

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

Date of decision: 14.11.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/748/2025	Ajay Kumar Gulati V/s Vatika Limited.	Sh. Gaurav Gaur Sh. Shiv Aditya
2.	CR/749/2025	Vandana Rajpal V/s Vatika Limited	Sh. Gaurav Gaur Sh. Gunjan Kumar

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 INXT CITY CENTER' being developed by the same respondent promoters i.e., M/s Vatika 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	"Vatika INXT City Centre", Sector 83, Vatika India Next, Gurugram, Haryana.	
Assured return clause as per application form: <i>Monthly rent/commitment @ ₹65/- per sq. ft. per month and ₹71.50/- till completion.</i>		
Clause 32.2 <i>That on the completion of the project, the unit would be let-out by the Developer to a Bonafide lessee at a minimum rental of ₹65 per sq. ft. per month less tax deducted at source, in the event of the developer being unable to finalise the leasing arrangements it shall pay the minimum rent at ₹65 per sq. ft. per month to the allottee as minimum guaranteed rent for the first 36 months after the date of completion of the project or till the date the said unit is put on lease whichever is earlier.</i>		
Possession clause: D <i>The developer shall complete the construction of the said complex and make it ready for occupation and possession in all respects, on or before expiry of 3 years from the date of execution of this agreement.</i>		
OC: Not obtained Offer of possession: Not offered		
Comp no.	CR/748/2025	CR/749/2025
Application form w.r.t. trade centre	14.03.2011 [pg. 22 of complaint]	14.03.2011 [pg. 20 of complaint]
Date of BBA w.r.t trade centre	23.04.2011 [pg. 24 of complaint]	16.04.2011 [pg. 22 of complaint]
Unit no. and area	333, tower F admeasuring 500 sq. ft. [pg. 49 of complaint]	332, tower F admeasuring 500 sq. ft. [pg. 51 of complaint]
Allocation of unit in project INXT city centre	10.07.2019 [pg. 49 of complaint]	15.04.2013 [pg. 51 of complaint]

Addendum agreement for change of project * as per clause 8 of this addendum all the terms and conditions of BBA shall remain same until amended in writing.	25.08.2011 [pg. 46 of complaint]	24.08.2011 [pg. 46 of complaint]
Due date of possession	23.04.2014	16.04.2014
Total sale and consideration amount paid	TC: ₹25,00,000/- AP: ₹25,00,000/-	TC: ₹25,00,000/- AP: ₹25,00,000/-
Assured return paid	₹30,12,750/- till 01.10.2018	₹30,12,750/- till 01.10.2018

- Direct the Respondent to hand over the vacant physical possession of the commercial unit to the Complainant along with all the necessary specifications and approvals as agreed in the Builder Buyer Agreement dated 23.04.2011 by fixing an appropriate deadline.
- The Respondent be directed to pay the delayed compensation charges at the rate of 8.5% per annum on the amount already deposited by the complainant from 23.04.2011 till the date of handing over of the possession of the commercial unit.
- The Respondent be directed to pay to the Complainant the assured returns at the rate of Rs 71.5 per sq. ft. as agreed to in the Builder Buyer Agreement dated 23.04.2011 from 07.01.2017, till the handing over of the possession.
- The Respondent be also directed to pay interest at the rate of 8.5% per annum on the delayed payments of the assured return from 07.01.2017 onwards.

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)

- 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/748/2025 titled as Ajay Kumar Gulati 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/748/2025 titled as Ajay Kumar Gulati V/s
Vatika Limited.**

S. N.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre, Sector-83
2.	RERA Registered/ not registered	Un-registered
3.	License no. and validity	Not available
4.	Application form w.r.t. trade centre	14.03.2011 [pg. 22 of complaint]
5.	Date of BBA w.r.t trade centre	23.04.2011 [pg. 24 of complaint]
6.	Unit no. and area	333, tower F admeasuring 500 sq. ft. [pg. 49 of complaint]
7.	Allocation of unit in project INXT city centre	10.07.2019 [pg. 49 of complaint]

8.	Addendum agreement for change of project * as per clause 8 of this addendum all the terms and conditions of BBA shall remain same until amended in writing.	25.08.2011 [pg. 46 of complaint]
9.	Due date of possession	23.04.2014
10.	Total sale consideration	₹25,00,000/-
11.	Amount paid	₹25,00,000/-
12.	Assured return paid	₹30,12,750/- till 01.10.2018
13.	Occupation certificate	not received
14.	Notice of possession	Not offered

B. Facts of the complaint

7. The complainant has submitted as under:
- Sometime in the year 2010 the respondent invited applications for the allotment of office space in a commercial project known as 'vatika trade centre' proposed to be developed by the respondent at Village Shikohpur, Tehsil Sohna District Gurugram, Haryana.
 - The respondent represented to the complainant that this project would be a high-tech project having world class facilities and since robust commercialization is taking place in the vicinity of the Gurugram and Manesar area therefore, investing in such kind of project would be a boon for the investor as the investment made would fetch high returns in the near future. The respondent also assured that in lieu of the investment, the complainant shall be paid a definite/ assured return till the project is completed in all respects.

- c. The complainant being lured by the picture portrayed by the respondent agreed to invest in the said project. Accordingly, the Complainant made an application for allotment on 14.03.2011 and was provisionally allotted a commercial unit bearing No. 102 ad measuring 500 sq. ft. on 1st Floor of the commercial complex. Subsequently, a Builder Buyer Agreement was also executed between the parties on 23.04.2011. in respect to commercial unit. The total sale consideration of the commercial unit was ₹25,00,000/-. The said amount was paid by the complainant through following cheques bearing Nos 000363 dated 14.03.2011 drawn on Kotak Bank for an amount of ₹50,000/-, 113584, dated 14.04.2011 for an amount of ₹14,50,000/- and cheque no. 113581 also dated 14.04.2011 for an amount of ₹10,00,000/- and cheque bearing no. 113586 for an amount of ₹64,375/- all drawn on Central Bank of India, Kalkaji Branch, New Delhi. The Respondent therefore has received a total sum of ₹25,64,375/- from the Complainant in lieu of the investment made by him in respect to the commercial unit.
- d. It is submitted that in terms of clause 2 of the Agreement the Respondent was to deliver the possession of the commercial unit within 36 months of the execution of the Agreement. The Respondent therefore was obligated to deliver the possession of the unit by 22.04.2014. It is submitted that till date the Respondent has not offered the possession of the unit to the Complainant. Therefore, as on date of filing of the present complaint there is a total delay of 10 years and 09 months in handing over the possession of the allotted unit.

- e. The Respondent thereafter vide Addendum to the Builder Buyer Agreement dated 25.08.2011, changed the project site due to relocation, the said new location was advertised as strategically better located due to its proximity to National Highway-8 and the Dwarka Expressway. It was represented by the Respondent that the Project land is owned by one Trishul Industries and the Respondent is the principle and controlling partner of Trishul Industries. The Respondent also represented that Trishul Industries has also obtained a License bearing No. 122 of 2008 from the Director of Town and Country Planning Department, Chandigarh for developing the said land.
- f. The Respondent vide the Addendum to the Builder Buyer Agreement dated 25.08.2011 relocated the allotted Unit No. 333 Tower F at the new location Vatika Inxt City Centre. Further, as per Clause 2 of the builder buyer agreement in lieu of the investment made by the Complainant in the project, the Respondent agreed to pay to the Complainant a fixed assured return at the rate of ₹71.5 per sq. ft i.e., ₹ 35,750/- every month. As per Clause 2 of the Agreement the assured returns of ₹32,175/- was to be paid by the Respondent every month w.e.f. 23.04.2011 till the completion of the project.
- g. In terms of the Agreement, the Respondent started making payments of the assured returns w.e.f. 11.07.2011. The Respondent used to deposit the assured returns directly into the bank account of the Complainant. It is submitted that in terms of the Agreement the Respondent had agreed/ committed to pay the assured returns at the rate of ₹71.5 per sq. ft. till the completion of the Project. However, the Respondent has paid the assured returns at the rate of

₹71.5 per sq. ft. only till 07.12.2016 and thereafter the said rate was unilaterally reduced by the Respondent to ₹19,050/- for the months of Jan-Feb 2017 without giving any prior intimation to Complainant. For the months of Jan-Feb 2017 the Respondent only remitted a monthly amount of ₹19,050/- and in August 2017 it remitted the amount of ₹32,175/-. For the year 2018 the assured return payments again were highly irregular and not according to the contractual rate of assured return in the months of March, April, May, June, July, August and September. No payments were made for the months of Oct-December 2018., thereafter the Respondent has abruptly stopped making the payment of the assured returns without any plausible explanation and the last singular payment amounting to ₹29,250/- was made by the Respondent on 13.10.2022.

- h. That the Complainant kept on pursuing with the Respondent with regard to the non-payment of the assured return by the Respondent and the issue of intermittent payments, the Respondent via Addendum Agreement executed on 10.07.2019 vide clause 2 of the said Addendum contractually admitted to be liable to pay the amounts due and payable under the assured return of the Builder Buyer Agreement which had become due and payable upto 30.06.2019 with in ninety days of the execution of the Addendum Agreement dated 10.07.2019 or at the time of leasing the unit, whichever was earlier. Further vide clause 3 of the said Addendum Agreement the Respondent deleted and amended clause 2 of the Builder Buyer Agreement. However, even after the execution of the Addendum Agreement the Respondent did not adhere to any of its

contractual and legal obligations as far as the question of payment of the assured returns or the handing over of the possession of the property was concerned.

- i. The Respondent thereafter without any communication whatsoever suspended the payment of the assured returns altogether. Till date there has been no communication from the Respondent regarding the handing over of the possession of the commercial unit to the Complainant. Since then, the Complainant has been regularly and repeatedly following up with the Respondent and enquiring about the payment of the assured returns and the status of the Project. However, the Respondent has neither made the payments of the assured returns without any justifiable reasons nor delivered the possession of the office space.
- j. Since, the Respondent failed to provide any update about the Project to the Complainant, the Complainant therefore visited the Project site and was surprised to find that the work on the project site was still not completed. It was found that the Respondent has been misrepresenting to the investors that the work of the building was over and the same was ready to be offered for possession. The survey of the project site revealed that a lot of work was needed to be done.
- k. The Complainant thereafter again followed up with the Respondent for the remaining outstanding dues. Despite continuous follow ups, the Respondent has failed to make the payment of its outstanding assured returns. The cause of action to file the present complaint arose on 10.07.2019 when the Complainant and the Respondent executed an Addendum Agreement to the Builder Buyer Agreement

and then on 13.10.2022 when the Respondent abruptly stopped paying the committed assured return. The cause of action is still subsisting and continuing as the Respondent has failed to deliver the possession of the commercial unit till date.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - a. Direct the Respondent to hand over the vacant physical possession of the commercial unit to the Complainant along with all the necessary specifications and approvals as agreed in the Builder Buyer Agreement dated 23.04.2011 by fixing an appropriate deadline.
 - b. The Respondent be directed to pay the delayed compensation charges at the rate of 8.5% per annum on the amount already deposited by the complainant from 23.04.2011 till the date of handing over of the possession of the commercial unit.
 - c. The Respondent be directed to pay to the Complainant the assured returns at the rate of Rs 71.5 per sq. ft. as agreed to in the Builder Buyer Agreement dated 23.04.2011 from 07.01.2017, till the handing over of the possession.
 - d. The Respondent be also directed to pay interest at the rate of 8.5% per annum on the delayed payments of the assured return from 07.01.2017 onwards.
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, the Complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well incorrect understanding of the terms and conditions of the Builder Buyers Agreement dated 23.04.2011, as shall be evident from the submissions made in the following paras of the present reply.
- b. That, at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainant has misdirected herself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the Complainant cannot be said to fall within the jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The Respondent Company having not taken registration from SEBI Board cannot run, operate, continue a committed return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
- c. Thus the 'Assured Return Scheme proposed and floated by the Respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the Respondent has duly paid

the assured return amounting to Rs. 30,12,750/- to the Complainant till the month of October 2018.

- d. That, as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the Committed return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the committed return scheme of the Opposite Parties/ Respondent Company has become illegal by the operation of law and the Opposite Parties / Respondent Company cannot be made to run a scheme which has become infructuous by law. Thus, the present complaint deserves to be dismissed at the very outset, without wasting precious time of this Hon'ble Authority.
- e. That, the Complainant has not come before the Hon'ble Authority with clean conscience. That, the complaint has been filed by the Complainant just to harass Respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the Complainant requires detailed deliberation by leading the evidence and cross-examination, thus only the Civil Court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.

- f. That, it is pertinent to mention that the present complaint is not maintainable before the Hon'ble Authority as it is apparent from the prayers sought in the complaint. That, further it is crystal clear from reading the complaint that the Complainant is not an 'Allottee', but purely is an 'Investor', who is only seeking committed return from the Respondent, by way of present petition, which is not maintainable under the provisions of the Real Estate Regulation and Development) Act, 2016.
- g. That, in view of the judgment and order dated 16.10.2017 passed by the Maharashtra RERA Authority in the complaint titled Mahesh Pariani vs. Monarch Solitaire order, Complaint No: CC00600000000078 of 2017 wherein it has been observed that in case where the Complainant has invested money in the project with sole intention of gaining profits out of the project, then the Complainant is in the position of co-promoter and cannot be treated as an 'Allottee'. Thus, in view of the aforesaid decision, the Complainant herein could not and ought to have not filed the present complaint being a co-promoter.
- h. That, the Complainant has come before this Hon'ble Authority with ulterior motive. The complaint has been filed by the Complainant just to harass the Respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy money. The Complainant has instituted the present false and vexatious complaint against the Respondent who has already fulfilled its obligation as defined under the BBA. It is pertinent to mention here

that for the fair adjudication of grievance as alleged by the Complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- i. That, it is submitted that the Complainant entered into an agreement i.e. Builder Buyers Agreement with Respondent owing to the name, good will and reputation of the Respondent. That, according to the terms of the BBA, the committed return was to be paid to the Complainant as committed. That, due to external circumstance which were not in control of the Respondent, minor timeline alterations occurred in completion of the project.
- j. That, it extremely pertinent to mention here that the possession of the unit in the commercial complex were never intended to be handed over to the Complainant. The BBA dated 23.04.2011 does not contemplate any possession clause. Thus, the Complainant never intended to take the possession of the unit and the project was intended for virtual possession only. The Complainant has prayed for direction to get possession in the present complaint even though there is no clause for possession in the BBA.
- k. That, further the prayer for delayed possession charges by the Complainant is untenable since the delayed possession charges can only be implied where possession is to be granted and is delayed. That, the present terms of the BBA dated 23.04.2011 does not provide for any possession. That, the present complaint of the Complainant has been filed based on incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The

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

- l. Thus, in this regard it is pertinent to mention that the Respondent Company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the Respondent such as the follows:
 - Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited for supplying natural gas and the consequent litigation for the same, due to which the Company was forced to change its building plans, project drawings, green areas, laying down of the connecting

roads and complete lay-out of the Township, including that of independent floors.

- Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 metre and 60 metre wide and the consequent litigation for the same.
- Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water.
- Delay in removal/ re-routing of defunct High-Tension Line of 66KVA in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- Total and Partial Ban on Construction due to the directives issued by the National Green Tribunal during various times since 2015.
- The National Green Tribunal/Environment Pollution Control Authority issued directives and measures to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.

- m. That the Respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works & Infrastructure Development Works.
- n. It is submitted that upon the issuance of the DTCP License, the concerned government department levied a certain fee to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompleteness of such Development Works resulted in minor alterations in timelines of the project, however the Respondent yet managed to complete the project. It is pertinent to mention that in the matter titled, Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Anr before the Competition Commission of India - Case No. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended, and the Respondent lacked any control in the subsequent deference of the project.
- o. That since the hurdles faced by the Respondent Company were beyond the control of the Respondent, there was unintentional delay

in completion of the project. It is further submitted that, it was never the intention of the Respondent Company to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.

- p. That, the Complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the Respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent Company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainant and against the Respondent and hence, the complaint deserves to be dismissed.
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.

G. Findings on the relief sought by the complainant.

G.I. Assured return.

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

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

19. 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.
20. 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.

21. 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 application form dated 14.03.2011 & BBA executed inter-se parties on 23.04.2011.

G.II. Delayed possession charges

22. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

23. As per clause D of the BBA dated 23.04.2011 the possession was to delivered within 3 years from the date of agreement. Therefore, the due date of possession comes out to be i.e., 23.04.2014.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- “Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”*
25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
26. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., 23.04.2014.
27. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of

possession, can claim both the assured return as well as delayed possession charges?

28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of application form and provisions in the BBA dated 23.04.2011. The assured return in this case is payable as per "BBA" the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till completion and ₹65/- per sq. ft. on monthly basis after the completion of the building. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹35,750/- per month whereas the delayed possession charges are payable approximately ₹22,604/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed 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 allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.
29. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured

return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. However, in the present matter, it is observed that, inadvertently, delay possession charges at the prescribed rate of 10.85% per annum, calculated from the due date of possession until the valid offer of possession, along with a period of two months after obtaining the Occupation Certificate from the competent authority or the handing over of possession, whichever is earlier, were allowed in the proceedings dated 14.11.2025. The same is hereby being corrected in the present order, in light of the proper reasoning set out in the preceding paragraphs. Accordingly, assured returns, being higher in nature, are allowed in place thereof.

30. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per BBA dated 23.04.2011, the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till completion and ₹65/- per sq. ft. on monthly basis after the completion of the building till the said unit is put on lease thereafter the lease rent as agreed between the parties. 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 01.10.2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments

made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

31. Admittedly, the respondent has paid an amount of ₹30,12,750/- to the complainants as assured return till 01.10.2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 01.10.2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, ₹65/- 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 Addendum read with clause 32.2 of the BBA.
32. 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. III. Possession

33. 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. IV. Conveyance deed

34. With respect to the conveyance deed, clause 8 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.
35. 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.”

36. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. 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 after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Directions of the authority:

37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- 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, ₹65/- 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 clause 32.2 of the BBA.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- e. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

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



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025

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