

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

Complaint no.: 1647 of 2024
Date of filing of complaint: 30.04.2024
Date of Order: 20.01.2026

1. Parminder Kaur
2. Parminder Singh

Complainants

Both R/o: - 150, SFS Flat, Rajouri Garden,
Delhi-110064

Versus

M/s Vatika Limited.

Respondent

Office at: 4th floor, Vatika Triangle, Block-A, Sushant
Lok Phase-1, M.G. Road, Gurugram-122002

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Garvit Gupta and Ms. Mansa (Advocates)
Shri Ankur Berry (Advocate)

**Complainants
Respondent**

ORDER

1. This complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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 and location of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Project area	10.718 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 valid up to 13.06.2016
5.	Name of Licensee	M/s Trishul Industries
6.	Rera registered/ not registered and validity status	Not Registered
7.	Unit No.	304, 3 rd Floor, Block-B (As per allocation of unit no. in INXT City Centre on page no. 46 of the complaint)
8.	Unit area admeasuring (Super Area)	500 sq. ft. (As per allocation of unit no. in INXT City Centre on page no. 46 of the complaint)
9.	Allocation of unit no. in INXT City Centre.	31.07.2013 (As per page no. 46 of the complaint)
10.	Date of buyer's agreement	28.07.2010 (As per page no. 21 of the complaint)
11.	Addendum to the buyer's agreement (W.r.t assured return clause)	28.07.2010 (As per page no. 40 of the complaint)
12.	Addendum to the buyer's agreement (W.r.t amendment in Clause A, B and C)	27.07.2011 (As per page no. 44 of the complaint)
13.	Possession clause	2 Sale Consideration <i>"The developer undertakes to complete the construction of the complex/building within 3 (three) years from the date of execution of this agreement"</i> (Emphasis Supplied) (As per page no. 24 of the complaint)

<p>14.</p>	<p>Assured return/ committed return as per BBA</p>	<p>32.2 Return on completion of the project and letting-out of unit. (a) That on completion of the project, the unit would be let-out by the developer to a Bonafide lessee at a minimum rental of Rs.65/- per sq. ft. per month less tax deducted at source. In event of the developer being unable to finalize the leasing arrangements, it shall pay the minimum rent of Rs.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. If on account of any reason, the lease rent achieved is less than Rs.65/- per sq. ft. per month of super area, then the developer shall return to the allottee, a compensation calculated at ts.120/- for every one rupee drop in the lease rental below Rs.65/- per sq. ft. per month. (As per page no. 34 of the complaint)</p>
<p>15.</p>	<p>Assured return/ committed return as per (Annexure A) Addendum of BBA</p>	<p style="text-align: center;">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 28.07.2010</p> <p>The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder buyer's agreement dated 28.07.2010 A. Till completion of building: Rs.71.50/- per sq. ft. B. After Completion of the building: Rs. 65/- per sq. ft. You would be paid an assured return w.e.f. 28.07.2010 on a monthly basis before the 15th of each calendar month. The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than</p>

		<p>Rs. 65/- per sq. ft. the following would be payable.</p> <p>1. If the rental is less then Rs.65/- per sq. ft. then you shall be refunded @Rs.120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq. ft.</p> <p>2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p> <p>(As per page no. 40 of the complaint)</p>
16.	Due date of possession as per BBA dated 22.08.2009	28.07.2013 (Note: Due date to be calculated 3 years from the date of execution of buyer's agreement i.e., 28.07.2010)
17.	Total Sale Consideration as per clause 1 of BBA dated 28.07.2010.	Rs.20,00,000/- (As per page no. 24 of the complaint)
18.	Amount paid by complainants as per clause 2 of BBA dated 28.07.2010.	Rs.20,00,000/- (As per page no. 24 of the complaint)
19.	Completion of construction of block-B in INXT City Centre	29.03.2016 (As per page no. 48 of the complaint)
20.	Assured return paid till July, 2018	Rs.34,10,613/- (As alleged by respondent in para 22 on page no. 13 of the reply)
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the payment of this consideration amount was made in two (2) parts; one at the time of initial booking on 07.07.2010 when an amount of Rs.1,00,000/- was paid as booking amount/ token

amount vide cheque number 557167 dated 07.07.2010 drawn on Axis Bank. The second payment was made lump-sum before execution of the builder buyer agreement, of Rs.19,00,000/- vide cheque dated 23.07.2010 drawn on Axis Bank. This lump-sum payment was made to the Respondent on promises made by them that on upfront payment of the consideration amount, the complainants will be getting benefits of assured returns.

- II. That no builder buyer's agreement was executed by the respondent at the time of receipt of 100% sale consideration and it was only on 28.07.2010 that the BBA was executed and as per its terms and conditions, it was agreed by the respondent that the complainants will receive assured returns @ Rs.65/- per sq. ft. per month till the completion of the project and thereafter, on the completion of the project, the respondent was obligated to let-out the unit of the complainants at a minimum lease rent @ Rs. 65/- per sq. ft. per month as 'Minimum Guaranteed Rent' for the first 36 (thirty-six) months. It was also agreed that if lease amount achieved was less, then the respondent shall return to the complainants a compensation calculated at Rs. 20/- for every one rupee drop in the lease rental below Rs.65/- per sq. ft. per month. It is pertinent to mention herein that the respondent did not get the BBA registered in violation of section 13 of the RERA Act.
- III. That thereafter, an addendum to the BBA was also executed by which the assured return was increased by Rs.6.50/- per sq. ft., therefore making the assured return payable @Rs.71.50/- per sq. ft. till the completion of the building and then Rs.65/- per sq. ft. after the completion of the building for three years and this was to be effective

from 28.07.20 and was to be paid before the 15th day of each calendar month.

- IV. That as per the BBA, the possession of the unit was to be handed over by the respondent within a period of three years from the date of BBA after completing the construction of the said complex and after making it ready for occupation and possession in all respects meaning thereby that the possession was to be handed over by 28.07.2013.
- V. That in the month of July, 2011, the complainants received a letter from the respondent stating that the location of the project has been changed and that the name of the project has also been changed to Vatika INXT City Centre. This was an arbitrary act on part of the respondent and after this, a series of arbitrary and one-sided decisions started flowing on part of the respondent.
- VI. That before the date of completion, in July, 2013, the respondent arbitrarily, without consent and after taking a one-sided decision, changed the unit of the complainants from Unit No. 1434A, 14th Floor, Tower A, Vatika Trade Centre, Sector 83, Gurugram, Haryana to 304, Third Floor, Tower B, Vatika INXT City Centre, Sector 83, Gurugram, Haryana.
- VII. That the building was incomplete in all respects and the respondent had failed to offer possession within the stipulated period but the respondent issued a letter dated 07.02.2014 to the complainants saying that the property tax being levied on the unit will be deducted from the assured return of the complainants which is completely illegal, arbitrary because the conveyance deed never got executed in favour of the complainants and for all legal purposes, the respondent is only liable to pay the property tax.

- VIII. That despite failing to offer possession of the unit after completing it in all respects by the stipulated time, and without completing the construction of the building/ unit and without obtaining any OC/CC, the respondent illegally declared in the month of March, 2016 (vide a letter) that Block B of the project was complete. Further, arbitrarily and contrary to the terms of addendum, reduced the Assured Return from Rs.71.50/- per sq. ft. to Rs.65/- per sq. ft. w.e.f. 01.04.2016 on the pretext of completion. Because the construction of the project was not complete, the term set in addendum that payment will be reduced to Rs.65/- per sq. ft. was never triggered.
- IX. That w.r.t. to payment of assured return, the respondent only started paying it to the complainants from October, 2010 (as opposed to the agreed terms as per addendum as payment of assured return was to made from 28.07.2010) @ Rs.71.50/- per sq. ft. after deduction of TDS. Then after sending the abovementioned arbitrary Letter falsely stating that construction of Block B was complete without obtaining OC/CC, the respondent starting paying Assured Return @ Rs.65/- per sq. ft. without any reason. In fact, the respondent in the months of January and February, 2017 has only paid an amount Rs.18,750/- respectively without any reason whatsoever and as per respondent's own whims and fancies. Finally, in the month of September, 2017 the respondent completely stopped paying the assured return even though the project was not complete.
- X. That the respondent had promised and sold the project as a commercial project and made representations that the said unit will be leased out to a tenant as soon as it is completed, but respondent has failed to obtain occupation certificate or the completion certificate till date. In fact, the project presently lacks from several

amenities and many electrical and sanitary hardware is yet not installed by respondent.

- XI. That as per pictures available on the website of the respondent, the project is far from complete and is not in a habitable or tenantable state. The respondent has failed to pay any property tax, execute any conveyance deed in favour of the complainants, appoint any maintenance agency or form an association of allottees to deal with the issues of the said project. Therefore, the respondent has without dispute cheated the complainants by inducing them to pay the consideration amount basis false promises.
- XII. That the said allotment was made under an assured return plan, however, the respondent failed to honour the terms of the said assured return plan and the BBA. The respondent has further failed to obtain the occupation certificate and the completion certificate from the Department of Town and Country Planning, Haryana for the project and the unit of the complainants remain to be inhabitable and in an untenable state. Consequently, has also failed to offer the possession of the unit to the complainants till date.
- XIII. Furthermore, the respondent has charged the complainants for super area admeasuring 500 sq. ft. Whereas, the respondent is required to allot units as per carpet area and charge accordingly. Therefore, the respondent in addition to the above said liabilities, is also liable to disclose the carpet area allotted under the said commercial unit to the complainants. In fact, the project is not even RERA registered.
- XIV. That the respondent had promised and sold the project as a commercial project and made representations that the said unit will be leased out to a tenant as soon as it is completed, but it has failed

to obtain occupation certificate as well as completion certificate till date and it lacks from several basic amenities, features as promised and many electrical and sanitary hardware is yet not installed by them.

- XV. That as per recent visit of the complainants to the site of the project, it is far from complete and is not in a habitable or tenantable state. The respondent has failed to execute any conveyance deed in favour of the complainants, appoint any maintenance agency or form an association of allottees to deal with the issues of the said project.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay monthly assured return from September, 2017 to 20.04.2024 along with further accrued Assured Returns till the completion of the building and till the possession is offered after grant of OC and CC.
 - ii. Direct the respondent to pay the deficit in assured returns amounting to Rs.1,72,032/- from the period July, 2010 till September, 2017.
 - iii. Direct the respondent to pay the 'Minimum Guaranteed Rent' from when the unit of the complainants is complete, as stipulated under the BBA and the addendum @ Rs.65/- per sq. ft. for a period of three years from the date of completion.
 - iv. Direct the respondent to uphold its promise to rent out the complainant's commercial office in the project to a suitable tenant space @ Rs.65/- per sq. ft and to further disclose all efforts including email correspondences done, till today, in respect of leasing the allotted unit on lease.

- v. Direct the respondent to register the BBA as per Section 13 of the RERA Act.
- vi. Direct the respondent to obtain an occupation certificate as well as completion certificate and to complete the project in all respects especially to bring it in a tenantable condition, including but not limited to all pending civil work and installation of hardware.
- vii. Direct the respondent to appoint a maintenance agency to look after the daily upkeep of the project and to pay for all such maintenance charges at its own cost, up-till the day of first lease, and thereafter from such tenant, to whom the unit is leased out.
- viii. Direct the respondent to revoke the email dated 29.09.2025 demanding maintenance charges of Rs.12,16,355/- towards the unit booked by the complainants and not to demand any maintenance charges from the complainants till the date the unit is leased to the lessee and thereafter demand maintenance charges from them.
- ix. Direct the respondent to execute and register a conveyance deed in favour of the complainants for the allotted unit, only after obtaining an occupation certificate and a completion certificate for the said project.
- x. Direct the respondent to disclose the actual carpet area allotted to the complainants.
- xi. Direct the respondent to disclose all third-party interest created over the said project till date and supply all necessary documents and plans, including that of common areas and status of facilities, amenities and sanitary, electrical hardware available in the said project and on the floor where the allotted unit is situated, and all other documents as mandated under RERA, to the complainants.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
- i. That the complainants have got no locus standi or cause of act on to file the present complaint. The present complaint is based on erroneous interpretation of the provisions of the Act as well as an incorrect Understanding of the terms and conditions of the builder buyer's agreement dated 28.07.2010.
 - ii. That the complainants herein are merely investors who had booked commercial unit under assured return scheme to make steady monthly return. The complainants do come within the definition of allottee and is rather speculative investor, who intended to invest in the commercial unit for the commercial gain only.
 - iii. That the complainants booked the unit with the respondent for investment purposes. The complainants herein are not allottees as the complainants approached the respondent with an investment opportunity in the form of a steady monthly income from the commercial units, which has been admitted by the complainants in the complaint.
 - iv. That in the year 2010, the complainants invested in the commercial unit for financial gains after learning of the financial gains that could be received by investing in the project of the respondent.
 - v. That after developing a keen interest in the project constructed by the respondent, the complainants independently bought a unit under the assured return scheme. The complainants were fully aware of the project's status and chose to book the unit to secure consistent monthly returns, without raising any objections or complainants.
 - vi. That respondent provisionally allotted unit no. 143A, 14th floor, Vatika Trade Tower (500 sq. ft.) to the complainants. Thereafter, a

builder buyer's agreement dated 28.07.2010 was executed between the complainants and respondent, for a total sale consideration of Rs.20,00,000/- in the project. However, upon knowing of the assured return scheme, the complainants upon own will paid entire amount of Rs.20,00,000/-for making steady monthly return.

- vii. That the BBA/addendum the respondent assured to provide assured return of Rs.71.50/- per sq. ft., till the completion of the building and Rs.65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier.
- viii. Thereafter the respondent vide letter in July 2011, the respondent herein allocated a final unit to the complainants' and allotted a unit bearing no. 304, 3rd floor, Block-B, admeasuring 500 sq. ft. in the INXT City Centre, situated at NH-8, Sector-83, Gurugram, in favor of the complainants. Thereafter the complainants have received assured returns till September 2018.
- ix. That the complaint is not maintainable or tenable in the eyes of the law. The reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. That upon the enactment of the Building of Unregulated Deposit Schemes, Act 2019, the 'Assured Return' and/or any "committed Returns" on the deposit schemes having not taken registration from SEBI Board cannot run, operate, continue an assured 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'.

- x. That BUDS Act is a central Act which came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay Assured returns shall be violation of the provisions of the BUDS Act. That for any kind of deposits and returns over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the competent Authority constituted under the Act.
- xi. That terms of allotment letters or any other understanding of these kinds without approvals 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.
- xii. That 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 have become illegal and continuing the same shall expose the respondent to strict penal provisions of the Act.
- xiii. That the respondent was committed to complete the construction of the project and subsequently lease out the same out of the same as agreed under the agreement. The respondent in due compliance of the terms of the agreement has paid assured return till September 2018. The complainants' have received an amount of Rs. 34,10,612/- as assured return right till September, 2018.
- xiv. That the respondent vide letter dated 29.03.2016, intimated the complainant's regarding the completion of construction of the respective unit comprising in Block B 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 29.03.2016, 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.

- xv. That the commercial unit of the complainants were not meant for physical possession as the unit is meant only for leasing the commercial space for earning rental income. But same shall be deemed to be legally possessed by the complainants.
 - xvi. That the respondent on 14.06.2019, issued update to all allottees regarding reconciliation of accounts as of 30.06.2019 and issuance of Addendum agreement for revising the clause of assured return and finally stopping the future returns. The allottees who chose to cancel the allotment were also provided required document email and were refunded investments. Thus, the respondent admittedly paid assured returns in June 2018 and at the time of stoppage of assured return in June 2018 and at the time of stoppage if assured return in June 2018, the respondent timely provided detailed communication to all allottees in the project.
 - xvii. That the respondent sent communication to the complainant on 25.02.2020, regarding ongoing transaction and possible leasing of the Blok A, B, D, E & F in the project INXT City Centre.
 - xviii. That on 29.03.2016 a letter was sent to the complainants informing of the completion of construction. That the complaint is without any basis and no cause of action lies against the respondent and hence, the complaint deserves to be dismissed.
6. 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 submissions made by the complainant.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction

9. 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)(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.

10. 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 complainant at a later stage.

F. Findings on the objection raised by the respondent:

- F.I Objection regarding maintainability of complaint on account of complainants being the investors.**

11. The respondent took a stand that the complainants are investors and not the consumers and therefore, is not entitled to 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 builder buyer's agreement, it is revealed that the complainants are buyers and 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;"

12. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the builder buyer's agreement dated 28.07.2010, it is crystal clear that the complainants are allottees 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 an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

13. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act

by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in *CR/8001/2022* titled as "*Gaurav Kaushik and Anr. Vs. Vatika Ltd.*" has already 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)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to pay monthly assured return from September, 2017 to 20.04.2024 along with further accrued Assured Returns till the completion of the building and till the possession is offered after grant of OC and CC.

G.II Direct the respondent to pay the deficit in assured returns amounting to Rs.1,72,032/- from the period July, 2010 till September, 2017.

14. 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 relief and the same being interconnected.

• Assured returns

15. The complainants are seeking unpaid assured returns on monthly basis as per the addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019. 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)(l)(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.

16. 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 complainant-allottee has a right to approach the authority for redressal of her grievances by way of filing a complaint.
17. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. 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 complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit

accepted by the later from the former against the immovable property to be transferred to the allottees later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the agreement dated 28.07.2010.

18. Subsequently, a new Addendum was executed inter se parties on 28.07.2010 itself whereby complainants agreed that the unit has been allotted with an assured monthly return of Rs.65/- per sq. ft. However, an additional amount of Rs.6.50/- per sq. ft. will be paid to the complainants till offer of possession. The relevant clauses of the Addendum are reproduced as under:

"1. The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:

This addendum forms an integral part of builder buyer's agreement dated 28.07.2010

A) Till offer of possession: Rs.71.50/- per sq. ft.

B) After completion of the building: Rs.65/- per sq. ft."

(Emphasis supplied)

19. The respondent in its reply dated 16.08.2024 admitted that on 28.07.2010 an addendum was executed between the complainants and the respondent vide which the assured return clause of the agreement was modified.
20. It is worth noting that the complainants have not challenged the said Addendum Agreement at any point of time and not even post the execution of the said Addendum Agreement, thus the complainants cannot raise the objection at such a belated stage. It is not a disputed fact that the aforesaid addendum was duly signed by the complainants and its execution is admitted by both the parties. Moreover, the complainants have failed to put forth any document to show that the Addendum agreement dated 28.07.2010 was executed under protest. Thus, the aforesaid Addendum becomes binding on both the parties and accordingly, the respondent is

liable to pay assured returns @ Rs.71.50/- per sq. ft. per month w.e.f. 28.07.2010 till offer of possession.

G.III Direct the respondent to pay the 'Minimum Guaranteed Rent' from when the unit of the complainants is complete, as stipulated under the BBA and the addendum @ Rs.65/- per sq. ft. for a period of three years from the date of completion.

G.IV Direct the respondent to uphold its promise to rent out the complainant's commercial office in the project to a suitable tenant space @ Rs.65/- per sq. ft and to further disclose all efforts including email correspondences done, till today, in respect of leasing the allotted unit on lease.

21. In the present matter the complainants were allotted a unit on 28.07.2010 bearing no. 304, 3rd floor, Block-B in the project namely "INXT City Centre" located in sector-83, Gurugram. The buyer's agreement was executed on 28.07.2010 and the complainants paid the whole amount of sale consideration i.e., Rs.20,00,000/-. As per clause 32.2 of the agreement dated 28.07.2010 it was promised and assured to the complainants on completion of the unit and an amount of Rs.65/- per sq. ft. per month will be paid as minimum rent. The relevant portion of clause 32.2 of buyer's agreement has been reproduced below for the ready reference:

32.2 Return on completion of the project and letting-out of unit.

(a) That on completion of the project, the unit would be let-out by the developer to a Bonafide lessee at a minimum rental of Rs.65/- per sq. ft. per month less tax deducted at source. In event of the developer being unable to finalize the leasing arrangements, it shall pay the minimum rent of Rs.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. If on account of any reason, the lease rent achieved is less than Rs.65/- per sq. ft. per month of super area, then the developer shall return to the allottee, a compensation calculated at Rs.120/- for every one rupee drop in the lease rental below Rs.65/- per sq. ft. per month.

22. Further as per section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of section 11(4)(a) is reproduced below:

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

23. In the present case, the respondent has not obtained the occupation certificate of the tower in which the unit of the complainants is situated till date and no valid offer of possession has been made. Neither any document is placed on record nor any submission has been made by either party regarding leasing of the unit, therefore, the complainants are entitled for committed returns of Rs.65/- per sq. ft. per month up to 36 months after the date of completion of the project or till the date the said unit is put on lease, whichever is earlier.

G.V Direct the respondent to register the BBA as per Section 13 of the RERA Act.

24. In the present complaint, the buyer's agreement was executed on 28.07.2010 which is prior to the commencement of the Act, 2016. The Act, 2016 is not applicable retrospectively, thus no directions to this effect.

G.VI Direct the respondent to obtain an occupation certificate as well as completion certificate and to complete the project in all respects especially to bring it in a tenantable condition, including but not limited to all pending civil work and installation of hardware.

25. As per Section 11(4)(b) of the Act, 2016 the respondent-promoter is liable to obtain the completion certificate or the occupancy certificate, or both as applicable, from the competent Authority. In the present complaint, the respondent has not obtained the occupation certificate till date, thus, the respondent is directed to complete the project in all aspects and obtain the completion certificate or the occupancy certificate from the competent Authority.

- G.VII Direct the respondent to appoint a maintenance agency to look after the daily upkeep of the project and to pay for all such maintenance charges at its own cost, up-till the day of first lease, and thereafter from such tenant, to whom the unit is leased out.**
- G.VIII Direct the respondent to revoke the email dated 29.09.2025 demanding maintenance charges of Rs.12,16,355/- towards the unit booked by the complainants and not to demand any maintenance charges from the complainants till the date the unit is leased to the lessee and thereafter demand maintenance charges from them.**
26. As per clause 7 of the agreement dated 28.07.2010, it was agreed between the complainants and the respondent that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant clause is reproduced below for the ready reference:
- 7. Maintenance of the Building:**
- 7.1 The upkeep, maintenance and management of common areas/ residual areas in the said complex including operation and up keep of plant and machinery shall be organized by the developer or its nominated maintenance agency. All such costs, expenses shall be borne and paid by the allottee to the extent of its share in the said building. The maintenance charges so fixed and payable every month shall be apportioned by the developer which the allottee hereby agrees to accept as final and binding. Such charges would be billed to the allottee by the developer/ maintenance agency every month. At present such charges are Rs.14/- per sq. ft. super area per month. The charges so fixed shall be increased by 15% after every 3 years. It is clarified that maintenance charges will be exclusive of water, electricity and other consumables for which separate bills will be raised by the developer/concerned agency/ department/ maintenance company and shall be paid by the allottee as stipulated herein.*
27. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainants-allottee in terms of clause 7 of the agreement dated 28.07.2010 executed between the complainants and the respondent subject to obtaining of occupation certificate.
28. The demands raised vide demand letter dated 29.09.2025 were regarding maintenance charges and the Authority is of the view that the respondent shall charge maintenance charges in terms of the agreed terms after obtaining occupation certificate. In the present complaint, the respondent has not obtained the occupation certificate till date. Therefore, the demand

letter dated 29.09.2025 is invalid and the respondent may charge the maintenance charges only after obtaining occupation certificate.

G.IX Direct the respondent to execute and register a conveyance deed in favour of the complainants for the allotted unit, only after obtaining an occupation certificate and a completion certificate for the said project.

29. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

30. In the present case, the unit allotted to the complainants is virtual space and there is no clause for handing over of physical possession of the unit. Thus, the respondent shall execute the conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

G.X Direct the respondent to disclose the actual carpet area allotted to the complainants.

31. In the present complaint, the buyer's agreement dated 28.07.2010 is pre-RERA agreement vide which the unit admeasuring 500 sq. ft. (super area) has been allotted to the complainants. As the Act, 2016 states that the unit is to allotted in terms of carpet area to the allottee and the same is not applicable retrospectively. Moreover, the Authority cannot rewrite the terms and conditions agreed between the parties prior to the commencement of Act, 2016. Thus, no directions to this effect.

G.XI Direct the respondent to disclose all third-party interest created over the said project till date and supply all necessary documents and plans, including that of common areas and status of facilities, amenities and sanitary, electrical hardware available in the said project and on the floor where the allotted unit is situated, and all other documents as mandated under RERA, to the complainants.

32. First of all, there is no provision in the Act, 2016 vide which the respondent is obligated to disclose the third-party interest created over the project to the allottee. Thus, no direction to this effect.
33. Secondly, as per section 19(2) of the Act, 2016, the allottee is entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. Thus, the respondent shall provide all the necessary documents to the allottee in consonance with the terms of agreement as well as provisions of the Act, 2016.

H. Directions of the authority:

34. 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 assured returns @ Rs.71.50/- per sq. ft. per month w.e.f. 28.07.2010 till offer of possession. The respondent is also directed to pay 'Minimum Guaranteed Rent' @Rs.65/- per sq. ft. post completion of building for 36 months or till the date on which the unit is put on lease, whichever is earlier.
 - ii. The respondent is directed to pay arrears of accrued assured return as per buyer's agreement dated 28.07.2010 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 @8.80% p.a. till the date of actual realization.



- iii. The respondent is directed to execute the conveyance deed of the allotted unit within the 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.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- v. 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.
35. Complaint stands disposed of.
36. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 20.01.2026

HARERA
GURUGRAM