

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

Date of decision: 12.12.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA TOWER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2141/2025	Sh. Harbinder Singh Sahni & anr. V/s Vatika Ltd. & anr.	Sh. Abhishek Sh. Shivaditya
2.	CR/2142/2025	Sh. Harbinder Singh Sahni & anr. V/s Vatika Ltd. & anr.	Sh. Abhishek Sh. Shivaditya

CORAM:	
Shri. Arun Kumar	<b>Chairman</b>

**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.

- 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 TOWER' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
- 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:

<b>Project Name and Location</b>	<b>"Vatika Tower", Golf Course Road, Gurugram, Haryana.</b>	
<b>Assured return clause as per application form:</b> <i>Rs. 133.33/- per sq. ft per month till the completion of the construction.</i> <b>Post completion:</b> <i>Rs. 120/- per sq. ft. per month on super area for upto 3 years from the date of completion of building or the said unit put on lease, whichever is earlier.</i>		
<b>Possession clause: no possession clause</b> <b>OC: Not obtained</b> <b>Offer of possession: Not offered</b>		
<b>Due date of possession: calculated 3 years from date of acknowledgement letter</b>		
<b>Comp no.</b>	<b>CR/2141/2025</b>	<b>CR/2142/2025</b>
<b>Unit no.</b>	P-456 (as per allotment letter)	P-457 (as per allotment letter)
<b>Unit area</b>	750 sq. ft. (super area)	750 sq. ft. (super area)
<b>Date of acknowledgement letter</b>	28.01.2016 [Page 46 of reply]	18.03.2016 [Page 45 of reply]
<b>Possession clause as per BBA</b>	<i>Not available</i>	<i>Not available</i>
<b>Due date of possession</b>	28.01.2019	18.03.2019



<b>Assured return as per acknowledgement letter</b>	Rs. 133.33/- per sq. ft per month till the completion of the construction. Post completion: Rs. 120/- per sq. ft. per month on super area for up to 3 years from the date of completion of building or the said unit put on lease, whichever is earlier.	Rs. 133.33/- per sq. ft per month till the completion of the construction. Post completion: Rs. 120/- per sq. ft. per month on super area for up to 3 years from the date of completion of building or the said unit put on lease, whichever is earlier.
<b>Total sale consideration</b>	Rs. 49,50,000/- [as per SOA on page 13 of complaint]	Rs. 49,50,000/- [as per SOA on page 13 of complaint]
<b>Total amount paid by the complainant</b>	Rs. 51,65,325 /- [as per SOA on page 13 of complaint]	Rs. 51,65,325 /- [as per SOA on page 13 of complaint]
<b>Assured return paid</b>	Rs. 66,77,285/- paid till October 2018 (page 50 of reply)	Rs. 66,77,285/- paid till October 2018 (page 49 of reply)
<p>a. In view of the above, it is, therefore, most respectfully prayed that the present complaint may please be allowed and Respondents may please be directed to pay to the complainants the entire arrears of assured return/lease rent of Rs. 1,07,30,932/- due as on 31.12.2024 along with interest as prescribed under the Act w.e.f. 20.01.2016 till the date of actual realization along with full update due amount towards unpaid assured return/lease rentals.</p> <p>b. Direct the respondents to handover the peaceful, vacated physical possession of complainant's property/commercial unit no. P-456, area about 750 sq. ft., situated at "VATIKA TOWER" Golf Course Road, Gurugram.</p> <p>c. Direct the Respondents not to act upon any previous authorization of Complainants as permitted earlier because now the purported authorization of Respondents has already been Revoked/withdrawn by the Complainants vide their Legal Notice Dated 14.01.2025 and same has been duly served.</p> <p>d. Direct the respondents to render true and correct accounts of lease money and /or other sum of money received by respondents in respect of aforesaid commercial unit and further directions be given provide the copy of all lease which either have signed or executed for and on behalf of complainant's pursuant agreement or otherwise in any way till date.</p> <p>e. Direct the respondents to render true and correct copy statement of account of assured return and lease money w.e.f 20.01.2016.</p> <p>f. Direct the Respondents promptly return all documents, keys, and any other materials pertaining to the aforesaid commercial unit in their power and possession to Complainants.</p>		

g. Litigation Cost may also be awarded to the Complainants. Pass any other order/order/directions as this Hon'ble Forum may deem fit and proper in the facts and Circumstance of the case.

**Note: In the table referred above certain abbreviations have been used.**

**They are elaborated as follows:**

**TC: Total consideration**

**AP: Amount paid by the allottee(s)**

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/2141/2025 titled as Harbinder Singh Sahni & anr. V/s Vatika Limited.* are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed 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/2141/2025 titled as Harbinder Singh Sahni & anr. V/s  
Vatika Limited.*

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Tower", golf course road, Gurugram
2.	Nature of the project	Commercial Colony

3.	RERA registered/ not registered	<b>Unregistered</b>
4.	Unit no.	P-456 (as per allotment letter)
5.	Unit area	750 sq. ft. (super area)
	Date of acknowledgement letter	28.01.2016 [Page 46 of reply]
6.	Possession clause as per BBA	<b>Not available</b>
7.	Due date of possession	28.01.2019
8.	Assured return	Rs. 133.33/- per sq. ft per month till the completion of the construction. <b>Post completion:</b> Rs. 120/- per sq. ft. per month on super area for upto 3 years from the date of completion of building or the said unit put on lease, whichever is earlier.
9.	Total sale consideration	Rs. 49,50,000/- [as per SOA on page 13 of complaint]
10.	Total amount paid by the complainant	Rs. 51,65,325 /- [as per SOA on page 13 of complaint]
11.	Assured return paid till oct 2018	Rs. 66,77,285/- (page 50 of reply)
12.	Occupation certificate	N/A
13.	Offer of possession	N/A

**B. Facts of the complaint**

7. The complainant has submitted as under:

- a. That undisputedly, as per account statement dated 20th November 2023 issued by Respondent, the complainants have already paid total amount/Sale Consideration Rs. 51,65,325/- including BSP and other charges/service tax/GST etc. of abovementioned commercial

unit in the year 2016 at the time of booking vide Booking Id 15-12-0258288.

- b. That in term of the Arrangement as discussed and agreed, the Respondents were authorized on behalf of Complainants to lease the aforementioned booked property/unit of Complainants and regularly pay the Assured Return/Monthly Lease Rental.
- c. The respondents were obligated to commence monthly assured returns from 20th January 2016, amounting to Rs. 99,997.50/- per month (Rs. 49,998.75/- to Mr. Harbinder Singh Sahni and Rs. 49,998.75/- to Mrs. Surinder Kaur Sahni) subject of deduction of TDS of Rs. 15,599,61/- for each of the complainant as applicable. However, as a matter of fact, not a single installment has been paid to date, constituting a clear breach of the agreed terms and conditions.
- d. That on 13th July, 2023, the complainants received an email from the respondents, wherein it was stated that the project 'VATIKA TOWER' has obtained full 100% occupancy. However, despite achieving full occupancy, the respondent has failed to pay the monthly assured returns/lease rent to the complainants as per the agreed terms and conditions, thereby violating the commitments made under the agreement.
- e. It is pertinent to mention that in the eventuality, if the Commercial Unit of the Complainants has been leased out, the respondents have to provide a copy of the Lease Agreement, details of the lease, and full information about the Lessee, which is otherwise a legal right of the complainants to have all these details, documents etc. and maintain their account to claim /to demand due amount from

respondent. However respondent fails to provide none of documents /details in this regard till date despite numerous request made by claimants , particularly last demand notice dated 14.01.2025 specifically asked for , therefore all these acts and deeds of Respondents are absolutely unfair and malpractice with sole motive to deceive the innocent people who believed upon them and paid huge amount believing the assurance and representations of the Respondents while property/unit was booked and amount was paid.

- f. Furthermore, in case the Complainant's booked property has been leased out, the respondents have not disclosed true and full details of the rent or other sums of money received from the Lessee till date. Additionally, the respondents have not paid the monthly assured return/lease rent to the complainants for several years, which are amounting to ₹1,07,30,932/- as on 31.12.2024 exclusive of accrued interest thereupon. These actions constitute a serious breach of the terms and conditions which were agreed while booking was done, all those act and commission of breach of trust as withholding the amount under entrustment and using the same unauthorizedly amount an act of deceiving the complainants for causing wrongful loss to the complainants and wrongful gain to the respondents.
- g. That since complainants did not hear anything for such a long time then they had no option left thus got issued through their Advocate a legal demand notice dated 14.01.2025 and called upon both the Respondents jointly/severally to pay the accrued amount of Assured Returns/lease rent, interest and vacate the property of Complainants and also with immediate effect to revoked/cancelled

the authorisation to sign or execute or register lease for and on behalf of complainants for the said commercial unit/property. Despite service of notice neither of it has been complied with by any of Respondents nor responded at all.

- h. That it is pertinent to mention here that the complainants have invested their hard-earned money with the expectation that the Respondents would honour its promises regarding the Assured Return/Lease Rent for the aforementioned unit in the project and shall maintain fair and transparent accounts, details of Lessee, collected rent etc. However, the respondents wilfully have failed to fulfil its obligations under the Agreement, as the agreed amount has not been paid to date despite receipt of notice.
- i. That had there been no assurances and promises on behalf of the respondents' company, the complainants would not have parted with their hard-earned money and given it to the respondent company. That the cause of action accrued in favour of the complainants when in spite of receipt of entire agreed sale consideration plus taxes in the year 2016, the respondents failed to perform its part of obligations for timely payment of assured return & assured monthly lease rentals of the commercial unit even after lapse of sufficient time line, rather usurped the complainants' funds. The cause of action arose when statement dated 20.11.2023 was issued by Respondents thereby Respondents are acknowledging the receipt of full consideration amount paid by Complainants and showing due NIL, Cause of action is still continuing as despite service of legal demand notice dated 14.01.2025, the Respondents paid no

heed to the request of the Complainants nor send any response to the Legal Demand Notice.

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

8. The complainant has sought following relief(s):

- a. In view of the above, it is, therefore, most respectfully prayed that the present complaint may please be allowed and Respondents may please be directed to pay to the complainants the entire arrears of assured return/lease rent of Rs. 1,07,30,932/- due as on 31.12.2024 along with interest as prescribed under the Act w.e.f. 20.01.2016 till the date of actual realization along with full update due amount towards unpaid Assured Return/Lease Rentals.
- b. Direct the Respondents to handover the peaceful, vacated physical possession of Complainants property/Commercial Unit No. P-456, area about 750 sq. ft., situated at "VATIKA TOWER" Golf Course Road, Gurugram.
- c. Direct the Respondents not to act upon any previous authorization of Complainants as permitted earlier because now the purported authorization of Respondents has already been Revoked/withdrawn by the Complainants vide their Legal Notice Dated 14.01.2025 and same has been duly served.
- d. Direct the Respondents to render true and correct accounts of Lease Money and /or other sum of money received by Respondents in respect of aforesaid commercial unit and Further Directions be given provide the copy of all lease which either have signed or executed for and on behalf of Complainants pursuant Agreement or otherwise in any way till date.

- e. Direct the Respondents to render true and correct copy statement of account of assured return and Lease Money w.e.f 20.01.2016.
  - f. Direct the Respondents promptly return all documents, keys, and any other materials pertaining to the aforesaid commercial unit in their power and possession to Complainants.
  - g. Litigation Cost may also be awarded to the Complainants. Pass any other order/order/directions as this Hon'ble Forum may deem fit and proper in the facts and Circumstance of the case.
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:
- a. That it is an established fact herein that the Complainant(s) booked the Unit with the Respondent No. 1 for investment purposes. The said Complainant herein is not an "**Allottee**", as the Complainant(s) had approached the Respondent No. 1 with an investment opportunity in the form of a steady rental income from the commercial units.
  - b. That in the year 2015, the Complainant(s) had learnt about the project launched by the Respondent No. 1 titled as "**VATIKA TOWER**" (*herein referred to as 'Project'*) situated at Sector 54, Gurugram and visited the office of the Respondent No. 1 to know the details of the said Project. The Complainant(s) had further inquired about the specifications and veracity of the commercial project and

- were satisfied with every proposal deemed necessary for the development.
- c. That after having dire interest in the project constructed by the Respondent No. 1, the Complainant(s) decided to invest and thus had booked a Unit under the assured return scheme, vide Application Form dated 29.12.2015. It may be noted that the Complainant(s) were aware of the status of the Project and invested in the Project to make steady monthly returns, without any protest or demur.
  - d. That the Respondent No. 1 vide Acknowledgment Letter dated 28.01.2016, acknowledged the Application Form received by the Respondent No. 1 on behalf of Complainant(s) and further allocated a Priority No P-456, for a unit admeasuring 750 sq. ft. in the aforesaid Project for a Basic Sale Consideration of Rs. 49,50,000/- in the Project. However, upon knowing the assured return scheme, the Complainant(s), upon own will paid an amount of Rs. 51,65,325/- for making monthly returns. It is pertinent to mention herein that only priority number was allotted to the Complainant(s) and not a Unit number as is stated by the Complainant(s) malafidely at Para 1 of the present complaint.
  - e. That as per Clause a) of the said Acknowledgement Letter dated 28.01.2016, it may be stated that assured return was to be paid by Respondent No. 1 at Rs. 133.33/- per sq. ft. till the completion of the project. Furthermore, post the completion of the project, an amount to the tune of Rs. 120/- per sq. ft. was to be paid by the Respondent No. 1 as committed return from the date of completion of

construction for up to 36 (thirty-six) months or till the said unit is put on lease, whichever is earlier.

- f. It is pertinent to note herein that the Respondent No. 1 was committed to complete the construction of the Project and subsequently lease out the same as agreed between the Complainant(s) and the Respondent No. 1 as per terms of Acknowledgment Letter. However, the Respondent No. 1, in due compliance, has paid assured return up till 01.10.2018.
- g. It is imperative to bring into the knowledge of the Ld. Authority that since starting the Complainant(s) have always been at an advantage of getting assured return as agreed by the Respondent No. 1. That it is a fact that the Complainant(s) have received an amount of Rs. 66,77,285.80/- as assured return right from 01.01.2016 up till 01.10.2018, with Harbinder Singh Sahni getting an assured returns to the tune of Rs. 33,38,643/- and Surender Kaur Sahni getting an assured returns to the tune of Rs. 33,38,643/-.
- h. It is to note, that the Respondent No. 1 herein have paid the assured returns till the time the same was valid/legal as per the law and in case of any discrepancy have updated the Complainant(s) about the exact status of the same. It is humbly submitted that the Complainant(s) herein are merely trying to hoodwink the Ld. Authority by alleging that the Respondent No. 1 has failed to handover the physical possession. Whereas, on the other hand the Complainant(s) were aware that as per the agreed terms between the Respondent No. 1 and the Complainant(s), the Respondent No. 1 was to lease out the unit in question along with other units upon

completion and the said fact can be substantiated from the terms of the Acknowledgment Letter.

- i. It is submitted that the Complainant(s) were well aware of the fact that the Unit in question being commercial in nature was subject to be leased out upon completion and the same was evidently mentioned and agreed by the Complainant(s). It is a matter of fact, that the unit allotted on basis of Priority Number, was deemed to be leased out upon completion. As the Complainant(s) 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. That only valid inference that can be drawn out of the futile attempt of the Complainant(s) by filling this complaint is that the Complainant(s) are investors and seeks speculative gains. Therefore, the Complaint is liable to be dismissed at the very outset.
- j. 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.
- k. It is pertinent to note herein that the objective of the RERA, 2016 is to regulate the real estate sector in terms of the development of the Project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the RERA, 2016. The objective of the RERA, 2016 is very clear to regulate the Real Estate Sector and form balance amongst the Promoter, Allottee and Real Estate Agent. However, the entire RERA, 2016 nowhere provides any provision to regulate the

commercial understanding regarding returns on investment or lease rentals between the Builder and the Buyer.

- l. It is submitted that since starting the Respondent had always tried level best to comply with the terms of the Acknowledgement Letter and the Application for Allotment and has always intimated the exact status of the project. However, the Respondent No. 1 herein could not continue with the payments of the assured returns after the coming in force of the BUDS Act, 2019 and other prevailing laws.
- m. It is imperative to mention that the issue pertaining to the *relief of assured return* is already pending for adjudication before the Hon'ble Punjab and Haryana High Court, in the matter of '*Vatika Limited vs. Union of India and Anr.*' in CWP No. 26740 of 2022, wherein the Court had restrained the respondents from taking any coercive steps in criminal cases registered against the Respondent herein, for seeking recovery against deposits till next date of hearing. Further the said matter is now listed on 16.02.2026.
- n. It is pertinent to note, that nowhere in the said provision the Ld. 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 Complainants shall be directed to file pursue her complaint before the civil court for any dispute arises from the Agreement pertaining to Assured Returns.
- o. Further, any orders or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent act passed post the RERA, 2016, which, is not violating

the obligations or provisions of the RERA, 2016. Therefore, enforcing an obligation on a Promoter against a Central Act which is specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.

- p. It is submitted that since starting the Respondent No. 1 had always tried level best to comply with the construction schedule and has always intimated the exact status of the project. However, the delay is caused in the payment was bonafide and purely out of the control of the Respondent No. 1 and the same has been explained in detail herein below.
- q. That the Respondent No. 1 was committed to complete the development of the project and put the unit on lease with the proposed timelines. It is pertinent to apprise the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The Respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
- r. That due to above unforeseen circumstances and causes beyond the control of the Respondent No. 1, the development of the Project got decelerated. That it is pertinent to mention herein that such delay was not intentional. It is also submitted that the Respondent No. 1 was bound to adhere with the order and notifications of the Courts and the Government.

- s. That as per the table shown hereinabove, the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date of completion of building. That after considering the above delay, the date of completion of building has to be extended by approximately 1.7 years.
- t. Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the Project. The Respondent No. 1 also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.
- u. That it is not out of the place to mention here that the Respondent No. 1 is entitled for the *extension of 6 months' time period* on account of the delay so caused due to *worldwide spread of covid-19*, which the 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 No. 1. 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 (Three) months extension to all the Promoters. Therefore, as the Project of the Respondent No. 1 herein was also affected by the Second Wave of Covid-19, and therefore, the extension for a period of 3 months' may be allowed.

- v. Further, the Promoter is also entitled for a 70 days *extension* till 2021 when construction was banned by NGT and EPCA. Further, while computing the date, the grace period for the inadvertent delay so caused on account of *force majeure* conditions may also be considered and allowed in view of the Judgement of the Hon'ble Supreme Court in '*M/S Supertech Ltd. vs. RajniGoyal, Civil Appeal No. 6649-50 of 2018*', wherein keeping in view the Bans imposed by NGT and other Government Authorities etc., the Promoter was allowed for the grace period enshrined under the Agreement.
- w. That all these factors being *force majeure* may be taken into consideration for the calculation of the period of the construction of the Project. It may also be noted that the Respondent No. 1 had carried out its obligations in Agreement with utmost diligence.
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 complainant.**

**G.I. Assured return.**

21. The complainants are seeking unpaid assured returns on monthly basis as per the acknowledgement letter 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 and 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)(1) deals with the exception wherein 2(4)(1)(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, MoU or addendum 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)(l)(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 read with addendum to the said 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 acknowledgement letter the parties on 28.01.2016. The promoter had agreed to pay to the complainants allottee Rs. 133.33/- per sq. ft per month till the completion of the construction. Post completion: Rs. 120/- per sq. ft. per month on super area for up to 3 years from the date of completion of building or the said unit 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 October 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. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of ₹66,77,285/- to the complainants as assured return till October 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.133/- per sq. ft. on monthly basis till completion of construction of the building i.e., receipt of occupation certificate from the competent Authority and Rs.120/- 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 nor occupation certificate of the project has been obtained and hence, any lease prior to obtaining of occupation certificate cannot be considered as valid lease.

26. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount from the date the assured return has not been paid i.e., October 2018 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. Possession**

27. From the bare perusal of the documents the authority observes that since there was a leasing arrangement between the parties therefore, the physical possession was not to be handed over to the complainants rather they are entitled for assured return and thereafter once the unit is put on lease, he shall be entitled for lease rent as agreed in BBA dated 23.04.2011.

#### **G.III. Litigation Cost**

28. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive

jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.

**H. Directions of the authority:**

29. 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., @ ₹133/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of completion of building i.e., the date of receipt of OC from the competent Authority and thereafter, ₹120/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of acknowledgement letter.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to registry.



**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 12.12.2025**



**HARERA**  
**GURUGRAM**