

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

Complaint no. :	1735 of 2025
Date of filling of complaint :	11.04.2025
Date of Decision :	09.01.2026

Pooja Kaicker  
R/o : 29, Sunder Nagar, Lodi Road,  
South Delhi – 110003

**Complainant**

Versus

1. Vatika One On One Private Limited  
**Office:** Vatika Business Centre, Thapar House, 3<sup>rd</sup>  
Floor, Eastern & Central Wing, Gate No. 1, 124  
Janpath Road, CP, New Delhi

**Respondent no. 1**

2. Vatika Limited  
**Office:** Unit No. A-002, INXT City Centre, Ground  
Floor, Block-A, Sector-83, Vatika India Next,  
Gurugram, Haryana-122012.

**Respondent no. 2**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shri Varun Kathuria (Advocate)  
Ms. Omita (Advocate)

Complainant  
Respondents

**ORDER**

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

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se .

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

2. 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:

S.no.	Particulars	Details
1.	Name of the project	"Vatika One on One", Sector 16, Gurugram
2.	Location of the project	Sector-16, Gurugram
3.	Nature of the project	Commercial colony
4.	Project Area	42452.291 sq. ft. (12.13 Acres)
5.	DTCP license no. and validity status	05 of 2015 dated 06.08.2015 Valid upto 05.08.2020
6.	Name of licensee	M/s Vatika One-on-One Pvt. Ltd.
7.	Registered or not registered	<b>Registered</b> [Phase-1] 237 of 2017 dated 20.09.2017 Valid upto 19.09.2022
8.	Unit no.	Priority No. P-793 (page 12 of complaint)
9.	Unit area	500 sq. ft. (page 12 of complaint)
10.	Application form	09.04.2018 (page 18 of complaint)
11.	Allotment letter	06.06.2018 (page 12 of complaint)
12.	Provision regarding assured return (as mentioned in allotment letter)	2. The developer shall remit an assured monthly return of an amount of <b>Rs. 150.26 per sq. ft.</b> payable from the date, when the payment is received as per the mutually agreed payment plan mentioned herein, i.e., ..... <b>till the building is ready for fit outs.</b> It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all

		<p>just exceptions, contemplates to complete construction of the said building/said commercial unit soon. (page 12 of complaint)</p>
13.	<p>Lease arrangement clause (as mentioned in allotment letter)</p>	<p>3. That you have intended to purchase the said unit with leasing arrangement and in terms of agreement for sale (which will be subsequently issued), the company shall be authorized to put the said unit on lease for and on your behalf (individually or in combination with other adjoining units) as and when the said unit is ready and fit for occupation. 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. ft. per month on super area of said unit for the first lease. However, in the event the achieved lease rent being higher or lower than Rs.131/- per sq. ft. as aforesaid, the following would be applicable.</p> <p>A. If the achieved rate of rent is less than Rs.131/- per sq. ft., then the promoter shall pay to the Allottee the differential rental for every Rs. 1 drop in the lease rental below Rs. 131/- per sq. ft. of saleable area per month, in regular monthly instalments for a period of three years such lease. This provision shall not apply in case of second and subsequent leases /lease terms of the said Commercial Space Unit.</p> <p>B. If the achieved rate of rent is less than Rs.131/- per sq. ft., then the allottee and promoter shall share the increased rental equally for the first three years of the lease. This provision shall not apply in case of second and subsequent</p>

		leases/lease terms of the said commercial Space/Unit. (page 13 of complaint)
14.	Date of builder buyer agreement	Not executed
15.	Possession clause	<b>Not provided</b>
16.	Due date of possession	<p><b>06.06.2021</b></p> <p><i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that <b>when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</b>"</p> <p>In view of the above-mentioned reasoning, the date of the allotment letter dated 06.06.2018 ought to be taken as the date for calculating the due date of possession.</p>
17.	Basic sale consideration	Rs.41,25,000/- (Page no. 12 of complaint)
18.	Amount paid	<b>Rs.46,20,000/-</b> (As per SOA dated 13.06.2018 annexed at page no. 14 of complaint)
19.	Occupation certificate	06.09.2021 (as per website of RERA)
20.	Offer of possession	To be ascertained

21.	Assured return amount paid by the respondents (Till Sept., 2018)	Rs.4,20,728/- (Page no. 16 of reply)
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**B. Facts of the complaint:**

3. The complainant has made the following submissions:
- I. That the respondents made false representations and claims of being a big company and a reputed developer and thereby induced the complainant to book a 500 sq. ft. unit in its project known as "Vatika One on One" located at Sector 16, Gurgaon by showcasing a fancy brochure.
  - II. That the complainant paid the full consideration amount of Rs. 41,25,000/- upfront at the time of booking of the unit and was allotted unit no. P - 793 of the project having 500 sq. ft. vide application dated 09.04.2018. At the time of making the payment the complainant was informed by the respondents that the respondent no. 1 is a sister concern of the respondent no. 2 having the same directors and management and also share the same corporate office address and was further assured that M/s Vatika Limited shall be a signatory to the builder buyer agreement which shall be executed between the parties at a later date.
  - III. That the respondent no. 1 executed a "letter of allotment" dated 6th June, 2018 in favour of the complainant detailing the terms and conditions of the allotment. As per clause 2, the respondent no. 1 was liable to pay assured monthly returns to be calculated @ Rs. 150.26/- per sq. ft. per month amounting to Rs. 75,130/- per month till the building is ready for fit-outs post completion of which it was liable to pay @ Rs. 130/- per sq. ft. per month to the complainant amounting to Rs. 65,000/- per month for upto 3 years post completion or till the unit is put on lease, whichever was earlier. The said letter also contained

terms specifying the amounts to be paid by the complainant to the respondents or vice-versa in case the unit is put on lease at a higher or lower rate than Rs. 131/- per sq. ft., respectively. The said letter further mentioned that the project is likely to be completed soon.

- IV. For reasons best known to the respondents no builder buyer agreement was ever executed between the parties and whenever the complainant visited the office of the respondents and requesting for the same, she was told by the respondents that possession of the unit is likely to be offered to the complainant soon and was further informed that the respondents are in the process of finalizing a prospective lessee for the said premises soon.
- V. That the respondents in furtherance of its mala fide intentions and ulterior motives stopped the payment of the monthly returns to the complainant from October, 2018 without assigning any reason. Upon repeated enquiries the respondents told the complainant that the same are not being paid due to the notification of the BUDS Act but never sent anything in writing to the complainant. Despite of repeated requests of the complainant no monthly returns have been paid by the respondents to the complainant till date.
- VI. That almost 7 years have passed since the complainant paid the entire consideration amount to the respondents and till the complainant has now come to know that although other towers in the said project have been completed and leased by the respondents but the respondents have till date, failed to complete the tower in which the unit of the complainant is located and has deliberately and malafidely not executed a builder buyer agreement for the unit of the complainant till date for the said reasons. The respondents have not sent any communication to the complainant regarding the status of construction or leasing of their

unit till date. The conduct of the respondents is illegal and arbitrary and the respondents are guilty of deficiency of services and of unfair and monopolistic trade practices. The respondents are clearly in breach of its contractual obligations and of causing financial loss to the complainant and the conduct of the respondents has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the complainant and their family members. The respondents are jointly and severally liable for the reliefs claimed by the complainant.

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

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

- I. Direct the respondents to pay the amount of assured returns due and payable by it to the complainant(s) from October, 2018 or as per law till the date of final order to be calculated at Rs. 150.26/- per sq. ft. per month till the completion of the project certified by the competent authority and thereafter, at Rs. 131/- per sq. ft. per month for a period of 3 years after the issuance of occupation certificate/completion certificate as per the terms of the agreement executed between the parties.
- II. Direct the respondents to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment.
- III. Direct the respondents to execute a conveyance deed for the unit of the complainant upon the completion of the project.
- IV. 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 agreements executed between the parties.

5. On the date of hearing, the authority explained to the respondents-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 respondents:**

6. That respondents filed a reply on dated 07.11.2025 and contested the complaint on the following grounds:
- I. That the respondents had entered into an agreement of assured return with the complainant in the year 2018, however the government has enacted Banning of Unregulated Deposit Scheme Act, 2019 thereby putting a sanction on all such commitments made by the Builder under the agreement of assured return. Therefore, as per Section 2 (j) of the Contract Act "A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable" and therefore all such contracts after enactment of BUDS Act have been void contracts and therefore such agreements have no enforceability in the eyes of law.
  - II. That the complainant herein along with his mother had invested money into the project of the respondents and has not purchased the said unit for residential use.
  - III. That the complainant booked the unit with the respondents for investment purposes. The said complainant herein is not an "Allottee", as the complainant approached the respondents with an investment opportunity in the form of a steady rental income from the commercial units.
  - IV. That after having dire interest in the project constructed by the respondents the complainant booked a unit vide application form dated 06.06.2018, under the assured return scheme on her own

judgement and investigation. The complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur and the respondents had paid an amount of Rs. 4,20,728/- to the complainant on account of assured return till September 2018.

- V. That the complainant has booked a commercial unit in the project "Vatika One on One" located in Sector 16, Gurgaon for a basic sale price of Rs. 41,25,000/-. However, the fact of the case is that only allotment letter had been issued in favour of the complainant wherein only priority no. has been allotted. In light of the same, there is no binding document executed between the parties that shall decide the terms of the agreement and therefore there is no question of payment of assured return to the complainant.
- VI. That since starting the respondents had always tried level best to comply with the terms of the allotment letter and has always intimated the exact status of the project. However, the respondents herein could not continue with the payments of assured return after coming in force of the BUDS Act, 2019.
- VII. That the agreed terms of the acknowledgment letter, clearly stipulated provisions for "Lease". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainant(s) are not a "allottee" but investors who have invested the money for making steady monthly returns.
- VIII. That the complainant is merely trying to hoodwink the Authority by concealing facts which are detrimental to this complaint at hand. Therefore, the said allotment of the said commercial unit contained a "lease clause" which empowers the developer to put a unit of

- complainant along with other commercial space unit on lease and does not have “possession clauses”, for physical possession.
- IX. That the complainant has misguided himself in filing the present complaint before the wrong forum. The complainant is praying for the relief of “assured returns” which is beyond the jurisdiction that the has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute arise between a builder and buyer with respect to the Development of the project. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of “refund” in case the Allottee wants to withdraw from the Project and the other being “interest for delay of every month” in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee.
- X. 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. Therefore, the present complaint is filed with grave illegalities and the same is liable to be dismissed at the very outset and the complainant shall be directed to file pursue her complaint before the civil court for any dispute arises from the agreement pertaining to assured returns.
- XI. 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.
- XII. 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 respondents herein, for seeking recovery against deposits till next date of hearing and the same has now been listed for 23.11.2023.

- XIII. 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.
- XIV. 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".
- XV. 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.
7. All other averments made in the complaint are denied in toto.

8. 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.

**E. Jurisdiction of the authority:**

9. 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**

10. 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.

**E. II Subject matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per 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.*

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

**F. Findings on the objections raised by the respondents:**

**F.1 Objection regarding maintainability of complaint on account of complainant being investor.**

13. The respondents took a stand that the complainant is investor and not consumer and therefore, she 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 respondents-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;"*

14. 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.

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

15. The respondents have 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.
16. 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. Findings on relief sought by the complainant.**

- G.I. Direct the respondents to pay the amount of assured returns due and payable by it to the complainant(s) from October, 2018, or as per law till the date of final order, to be calculated at Rs. 150.26/- per sq. ft. per month till the completion of the project certified by the competent authority and thereafter, at Rs. 131/- per sq. ft. per month for a period of 3 years after the issuance of occupation**

**certificate/completion certificate as per the terms of the agreement executed between the parties.**

**G.II. Direct the respondents to pay interest at the prescribed rate on the unpaid monthly returns/investment returns to the complainant(s), to be calculated from the date the monthly returns were due till the date of actual payment;**

17. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint. Therefore, the above-mentioned relief(s) G.I and G.II being interrelated are taken together for adjudication.

**I. Assured returns**

18. In the instant complaint, the complainant duly booked a unit bearing no. P-793 admeasuring 500 sq. ft. in the respondent's project namely, Vatika One on One situated at Sector-16, Gurugram. The allotment letter was executed between the parties on 06.06.2018. The builder buyer agreement was not executed between the parties.

19. The complainant in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the allotment letter dated 06.06.2018. The complainant has submitted that as per clause 2 of the said allotment letter, it was agreed that the respondents would pay monthly assured return of Rs.150.26/- per sq. ft. from the date when the payment is received as per mutually agreed payment plan till the building is ready for fit outs. It is pleaded by the complainant that the respondents have not complied with the terms and conditions of the said allotment letter.

20. The respondents 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 respondents in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondents are not sustainable in view of the aforesaid reasoning and case cited above.

21. Further respondents raised an objection that only allotment letter was executed but not agreement for sale has been executed. The authority is of the view that the allotment letter dated 06.06.2018 contains all the terms and conditions regarding the payment of assured return. Therefore, the promoter and allottee would be bound by the obligations contained in the allotment letter and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban**

*Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

22. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
23. The Authority 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. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship.
24. In the present complaint, the assured return was payable as per clause 2 of the allotment letter dated 06.06.2018, which is reproduced below for the ready reference:

*2. The developer shall remit an assured monthly return of an amount of **Rs. 150.26 per sq. ft.** payable from the date, when the payment is received as per the mutually agreed payment plan mentioned herein, i.e., ..... **till the building is ready for fit outs.** It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said commercial unit soon. .*

25. The Authority has perused clause 2 of the allotment letter which provides that the developer shall remit an assured monthly return of Rs. 150.26 per sq. ft., payable from the date when the payment is received as per the mutually agreed payment plan till the building is ready for fit-outs. However, the clause does not specify any particular date from which such assured return becomes payable.
26. In the present case, no specific document has been placed on record to establish the exact date on which the payment, as contemplated under the mutually agreed payment plan, was received by the respondents. In the absence of any such material on record indicating the precise date of payment, the Authority deems it appropriate to compute the assured return from the date of execution of the allotment letter, which reasonably reflects the commencement of the contractual relationship between the parties.
27. Accordingly, the respondents are held liable to pay assured returns at the agreed rate from the date of execution of the allotment letter till the date the building was ready for fit-outs, in terms of the aforesaid clause.

## II. Delay possession charges.

28. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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. However, in the present matter no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in

the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:*

*“Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered.”*

30. Accordingly, the due date of possession is calculated as 3 years from the date of execution of allotment letter i.e., 06.06.2018. Therefore, the due date of possession comes out to be 06.06.2021.
31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

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

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

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

32. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
33. 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., 09.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*  
*Explanation. — For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
  - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
35. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoter

protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date and in return, he is to be paid either the assured return or delay possession charges whichever is higher.

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

40. In the present complaint, as per clause 2 of the allotment letter dated 06.06.2018, the amount on account of assured return was payable from 06.06.2018 till building is ready for fit-outs. Accordingly, the liability of the respondents to pay assured return as per allotment letter is still continuing. Hence, the respondents/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.150.26/- per month from the date i.e., 06.06.2018 till building is ready for fit-outs after deducting the amount, if any already paid on account of assured return to the complainant.

**G.III. Direct the respondents to execute a conveyance deed for the unit of the complainant upon the completion of the project;**

41. 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*

which is the same as is being granted to the complainant in case of delay possession charges.

36. On consideration of documents available on record and submissions made by the complainant and the respondents, the authority is satisfied that the respondents are in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 06.06.2021. The occupation certificate for the said project was received on 06.09.2021 however, till date no possession has been handed over to the complainant/allottee. The authority is of the considered view that there is delay on the part of the respondents/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
37. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?
38. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the allotment letter at the rate at which assured return has been committed by the promoter. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he will be entitled for this specific amount from 06.06.2018 till the building is ready for fit-outs. Accordingly, the interest of the allottee is

*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."*

42. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondents promoter from the competent authority on 06.09.2021. The respondents/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 respondents shall execute the conveyance deed of the allotted unit within a period of 30 days from the date of this order.

**G.IV. Direct 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 agreements executed between the parties.**

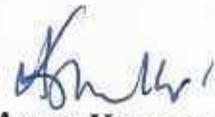
43. The respondents shall not charge anything from the complainant which is not part of the buyer's agreement.

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

44. 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 respondents are directed to pay the pending amount of assured return at the agreed rate i.e., Rs.150.26/- per sq. ft. per month from the date i.e., 06.06.2018 till building is ready for fit-outs after deducting the amount, if any already paid on account of assured return to the complainant.
  - ii. The respondents are directed to execute the conveyance deed of the allotted unit within a period of 30 days from the date of this order.
  - iii. The respondents shall not charge anything from the complainant which is not part of the buyer's agreement.
  - iv. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
45. Complaint as well as applications, if any, stands disposed off accordingly.
46. File be consigned to registry.

**Dated: 09.01.2026**



**Arun Kumar**  
**(Chairman)**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram