

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

Complaint no.: **1893 of 2023**
Date of complaint: **26.04.2023**
Order pronounced on: **09.12.2025**

1. Manish Parkash
2. Maya Gupta

Both resident of: - D-79, Doctors Residence, Mayom Hospital, D-Block, South City-I, Gurugram-122007.

Complainants

Versus

M/s Vatika Limited

Regd. Office at:- Unit No.-A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next Gurugram, Gurgaon-122012, Haryana.

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Venket Rao (Advocate)

**Complainants
Respondent**

**HARERA
ORDER**

1. This complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details.

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

S. no.	Particulars	Details
1.	Name of the project	"Vatika Trade Centre" Now Vatika INXT City Centre, at sector-83, Gurugram.
2.	Project area	0.826 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no.	258 of 2007
5.	Name of licensee	M/s Shivam Infratech Private Limited
6.	RERA Registered	Not Registered
7.	Allotment letter	Not provided
8.	Unit no.	1212, 12th floor, (Old Unit) (as per BBA at page 44 of reply) 137 on 1st floor of Block-E in India Next City Centre (New Unit) (page 53 of reply)
9.	Unit area	500 sq. ft. (super area) (as per BBA at page 44 of reply)
10.	Date of builder buyer agreement	15.02.2010 (page 42 of reply)
11.	Completion clause	<i>2. The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement.</i>
12.	Addendum to the agreement	15.02.2010 (page 52 of reply)
13.	Assured return clause	This addendum forms an integral part of the builder buyer agreement dated 15.02.2010 a) <i>Till completion of the building</i>

		<i>Rs.78/-</i> <i>b) After completion of the building</i> <i>Rs.65/- per sq. ft.</i> <i>(page 52 of reply)</i>
14.	Due date of possession	15.02.2013 (Calculated from the date of execution of buyer's agreement as per completion clause 2 of buyer's agreement.)
15.	Allocation of unit number in INXT City Centre	07.09.2013 (as per page 53 of reply)
16.	Total sale consideration	Rs.17,50,000/- as per clause 1 of the agreement (page 44 of reply)
17.	Amount paid against the allotted unit	Rs.17,50,000/- as per clause 2 of the agreement (page 44 of reply) & (page 43 of complaint for unit 1212).
18.	Assured return paid by the respondent	Rs.39,91,000/- [Rs.19,95,500/- + Rs.19,95,500/-] Till September, 2018. (as per ledger account at page 54-59 of reply)
19.	Completion of construction of Block-E, INXT City Centre	26.03.2018 (page 41 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint: -
 - a. The complainants are law-abiding citizens and are residing at R/o D-79, Doctors Residence, Mayom Hospital, D Block, South City-1, Gurgaon-122007. The respondent company is a private limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.

- b. This is with reference to the proposed project of Vatika Trade Centre-INXT, Sector 82-A Pin Code-122004. The respondent, Vatika Limited advertised about its new project in the Vatika Trade Centre, Gurugram.
- c. In 2010, the respondent issued an advertisement announcing office spaces and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the Authority.
- d. That relying on various representations and assurances given by the respondent company and on the belief of such assurances, Mr. Manish Prakash and Mrs. Maya Gupta purchased a unit in the project @Rs.3500/- sq. ft. for the total consideration of Rs.17,50,000/- towards a super area of 500 sq. ft. exclusive of service tax payable by the Complainants and the same was acknowledged by the respondent.
- e. The respondent subsequently transferred/ endorsed the property in favour of the complainant vide builder buyer agreement dated 15.02.2010. The respondent executed a builder buyer agreement dated 15.02.2010 in the favour of the complainant for an appropriate consideration. The total consideration paid by the complainant according to the demands raised by the respondent. A copy of the builder buyer's agreement dated 15.02.2010 was assured to be provided by the Builder but had failed to do so inspite of various requests.
- f. The respondents despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottee.
- g. The respondents have completely failed to honour their promises and have not provided the services as promised. Further, such acts of the respondent

are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

- h. It is abundantly clear that the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with false promises. The respondent had further malafidely failed to implement the builder buyer agreement dated 15.02.2010 executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- i. The complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for survival. They have been deprived of the prospective returns arising out of the investments.
- j. That the respondent is guilty of deficiency in service within in the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- k. That the complainant after losing all hope from the respondent and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- l. It is stated that the present complaint is within the prescribed period of limitation.

m. That the complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present complaint.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
 - i. Seek equivalent space/ unit ad measuring 500 sq. ft. super area on the 12th floor, bearing no.1212 in the project Vatika Trade Centre-INXT, Sector-82A.
 - ii. Restrict the respondent for making any other demands as the complainant had paid full amount of consideration.
 - iii. Direct the respondent to provide copy of agreement dated 15.02.2010 signed between complainant and the respondent.
5. Further on 07.08.2024, the complainants have filed an application for amendment in relief(s) and requests for amendment in the relief(s) sought with the following reliefs mentioned below. The reply to the said application was received on 24.04.2025. After considering the facts and submissions made by both the parties, the Authority vide proceedings dated 30.10.2025 allowed the application for amendment in relief(s). Therefore, the Authority would deliberate upon the relief(s) mentioned below:
 - i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;
 - ii. Direct the respondent to pay the pending assured return and interest thereon on the total amount paid by the complainant;
 - iii. Restrain the respondent from raising fresh demand for payment under any head, as the petitioner had already made full payment;
 - iv. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the Conveyance Deed/ sale deed;

- v. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit;
- vi. Direct the respondent to provide the exact lay out plan of the said unit;
- vii. Pass such other or further order(s), which this Authority may deem fit and proper in the facts and circumstances of the present case.

6. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent: -

7. The respondent contested the complaint on the following grounds: -

- a. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. That the complainants have filed the present complaint with oblique motive of harassing the respondent and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
- b. That the complainants had not approached the Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- c. That the complainants had erred gravely in filing the present complaint and misconstrued the Provisions of the RERA Act. It is imperative to bring the attention of the Authority that the Real Estate (Regulation and Development) Act, 2016 (RERA), was passed with the sole intention of regularization of real estate projects, promoters and for the dispute resolution between builders and buyers. That the same can be perused from the objective of the said Act as published in the Official Gazette.

- d. That it is an established fact herein that the complainants booked the unit with the respondent for investment purposes. The said complainants herein are not an "Allottee", as the complainants approached the Respondent with an investment opportunity in the form of a steady rental income from the commercial units.
- e. That in the year 2010, the complainants learned about the project launched by the respondent titled as "Vatika Trade Centre" situated at Sector 83, Gurugram and visited the office of the respondent to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- f. That after having dire interest in the project constructed by the respondent the complainants booked a unit under the assured return scheme, on his own judgement and investigation. It is evident that the complainants were aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.
- g. That on 15.02.2010, the builder buyer agreement, was executed between the complainants and the respondent for the unit bearing no.1212, admeasuring 500 sq. ft. at 12th Floor, for a total sale consideration of Rs.17,50,000/- in the erstwhile project. However, upon knowing the assured return scheme, the complainants upon own will paid entire amount of Rs.17,50,000/- for making steady monthly returns.
- h. That an addendum agreement, was also executed between the complainants and the respondent, under which the respondent assured to provide assure return of Rs.78/- per sq. ft., till the completion of the building and Rs.65/- per sq. ft., after completion of building for three years or till the unit is put on lease.

- i. That the respondent vide letter dated 17.09.2013, the respondent herein allocated a new unit to the complainants and allotted a unit bearing no. 137, 1st Floor, Block 'E' admeasuring 500 sq. ft. in the INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favor of the complainants in place of the erstwhile unit.
- j. That since starting the complainants have always been in advantage of getting assured return as agreed by the respondent. It is an admitted fact that the complainants have received an amount of Rs.39,91,000/- as assured return right from the date of allotment up to September, 2018.
- k. That the complainants were well aware of the fact, that the commercial unit in question was deemed to be leased out upon completion and the same was evidently mentioned and agreed by the complainants in the agreement dated 15.02.2010.
- l. That the agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not an "Allottee" but investors who have invested the money for making steady monthly returns.
- m. That the complainants are trying to hoodwink the Authority by concealing facts which are detrimental to this complaint at hand. Therefore, the said allotment of the said commercial unit contained a "Lease Clause" which empowers the developer to put a unit of complainants along with other commercial space unit on lease and does not have "possession clauses", for physical possession.
- n. 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 and the same has now been listed for 23.11.2023. It is to bring to the knowledge of the Authority that the Hon'ble Appellate Tribunal, while considering an Appeal bearing no. 647 of 2021, titled as 'Vatika Limited vs. Vinod Agarwal', has deferred the same as the jurisdiction of the Hon'ble Tribunal in the matters pertaining to assured returns is under challenge before the Hon'ble High Court.

- o. That a reading of the entire complaint on a demurrer reveals that the true nature of the relief sought is specific performance of the assured returns commitment. That the relief of specific performance flows from the Specific Relief Act, 1963 and no part of the Real Estate (Regulation and Development) Act, 2016 clothes this Authority to exercise powers under Specific Relief Act, 1963.
- p. That the complainants are praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute arise between a builder and buyer with respect to the development of the project as per the agreement. That such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee.

- q. That the respondent cannot pay “Assured Returns” to the complainants by any stretch of imagination in the view of prevailing laws. That on 21.02.2019 the Central Government passed an ordinance “Banning of Unregulated Deposits, 2019”, to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- r. Thereafter, the act titled as “The Banning of Unregulated Deposits Schemes Act, 2019” notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination the respondent could have continued to make the payments of the said assured returns in violation of the BUDS Act.
- s. Further, it pertinent to mention herein that the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a ‘Regulated Deposit Scheme’ as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- t. That as per Section 2(4) defines the term “Deposit” to include an amount of money received by way of an advance or loan or in any form by any deposit taker and the explanation to the Section 2(4) further expands the definition of the “Deposit” in respect of company, to have same meaning as defined within the Companies Act, 2013. The companies Act, 2013 in Section 2(31) defines “Deposit” as “deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India”. Further, the explanation for the clause (s) of Section

2(1) states that any amount received by the company, whether in the form of any instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as deposit. Thus, the simultaneous reading of the BUDS Act read with Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

- u. Therefore, the terms of the allotment letters or any other understanding of these kinds without approval after February 2019 is violation of BUDS Act, and if any assured return is paid thereon or continued therewith may be in complete contravention of the provisions of the BUDS Act.
- v. That in the present complaint the respondent has offered assured returns to the complainants in lieu of advance payments received in respect to a unit booked in the project. And upon coming into force of the BUDS Act, any such unregulated deposits which are not approved has become illegal and continuing the same shall expose the respondent to strict penal provisions of the Act.
- w. 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 Act, which, is not violating the obligations or provisions of the RERA Act. 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.
- x. The respondent vide letter dated 26.03.2018, intimated the complainants regarding the completion of construction of the respective unit comprising in Block E of the project and also stated that they are in discussions with

various tenants and expect to lease out the unit in due course. That vide said letter dated 26.03.2018, the respondent also informed the complainants that the commitment charges payable under the agreement shall be revised to Rs.65/- sq. ft. per month w.e.f. 01.03.2018.

- y. That further, the complainants in the instant complaint have harped that the respondent has failed to offer timely possession of the respective unit. It is pertinent to note herein that the said agreement was of the nature of an "Investment Agreement". That the same does not stipulate about possession, in fact it clearly specified and as mutually agreed by the complainants.
- z. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainants have not approached the Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainants.
- aa. That the complainants herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Authority and in the interest of justice.
- bb. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

8. All other averments made in the complaint were denied in toto.
9. 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 these undisputed documents and written submissions made by the parties.

E. Jurisdiction of the Authority:

10. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. 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:

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the Authority has the jurisdiction to

entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

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

14. The respondent took a stand that the complainants are investor and not consumer 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 complainants are buyer's, 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;"

15. 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 complainants, it is crystal clear that the complainants 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.

16. 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.

17. 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."

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

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;

G.II Direct the respondent to pay the pending assured return and interest thereon on the total amount paid by the complainant;

G.III Restraine the respondent from raising fresh demand for payment under any head, as the petitioner had already made full payment;

19. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

20. The complainants in the present complaint seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. 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 of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act 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. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured return up to the September 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

21. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship

gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in *case Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

22. It is now well settled preposition of law 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 can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. 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. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. 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.

23. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. 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, but does not include

i. an amount received in the course of, or for the purpose of, business

and bearing a genuine connection to such business including—

ii. 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.

24. 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.

25. 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. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)*** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no

illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)*** as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

26. 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.

27. 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 agreement executed between the parties on 15.02.2010, As per clause 2 of buyer's agreement, the possession of the subject unit was to be delivered within three (3) years from the execution of buyer's agreement i.e., come to be 15.02.2013.

28. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the buyer's agreement and addendum to the buyer's agreement dated 15.02.2010. The assured return in this case is payable as per "Annexure A – Addendum to the agreement dated 15.02.2010". The rate at which assured return has been committed by the promoter is Rs.78/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee

that they would be entitled for this specific amount till completion of the building and Rs.65/- 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.

29. 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 buyer's agreement and addendum executed thereto along with interest on such unpaid assured return. As per Annexure A of buyer's agreement dated 15.02.2010, the promoter had agreed to pay to the complainants-allotees Rs.78/- per sq. ft. on monthly basis till completion of the building and Rs.65/- 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 buyer's agreement further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till September, 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. 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.

30. In the present complaint, vide letter dated 26.03.2018, the respondent has intimated the complainant that the construction of subject tower is complete wherein the subject unit is located. However, admittedly, occupation certificate/ completion certificate for that block has not been received by the respondent till this date and hence, 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 Rs.39,91,000/- to the complainants as assured return till September, 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building and thereafter, @ Rs.65/- per sq. ft. per month for 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, as per the agreed terms of buyer's agreement and addendum to the agreement dated 15.02.2010.

31. The respondent is further 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.IV Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the Conveyance Deed/ sale deed;

32. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which prejudicial to their rights as has been decided by the Authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

33. The complainants are seeking the relief for the registration of conveyance deed in accordance with Section 17 of the Act of 2016 and also as per clause (8) of buyer's agreement dated 15.02.2010, the relevant clause of the buyer's agreement is reproduced for ready reference: -

8. Conveyance

"Subject to the approval/ no objection of the appropriate authority the developer 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. The conveyance deed shall be in the form and content as approved by the developer's legal advisor and shall be in favour of the allottee. Provided that the conveyance deed shall be executed only upon receipt of full consideration amount of the said unit, stamp duty and registration charges and receipt of other dues as per these presents."

34. It is to be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.

35. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as Section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of complainants/allottees within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

"Section 17: Transfer of title.

17(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 from the competent authority till date. 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. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of the above, the respondent shall execute the conveyance deed in favor of the complainants within three (3) months after obtaining the occupation certificate from the competent authorities.

G.V Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit;

37. The respondent is directed to offer the possession of the unit/space to the complainants in terms of the buyer's agreement executed between the parties on 15.02.2010.

G.VI Direct the respondent to provide the exact lay out plan of the said unit;

G.VII Pass such other or further order(s), which this Authority may deem fit and proper in the facts and circumstances of the present case.

38. As per Section 19(1) of the Act of 2016, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is obligated to provide requisite layout plan of the allotted unit in question to the complainants within a period of one (1) month from the date of this order.

H. Directions of the Authority:

39. 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):

- i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October, 2018 till the completion of the building and thereafter, @ Rs.65/- per sq. ft. per month for 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, as per the agreed terms of buyer's agreement and addendum to the agreement dated 15.02.2010.
- ii. 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.
- iii. The respondent is directed to offer the possession of the unit/space to the complainants in terms of the buyer's agreement executed between the parties on 15.02.2010.
- iv. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.
- v. The respondent-promoter shall execute the registered conveyance deed in favor of the complainants-allotees within three (3) months after receipt of occupation certificate from the competent authority.
- vi. The respondent is directed to provide requisite layout plan of the allotted unit in question to the complainants within a period of one (1) month from the date of this order.

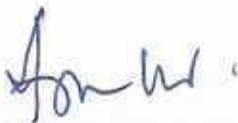
vii. The respondent-promoter is further directed not to charge any amount from the complainants-allotees, which is not a part of buyer's agreement dated 15.02.2010.

40. Complaint as well as application, if any, stands disposed off, accordingly.

41. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025



HARERA
GURUGRAM