singhal Sh. Venket Rao
2.	CR/3105/2024	Apurv Sharma & Anant Sharma V/s Vatika One on One Pvt. Ltd. & anr.	Sh. Chaitanya Singhal Sh. Venket Rao

CORAM:

Shri. Arun Kumar

Chairman**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA ONE ON ONE' being developed by the same respondent promoters i.e., M/s Vatika One on One Pvt. Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location		<i>"Vatika One on One", Sector 16, Gurugram, Haryana.</i>
OC: 06.09.2021 Offer of possession: Not offered		
Comp no.	<i>CR/3104/2024</i>	<i>CR/3105/2024</i>
Allotment letter	<i>12.04.2016 [pg. 30 of complaint]</i>	<i>09.03.2018 [pg. 25 of complaint]</i>
Unit no. and area	<i>306, block 4 admeasuring 500 sq. ft.</i>	<i>P-728 admeasuring 500 sq. ft.</i>
BBA	<i>11.05.2016 [pg. 35 of complaint]</i>	<i>Not executed</i>
Assured return clause:	<i>15. Assured monthly commitment of ₹151.65/- per sq. ft. per month from the date of execution of this agreement till construction of the said building is complete. 16.1. The developer will pay to the buyer ₹130/- per sq. ft. super area of the unit per month shall be paid as committed for up to 3 years from the date of completion of construction of the said building or till the said unit is put on lease, whichever is earlier.</i>	<i>2. assured return of Rs 150. 26/- per sq. ft. per month on super area will commence only on receipt of 100% of Basic Sale Consideration by us from you, in terms of the payment plan/schedule of payments as agreed/opted by you and will be paid till the completion of the construction of the said building 3. The company expects to lease the said unit (individually or in combination with other adjoining units) at minimum lease rent of Rs 131/- per sq.</i>

		<i>ft. per month on super area of said unit for the first lease.</i>
Total sale consideration	₹41,25,000/- <i>[pg. 30 of complaint]</i>	₹41,25,000/- <i>[pg. 25 of complaint]</i>
Amount paid	₹43,04,438/- <i>[as stated by complainant]</i>	₹46,20,000/- <i>[pg. 24 of complaint]</i>
Relief Sought		
a. Assured Return		
b. Refund amount collected towards VAT, other govt. taxes		
c. Execute CD		
d. Not to charge anything which is not the part of BBA.		

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/3104/2024 titled as Apurv Sharma & Anant Sharma V/s Vatika One on One Pvt. Ltd. & anr.** Are being taken into consideration for determining the rights of the allottees qua assured return, execute buyers' agreement and conveyance deed.
- A. Unit and project related details**
6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/3104/2024 titled Apurv Sharma & Anant Sharma
V/s Vatika One on One Pvt. Ltd. & anr.**

S.N.	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	12.13125 acres
4.	DTCP	05 of 2015 dated 06.08.2015
5.	RERA Registration	237 of 2017 dated 20.09.2017
6.	Unit no.	306, 3 rd floor, block no. 2 (Page 30 of complaint)
7.	Unit admeasuring	500 sq. ft. (Page no. 30 of complaint)
8.	Date of allotment	12.04.2016 (Page 30 of complaint)
9.	Date of execution of agreement	11.05.2016 (Page 35 of complaint)
10.	Basic sale consideration	Rs. 41,25,000/- (Page 30 of complaint)
11.	Paid up amount	Rs. 43,04,438/- (as stated by complainant)
12.	Assured return clause as per builder buyer agreement	15. "The Developer may, where the Buyer has paid 100% of the Total Sale consideration and other charges for the Commercial Unit, upon signing of this agreement pay Rs. 151.65/- per sq. ft. super area per month by way of assured return to the Buyer, of certain category of commercial unit as per its policy, from the date of <u>execution of this agreement till the construction of the said Commercial Unit is complete.</u> "
13.	Possession clause	Clause 17: Handing over of possession of the commercial unit in case of non-leasing arrangement: "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 <u>Within 48 months from the date of execution of this agreement...</u> "...Subject to the provisions of Leasing Arrangement option, the Developer, on completion of construction shall offer in writing to such Buyer to <u>take over the physical possession</u> of his commercial unit for his occupation and use in terms of <u>this Agreement within sixty (60) days of issue of the notice as aforesaid...</u> "

		<i>(Emphasis supplied)</i>
		[Page 55 of complaint]
14.	Due date of possession	11.11.2020 <i>[as per possession clause, 48 months from the date of execution of buyer agreement i.e., 11.05.2016]</i>
15.	Offer of possession	Not offered
16.	Occupation certificate	06.09.2021

B. Facts of the complaint

7. The complainants have submitted as under:

- i. That the respondent is leading real estate company having various real estate projects in Gurugram and other parts of Delhi NCR region. That through public advertisement, the respondent company boasted that it is its' endeavor to meet the expectations of the buyers, enticing them to invest their hard-earned money in their project "Vatika One on One" located in Sector-16 Gurugram and made tall claims and promises of high-quality production and timely possession. It further claimed that their project is inspired by the dreams of the consumers and driven by its commitment to deliver the finest quality and set new benchmarks in the industry.
- ii. That on 28th March 2016 the complainants booked a commercial unit measuring 500 sq. ft. in respondent's project "Vatika One on One" located in Sector-16 Gurugram, Haryana and filled an application/ booking form and paid a sum of Rs. 43, 04,438/- to the respondent as 100% advance towards purchase of commercial unit. That the entire payment with respect to the said unit was made by complainant on 28.03.2016 i.e. on the date of booking however the builder buyers' agreement was signed and executed on 11.05.2016.

- iii. The respondents started paying the monthly assured returns to the complainant from April 2016, after the complainant paid the entire basic sale consideration amount to respondents and the last assured return amount was received in September, 2018 for the month of August, 2018.
- iv. That on 12th April 2016 the complainants received “allotment letter” from the respondent. That in terms of the allotment letter the respondent had allotted commercial unit no. 306 located on 3rd floor, Block-2 in project “Vatika One on One” located at Sector-16 Gurugram, Haryana for a total sale consideration was Rs. 41,25,000/-.
- v. That as per “Clause 2” of the allotment letter, the respondent had committed to pay a monthly assured return of Rs. 151.65/- per sq. ft. per month on the super area of unit from the date of allotment letter i.e. 12.04.2016 till the completion of the construction of the said building for fit outs.
- vi. Further as per “Clause 3” of the allotment letter, the respondent had committed to provide a minimum lease rental of Rs. 130/- per sq. ft. per month on super area of the said unit starting from the date unit will be ready for occupation or when the said unit is put on lease, whichever is earlier, up till three years. Further in “Clause 3” of the allotment letter, the respondents guaranteed the complainant that in event the said unit is leased at a gross monthly rental of less than the commitment amount of Rs.130/- per sq. ft. per month, then the complainant would be entitled get compensation calculated @ Rs. 133/- per sq. ft. for every Rs. 1/- by which the achieved rent is less than Rs. 130/- per sq. ft.
- vii. Further as per “clause 4” of the allotment letter the respondent had stated that the no maintenance charges/ electricity charges/ water charges or any

charges of any kind will be charged from the complainant for the period the unit is put on lease and the said charges will be paid by the prospective tenant. further as per "clause 5" of the allotment letter the respondent had stated that brokerage for leasing of the said unit will be borne by the complainant which may be maximum of 3 months of the lease rent. However, the brokerage shall not be applicable in case of first lease.

- viii. That on 11th May 2016 "builder buyer agreement" was executed between the complainants and respondent. That as per B.B.A the complainants were allotted unit no. 306 located on 3rd floor, Block-2 measuring 500 sq. ft super area in project "Vatika One on One" located at Sector-16 Gurugram, Haryana. That as per "Clause 2 (a) of the B.B.A", the total sale consideration including E.D.C & I.D.C was Rs. 41,25,000/- @ Rs. 8,250 per sq. ft. That the complainants had paid a sum of Rs. 43, 04,438/- to the respondent on the date of booking itself. That detail of payments made by the complainants is mentioned in clause 2 (b) (i) of the builder buyer agreement and as well as in booking/ application form.
- ix. Further as per "clause 17" of the builder buyer agreement the respondent had committed to complete the construction of unit within a period of 48 months/ 4 years from the date of execution of the builder buyer agreement i.e. 11th May 2020. Miserably the respondent failed to timely construct and offer the possession of unit on time and failed to execute the conveyance deed in favour of the complainant even till date.
- x. That as per "clause 15" of the builder buyer agreement the respondent had committed to pay assured return of Rs. 151.65 per sq. ft. per month on the super area of unit from the date of entire sale consideration by complainant

- till the completion of construction until the unit is ready for fit-outs/possession.
- xii. Further as per "clause 16" of the builder buyer agreement the respondent had committed to pay assured minimum lease rental of Rs. 130 per sq. ft. per month on the super area of unit for a period of three years from the date of completion of construction of building or the said unit is put on lease, whichever is earlier.
 - xiii. That further as per clause 16.11 of the B.B.A, the liability to pay maintenance charges and all other charges will be borne by the lessee during the period of lease to the respondent.
 - xiv. That the respondent had paid assured return from April 2016 till September 2018 @ Rs. 151.65 per sq. ft. per month to the complainant and thereafter the respondent had stopped paying Assured return.
 - xv. That the respondent had not paid the assured return to the complainants from September 2018 till date. The respondent is liable to pay assured return at agreed rate of Rs. 151.65/- per sq. ft. per month on super area of 500 sq. ft. from September 2018 till the completion of building i.e. till the receipt of O.C.
 - xvi. That on 24th December 2019 the respondent sent an e-mail along with the copy of "draft addendum to the builder buyer agreement" and requested the complainant to sign and execute the same. That the complainant after going through the draft addendum agreement did not signed it since several clauses were substituted which extinguish the liability of the respondent to pay assured return and minimum lease guarantee as agreed by the respondent in the original Builder buyer agreement and further added clauses regarding the liability of the

complainant to pay maintenance charges irrespective of the fact whether the unit is put on lease by the respondent or not.

- xvi. That on 11th September 2021, the respondent sent an e-mail stating that they had received occupation certificate on 06th September 2021 from the concerned D.T.C.P department. However, the respondent had not attached the copy of O.C in their e-mail. Therefore, it is hard to believe whether the respondent had received O.C or not. That it is reasonably believed that the respondent had not obtained the O.C from D.T.C.P department till date since it is not available/ uploaded on the official website of DTCP, Haryana. That the respondent be directed to provide the copy of O.C, if obtained to the complainant.
- xvii. That on 07th October 2021, the respondent sent an email- update regarding on-boarding of first tenant i.e. Google Connect India Services Pvt. Ltd. and gave details of monthly rental, lease tenure, security deposit etc. to the complainant. That thereafter on 05th January, 2022 the respondent sent another e-mail to the complainant and stated that the tenant- Google Connect India Services Pvt. Ltd. had terminated the lease with the respondent and the respondent.
- xviii. That on 28th April 2023, the respondent sent another email to the complainant informing execution of 2nd lease agreement with new tenant i.e. Air India Limited. Further vide email dated 31st May 2023, the respondent informed the complainant that rent will commence w.e.f 1st April, 2023 and out of 6 months security deposit, 1 month security deposit will be credited in the account of the complainant in the month of June 2023 and balance 5 months security deposit amount will be adjusted being amount payable by complainant. That the

respondent imposed illegal charges like “cost escalation” upon the complainant inspite of the payment of entire sales consideration by the complainant at the time of allotment.

- xix. That escalation charges are illegal since the complainant had paid the entire 100% sales consideration of the unit at the time of booking in 2016. The deemed date of completion and possession of unit was 48 months from the date of execution of BBA which comes to 11.05.2020 and whereas the respondent lately received O.C for the building on 9th September 2021. That the delay caused in construction led to cost escalation for which the respondent is solely liable. Therefore, cost escalation charges of Rs. 5, 40,000/- levied by respondent are illegal and wrong and are liable to be quashed.
- xx. Further the respondent had levied bills of maintenance charges upon the complainant during the lease period which is illegal and not as per the agreed terms of the allotment letter and builder buyer agreement.
- xxi. Therefore, maintenance charges levied by respondent are illegal and wrong and are liable to be quashed.
- xxii. Further the respondent had raised demand for payment of three months’ rent as brokerage i.e. Rs. 1, 53,000/- @ Rs.102/- per sq. ft per month for getting the unit leased with the tenant. Further the respondent wrongly adjusted the said brokerage charges from the security deposit paid by the tenant- Air India.
- xxiii. That the above said charges raised by the respondent are illegal since they were nowhere mentioned in the builder buyer agreement or allotment letter. That as per “Clause 4” of the allotment letter the respondent had stated that the- no maintenance charges/ electricity charges/ water charges or any

charges of any kind will be charged from the complainant for the period the unit is put on lease and the said charges will be paid by the prospective tenant. Therefore, in light of the above clause the said charges are illegal and are liable to be quashed.

xxiv. That on account of non-payment of assured return and non- payment of committed lease rental, cause of action in favor of complainants and against the respondent is a continuing cause of action and still subsisting one.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - a. The respondents be directed to pay the amount of assured returns due and payable by it to the complainant(s) from September, 2018, till September 2021 as per the terms of the agreement executed between the parties.
 - b. The respondents be directed to pay interest at the prescribed rate on the unpaid assured returns to the complainant.
 - c. The respondents be directed to pay committed lease rental.
 - d. The respondents be directed not charge any illegal charges under different heads.
 - e. The respondents be directed to execute a conveyance deed for the unit of the complainant upon the completion of the project.
 - f. The respondents be restrained from demanding any amounts from the complainant(s) at the time of offer of possession which do not form a part of the agreement executed between the parties.
9. On the date of hearing, the authority explained to the respondent /promoters 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.

10. The respondent has contested the complaint on the following grounds:

- i. That the complainant has not approached the Ld. Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- ii. The respondent no. 2 i.e. Vatika Limited is not a necessary party in this complaint as the respondent no. 2 is the only confirming party in the builder buyer agreement. In the present complaint, it can be clearly ascertained from the agreement, that the respondent no. 1 is the developer of the project and has acquired right, interest in the land on which the said project is being developed.
- iii. That the respondent no. 2 is not a promoter as per the definition of 'Promoter' in Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, for the 'One on One' project and had no obligations, responsibilities and functions defined under the Section 11(4) of the Real Estate (Regulation and Development) Act, 2016. It is pertinent to mention herein that the respondent no. 2 is only a confirming party in the builder buyer agreement, confirming the rights, interest of the respondent no 1 in the project.
- iv. It is to bring to the knowledge of the Ld. Authority, that the respondent no. 2 is only a confirming party in the builder buyer agreement. Also, all the rights and liens of the project have been acquired by the respondent

- no. 1 and the same can be verified from the registration certificate of the project.
- v. In the present complaint, the complainants have clearly stated that the respondent no. 2 is just a confirming party. Further, all the communications and payments with respect to the subject unit were sent or received by the respondent no.1. Hence, the respondent no. 2 has no liability against the complainant and no right of complainant can be imposed against the respondent no. 2 and the respondent no. 2 shall be deleted from the array of parties.
- vi. That it is an established fact herein that the complainants booked the unit with the respondent for investment purposes. The said complainants herein are not "allottee", as the complainants approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units.
- vii. That in the year 2016, the complainants being in search of investment opportunities learned about the project launched by the respondent no. 1 titled as "One on One" at Sector 16, Gurugram and visited the office of the respondent no. 1 to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.
- viii. That after having dire interest in the commercial project constructed by the respondent the complainants decided to invest and thus had booked a unit under the assured return scheme, vide application form dated 27.05.2016. Further, upon knowing the assured return scheme, the

- complainants upon own will paid the entire sale consideration amount to the respondent for making steady monthly returns.
- ix. It may be noted that the complainants were 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.
 - x. That on 12.04.2016, respondent vide allotment letter allotted unit no. 306 in block 2 measuring 500 sq. ft. in the aforesaid project.
 - xi. That on 11.05.2016, the builder buyer agreement, was executed between the complainants and the respondents for the unit, for a basic sale consideration of Rs. 38,04,500/- in the project, which was duly paid by the complainants. It is pertinent to note that the respondent no. 2 was just a confirming party in the said agreement and the rights, interest in the land has been acquired by the respondent no 1.
 - xii. That as per the terms of the agreement, the unit was supposed to be leased out upon the completion as per clause 16 of the agreement and in case the complainants wish not to lease the unit then as per the provision of clause 17, the unit was proposed to be handed over within an estimated period of 48 months from the date of execution of agreement. But, in the present complaint, it is an undisputed fact that the complainants had opted for leasing out and authorized the respondent to lease out the unit.
 - xiii. It is a matter of fact, 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.

- xiv. That only valid inference that can be drawn out of the futile attempt of the complainants by filling this complaint is that the complainants are investors and seek speculative gains. Therefore, the complaints are liable to be dismissed at the very outset.
- xv. That the agreement, clearly stipulated provisions for "lease" and admittedly contained a "leasing clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not "allottee" but investors who have invested the money for making steady monthly returns.
- xvi. 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 (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/	Press Note - 29.10.2018 and later	01.11.2018- 12.11.2018

	Environment Pollution (Prevention & Control Authority)-EPCA	extended 12.11.2018	till (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
TOTAL		1.7 years (approx.)	

xvii. 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 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.

xviii. That it is not out of the place to mention here that the respondent 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 Ld. 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. It is also required to be considered that the Ld. 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 months extension to all the promoters. Therefore, as the project of the respondent herein was also affected by the second wave of Covid-19, and therefore, the extension for a period of 3 months may be allowed.
- xix. 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 had carried out its obligations in agreement with utmost diligence.
- xx. It is submitted that despite these obstructions and changes in the prevailing laws, the respondent 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. 151.65/- from the date of making full payment till completion of construction i.e. 2020 and Rs 130/- per sq. ft after completion of construction up to three years or when the unit is put on lease, whichever is earlier.
- xxi. In the present complaint, as per agreed clauses, the complainants were to be paid an assured return of Rs. 151.65/- per sq. ft from date of complete payment till completion of construction, 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 return of Rs. 130/- per sq. ft per month, till 3 years or till unit is put on lease, whichever is earlier, and in the present complaint the respondent already entered into an agreement to lease on 22.06.2020. Therefore, if any monetary relief is allowed, then it shall be allowed as per the agreed clauses and facts of the present complaint.

- xxii. That as per clause 3 of the allotment letter read with clause 16.5 of the agreement, the respondent has to achieve a minimum lease rental of Rs. 130/- for the first lease only. Further, the compensation of Rs 133/- per sq. ft for every 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.
- xxiii. 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 is obligated to pay Rs. 133/- per sq. ft for every Rs 1/- by which the rental achieved is less than Rs. 130/-. It is pertinent to mention herein that the complainant is claiming the said relief amount on the basis of the lease rental achieved for 2nd lease as per email dated 27.01.2023. As per the clauses of allotment letter and agreement, 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 agreement and therefore shall be dismissed.
- xxiv. It is pertinent to state herein that the "addendum agreement" was duly sent to the Complainants on 24.12.2019, via email, with the intent of apprising them of the necessary amendments to the Builder-Buyer

Agreement. The email explicitly advised the complainants to review these changes carefully and return a signed copy upon full understanding. However, the complainants disregarded this communication. The fact that they have attached a copy of the email dated 24.12.2019, along with the "addendum agreement" substantiates their receipt and awareness of the document.

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 on the basis of those undisputed documents and submissions made by the parties.

E. 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:

E. I Territorial jurisdiction

13. 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

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

Section 11(4) (a)

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

Section 34-Functions of the Authority:

34(f) *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 the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding maintainability of complaint on account of complainant being investor

16. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been

allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"

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 are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

18. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and 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 State of Haryana for 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), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending

appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"...it is pointed out 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"

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

G. Findings on the relief sought by the complainants.

G.I. Assured return.

21. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. 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) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that

time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in **CR/8001/2022 titled as Gaurav Kaushik & anr. Vs. Vatika Ltd.** rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated 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. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors.**, (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter

against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of the above-mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form. Further, section 2(4)(I) deals with the exception wherein 2(4)(I)(ii) specifically mention that deposit does not include an advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement. In the present matter the money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period as agreed between the allottee and the builder in terms of buyer's agreement executed inter-se parties. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. The Act of 2019

- does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(ii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.
22. 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.
 23. 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 builder buyer agreement.
 24. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 11.05.2016. The assured

return is payable to the allottees as per clause 15 & 16.1 of the buyer's agreement dated 11.05.2016. The promoter had agreed to pay to the complainants allottee Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said 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.

25. The authority is of the view that the construction is complete since the OC/CC is obtained from the concerned authority by the respondent i.e. 06.09.2021. Admittedly, the respondent has paid an amount of 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., @ Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building i.e., till 06.09.2021 and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier. The respondent has neither put on record any document for lease therefore the respondent is obligated to pay the committed returns for three years from 06.09.2021 i.e., till 06.09.2024.
26. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from

the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G.II. Execute CD

27. With respect to the conveyance deed, clause 9 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
28. 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”

29. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation

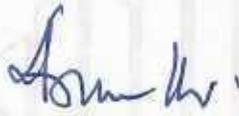
certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the date of order after final offer of possession and upon payment of requisite stamp duty by the complainants as per norms of the state government.

H. Directions of the authority:

30. 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., @ Rs.151.65/- per sq. ft. on monthly basis from the date of agreement till completion of construction of the building i.e., till 06.09.2021 and Rs.130/- per sq. ft. on monthly basis for up to 3 years from the date of completion of the building or the said unit is put on lease, whichever is earlier. The respondent has neither put on record any document for lease therefore the respondent is obligated to pay the committed returns for three years from 06.09.2021 i.e., till 06.09.2024.
- 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. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of order after final offer of possession and upon payment of requisite stamp duty by the complainants as per norms of the state government.
- e. 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.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. True certified copies of this order be placed on the case file of each matter.
33. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2025