BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 2358 of 2024
Date of filing of complaint: 31.05.2024
Order pronounced on: 20.01.2026

Complainants

1. Sunil Kumar Jain
2. Anupam Jain

Both R/o: 502/23, Heritage City, M. G. Road, Gurugram, Haryana-122001

Versus

Respondents

1. M/s Vatika One on One Private Limited
Regd. Office at: Flat no. 621-A, 6th floor, Devika Tower, 6 Nehru Palace, New Delhi - 110019
2. M/s Vatika Limited
Regd. Office at: 4th Floor, Vatika Triangle, Sushant Lok Phase-I, Block-A, Mehrauli-Gurgaon Road, Gurugram-122002

CORAM:
Shri Arun Kumar — **Chairman**
Shri Phool Singh Saini — **Member**

APPEARANCE:
Sh. Himanshu Gautam (Advocates) — Complainants
Sh. Venkat Rao (Advocate) — Respondents

ORDER

1. This complaint has been filed by the complainant/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 allottees 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 complainants, 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 one on one" at Sector- 82, Vatika India Next, Gurugram.
2.	Project area	42452.291 sq. ft. (12.13 Acres)
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	05 of 2015 dated 06.08.2015 valid up to 05.08.2020
5.	Rera registered/ not registered and validity status	**Registered** (For Vatika One on One phase-I) Vide no. 237 of 2017 dated 20.09.2017 valid up to 19.09.2022
6.	Unit No.	442, on 4th Floor, Block -3 (As mentioned in BBA on page no. 45 of the complaint)
7.	Unit area admeasuring (Super Area)	500 sq. ft. (As mentioned in BBA on page no. 45 of the complaint)
8.	Application form	06.11.2015 (As per page no. 27-33 of the complaint)
9.	Allotment letter **[For unit no.402 in Block - 3]**	17.12.2015 (As per page no. 87 of the complaint)
10.	Assured return clause **[as mentioned in allotment letter]**	Assured monthly commitment of Rs.175/- per sq. ft. payable till completion of the building. a) Post completion of the project an amount equivalent to Rs.150/- per sq.

		ft. super area of the unit per month shall be paid as committed return from the date of completion of construction of the said unit, for up to 36 months or till the said unit is put on lease whichever is earlier. **[Emphasis Supplied]** (As per acknowledgment of application form on page no. 44 of the reply)
11.	Date of buyer's agreement	23.02.2016 (As alleged by respondent in para 12 on page no. 7 of the reply)
12.	Assured return clause [as mentioned in BBA]	**15 Assured Return in full down payment cases** *"The developer may, where the buyer has paid 100% of the total sale consideration and other charges for the commercial unit, upon signing of this agreement pay Rs.151.65/- per sq. ft. super area per month by way of assured return to the buyer, of certain category(ies) of commercial unit as per its policy, from the date of execution of this agreement till the construction of the saif commercial unit is complete. Such policy of the developer may change from time to time where the developer may withdraw the assured return scheme."* (As per page no. 59 of the complaint)
13.	Commitment return clause [as mentioned in BBA]	***16. LEASING AGREEMENT (OPTIONAL)*** ***"16.1 The developer will pay to the buyer Rs.130/- per sq. ft. super area of the said unit per month as committed return for up to three years from the date of completion of construction of the said building or the said unit is put on lease, whichever is earlier.*** *The buyer will*

		start receiving lease rental is respect of the said unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent-free period on account of fit-out by the lessee or any other account, then the buyer shall not be entitled for any rent during the same." **(Emphasis supplied)** (As per page no. 59 of the complaint)
14.	Lease rental clause [as mentioned in BBA]	***16. LEASING AGREEMENT (OPTIONAL)*** ***"16.5 The developer expects to lease out the said unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.130/- per sq. ft. super area per month for the first term (of whatsoever period).*** *If on account of any reason, the lease rent achieved in respect of the first term of the lease in less than the aforesaid Rs.130/- per sq. ft. super area per month, then the developer shall pay to the buyer a one-time compensation calculated at the rate of Rs.133/- per sq. ft. super area for every one rupee drop in the lease rental below Rs.130/- per month. This provision shall not apply in case of second and subsequent lease/ lease terms of the said unit."* **(Emphasis supplied)** (As per page no. 59-60 of the complaint)
15.	Possession clause [as mentioned in BBA]	**17** **Handing Over Possession of the Commercial Unit**

		The Developer based on its present plans and estimates and subject to all just exceptions, contemplates **to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments. **(Emphasis supplied)** (As per page no. 63 of the complaint)	
16.	Due date of possession	**23.02.2020** (**Note:** the due date of possession is to calculated 48 months from the date of execution of buyer's agreement i.e., 23.02.2016)	
17.	Basic Sale Consideration	Rs.80,00,000/- (As mentioned in SOA dated 06.06.2024 on page no. 54 of the reply)	
18.	Total sale consideration (inclusive of EDC & IDC only)	Rs.82,90,000/- (As per page no. 46 of the complaint)	
19.	Amount paid by complainant	Rs.83,36,000/- (As mentioned in SOA dated 06.06.2024 on page no. 54 of the reply)	
20.	Assured return paid by the respondent	To Anupam Jain	Rs.11,66,574.50/- From April, 2016 till September, 2018. (as mentioned in table provided by respondent at page 81 of reply)

		To Sunil Kumar Jain	Rs.11,66,574.50/- From April, 2016 till September, 2018. (as mentioned in table provided by respondent at page 82 of reply)
21.	Occupation certificate	06.09.2021 For Block-2, 3, 4 & 5. (As per page no. 56-58 of the reply)	
22.	Offer of possession	Not on record	
23.	Unit has been leased out to AIR India	In October, 2023 and After receipt of OC [As mentioned in para 16 of written submissions by respondent]	
24.	Committed return/ Lease rental paid to the complainant	Rs.3,64,670/- [As mentioned in para 16 of written submissions by respondent]	

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

i. That the complainants are the joint allottee within the meaning of section 2(d) of the Rera Act 2016 and the Respondent M/s Vatika One on One Pvt. Ltd. is a company incorporated under the Companies Act 1956 engaged in the business of providing the Real Estate services.

ii. That, the complainants, jointly purchased 500 sq. ft. of commercial space, unit no. 402, in the above project and filed application dated 06.11.2015. This application was filled, executed, and counter-signed by the then sales executive of the respondent company, Mr. Ashutosh Baloni. The purchase was made on an assured return basis, agreed upon at Rs. 151.65 per sq. ft. per month until the

completion of the project and a monthly return of Rs.130 per sq. ft. per month post-completion. On 06.11.2015, a lump sum payment of Rs. 83,36,000/- (including TDS of Rs. 80,000/-) was made in full settlement for the booking.

iii. On 23.02.2016, the respondent sent us a builder buyer agreement for our signatures, which we duly executed. Subsequently, there has been confusion regarding the execution of a RERA-compliant agreement or an addendum, as indicated in an email from the respondent dated 08.07.2019. To date, no such addendum agreement has been executed. The respondent should not have required an addendum agreement once the builder buyer agreement was executed without ensuring it was in the allottees' interest. It is because of this confusion that the complainants are not sure which builder buyer agreement stand executed by the respondent Company after our booking vide application dated. 06.11.2015.

iv. In flagrant disregard of the RERA Act, the respondent company, with blatant audacity, dispatched an addendum agreement, purportedly sanctioned under some cryptic clause, alongside physically delivering builder buyer agreements dated 20.12.2018 and 06.12.2019. This heinous act was executed, it seems, under the shroud of secrecy, for reasons inexplicable to us. That these agreements, masquerading as legal instruments, hold no authority under the RERA Act. Astonishingly, these documents were never authenticated nor ratified by the complainants, thus rendering them null and void in the eyes of the law.

v. This nefarious conduct is a brazen attempt to circumvent the provisions of the RERA Act and flout the rights of the aggrieved parties. Such underhanded tactics employed by the respondent company not only betray the principles of justice but also serve to undermine the very foundation of consumer protection enshrined in the RERA Act.

vi. It is incumbent upon this court to uphold the sanctity of the RERA Act and ensure that justice is served swiftly and decisively. The respondent company must be held accountable for their flagrant transgressions and be made to answer for their blatant disregard for the law.

vii. That an allotment letter dated 17.12.2015 was issued by the respondent, confirming an assured return of Rs. 175 per sq. ft. per month until the completion of the building and a post-completion return of Rs.150/- per sq. ft. per month for up to 3 years from the completion of construction or until the unit was leased, whichever was earlier. During a follow-up visit on 16.06.2016 for assured return cheques, the respondent took back the above allotment letter for corrections on account of certain calculation issues but never returned the corrected version of the allotment letter ever since.

viii. As per clause 15 and 16.1 of the builder buyer agreement, the respondent agreed to lease the unit at Rs. 151.65 per sq. ft. per month and provide a post-construction committed return for up to 3 years at Rs.130/- per sq. ft. per month. Clause 16.6 of Annexure I stipulates that if the achieved rental is less than Rs.130/- per sq. ft.

per month, they would refund Rs.133/- per sq. ft. per month for every Rs. 1 by which the achieved rental falls short.

ix. Initially, unit no. 402 was allotted to us, but the agreement forwarded to us mentioned unit no. 442.

x. The respondent paid assured returns only up to 30.09.2018 and has not paid any returns since, citing provisions allegedly introduced by SEBI later, as communicated in their emails dated 31.10.2018, 14.11.2018, 30.11.2018, and 19.12.2018. They assured that the area would be leased by June 2019 and all accounts reconciled, which did not happen.

xi. Despite our continuous efforts through emails, WhatsApp messages, and phone calls to the respondent's CRM team, our assured and committed returns have not been paid. We also requested an in-person meeting with the Chairman, Mr. Anil Bhalla, through emails dated 24.01.2019 and 25.01.2019, which were ignored.

xii. On 11.09.2021, the respondent informed us via email that they had obtained the occupation certificate for the project. however, the occupation certificate was not attached to the email, leaving us without the necessary documentation to verify the project's status.

xiii. The respondent again, via an email dated 14.06.2019, promised to reconcile our accounts and pay all dues related to assured and committed returns by or before 25.06.2019. This promise was not fulfilled, and no action was taken to reconcile or settle our dues/accounts.

xiv. In response to our letter dated 06.12.2018, the respondent confirmed that the project is registered with RERA under

registration number 237 of 2017. This confirmation, however, has not resulted in compliance with RERA regulations.

xv. The respondent has failed to hand over possession of the unit allotted to us, violating Section 19(4) of the Haryana Real Estate Regulation Act, 2016, which mandates compensation to the allottees in case of such delays.

xvi. To date, we have not received committed allotment letter or occupation certificate from the respondent. This failure continues to exploit our position as Allottees, causing significant stress and financial hardship.

xvii. Through letters dated 07.10.2021, 14.01.2022, 10.02.2022, and 07.04.2022, the respondent claimed the unit was leased to Google Connect India Services Pvt. Ltd., but later informed us that this lease did not materialize. Despite receiving a substantial security deposit from Google. The respondent did not share these funds with the allottees, and no transparency has been there regarding these transactions.

xviii. On 23.11.2023, the respondent informed us that the premises were leased to Air India, demanding additional costs, including an escalation cost of Rs. 1080 per sq. ft., property maintenance charges from 01.09.2021 to 15.10.2023 at Rs. 16 per sq. ft., DHBVN load charges at Rs. 1.06 per sq. ft. per month, and brokerage fees. These demands were made without prior discussion or agreement with us. Additionally, the respondent mentioned an arbitration case against Google India, with no clear information provided on how the recoveries will be settled with the allottees. It was committed

that no maintenance charges would be taken till the premises are leased out and thereafter from the tenant.

xix. Since we made our payment in November 2015, we have faced continuous exploitation and non-compliance by the Respondent. We have not received assured/committed/refund returns on our investment of Rs.83,36,000/-.

xx. Instead of addressing our grievances, the respondent is making fresh demands on various pretexts, further complicating and delaying the resolution of our issues. The respondent company has violated the undertaking as given in the section 11 (4)(a) of the Rera Act 2016 and has also violated section 13 (1) of the Act. The respondent company is liable to be prosecuted and penalized for violation and contravention of the provision of the Act Rules and Regulations against the allottees and relief as requested vide point no. 5 of this application be kindly directed to be paid to the complainants.

xxi. The respondent company has played a fraud upon the complainants with false promises at every stage and failed to complete the construction and lease out the premises even much beyond the stipulated period and failure in paying the monthly assured returns. The respondent company further failed to implement the promises made in the allotment letter with the complainants. Hence the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiencies and failure in service of the respondents is filing the present complaint.

xxii. The complainants have suffered a loss and damage as much as they had deposited the money in the hope of getting the said unit. They

have not only been deprived of the timely payment of assured returns, committed returns and rentals of the said unit, but the prospective return they could got if they have invested in the mutual fund market or the fixed deposit in the bank. Therefore, the complainants expect fair justice and compensation higher than what is agreed and accepted in the booking application form, more so as one of the allottees is a senior citizen and at his age of 71, he regularly visited the office of the respondent, without any results.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):

i. Direct the respondent to forthwith disburse the assured return at the rate of Rs.151.65/- per square foot per month, commencing from the date of our initial booking till the completion, in adherence to their contractual obligations delineated in clause no. 15, 16.1, and 16.5 of the agreement, supplemented with due interest accrued @ 11% owing to the delay.

ii. Direct the respondent to pay stipulated rental amount of Rs.130/- per square foot per month, prompt restitution amounting to Rs.133/- per square foot per month, reflective of their recent lease transaction with Air India.

iii. Direct the respondent to pay interest for delay in possession on investment of Rs.83,36,000/- (Reference proviso to section 18(1) of the Act, 2016) from the due date the possession is actually due from date of occupancy certificate i.e., 01.09.2021 to 15.10.2023 till the date of leasing to Air India.

iv. Direct the respondent to eliminate the clauses pertaining to 'escalation cost', 'property maintenance fee' and DHBVN charges from the lease intimation particulars vis-a-vis Air India.

v. Direct the respondent to furnish the current status of the case and the litigation initiated for recovery proceedings vis-a-vis Google Connect India Services Pvt. Ltd.

5. 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 respondents:

6. The respondents have contested the complaint on the following grounds:

I. That the complainants have filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondent.

II. The respondent no. 2 i.e. Vatika Limited is not a necessary party in this complaint as the respondent no. 2 is the only confirming party in the builder buyer's agreement. In the present complaint, it can be clearly ascertained from the agreement, that the respondent no. 1 is the Developer of the project and has acquired right, interest in the land on which the said project is being developed.

III. The respondent no. 2 is not a promoter as per the definition of 'promoter' in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, for the 'One on One' project and had no obligations, responsibilities and functions defined under the

section 11(4) of the Real Estate (Regulation and Development) Act, 2016. It is pertinent to mention herein that the respondent no. 2 is only a confirming party in the builder buyer agreement, confirming the rights, interest of the respondent no 1 in the project.

IV. It is to bring to the knowledge of the Ld. Authority, that the respondent no. 2 is only a confirming party in the builder buyer agreement. Also, all the rights and liens of the project have been acquired by the respondent no. 1 and the same can be verified from the registration certificate of the project.

V. As per Act, 2016, no provision or any procedure has been provided to adjudicate upon the deletion of parties and as a result the Ld. Authority is bound to take guidance from the provision of the Code of Civil Procedure, 1908. In the present complaint, the complainant has clearly stated that the respondent no. 2 is just a confirming party. Further, all the communications and payments with respect to the subject unit were sent or received by the respondent no.1. Hence, the respondent no. 2 has no liability against the complainant and no right of complainant can be imposed against the respondent no. 2 and the respondent no. 2 shall be deleted from the array of parties.

VI. At the outset, it is pertinent to bring into the attention of the Ld. Authority that the complainant herein being an investor having multiple units in the same project being developed by the Respondent. It is evident that the complainant is merely an investor who purchased the units for making steady monthly returns.

VII. The complainant had erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. It is imperative

to note, that the RERA Act, 2016, was passed with the sole intention of regularisation of real estate projects, promoters and for the dispute resolution between builders and buyers. It is an established fact herein that the complainant booked the unit with the respondent for investment purposes. The said complainant herein is not an "allottee", as the complainant approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units.

VIII. In the year 2016, the complainants being in search of investment opportunities learned about the project launched by the respondent no. 1 titled as "One On One" at Sector-16, Gurugram and visited the office of the respondent no. 1 to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.

IX. After having dire interest in the commercial project constructed by the respondent the complainants decided to invest and thus had booked a unit under the assured return scheme, vide application form dated 06.11.2015. Further, upon knowing the assured return scheme, the complainants upon own will paid the entire sale consideration amount to the Respondent for making steady monthly returns.

X. That the complainants were aware of the status of the project and invested in the project of the respondent without any protest or demur, to make steady monthly returns upon their own judgement and investigation.

XI. On 17.12.2015, respondent vide allotment letter allotted unit no. 402 in Block 3 measuring 500 sq. ft. in the aforesaid project. On 23.02.2016 issued a letter for execution of builder buyer agreement and again on 28.04.2016 respondent issued a reminder letter to complainant, for execution of the builder buyer agreement and the respondent requested the complainant to return the signed copies of the builder buyer's agreement within 30 days

XII. On 23.02.2016 the builder buyer agreement was executed between the complainants and the respondents for the unit no. 442 in Clock 3 measuring 500 sq. ft., for a total sales consideration of Rs. 83,59,600/- in the project. The complainants paid a total amount of Rs.83,36,000/- towards the said unit against the total sales consideration to respondent.

XIII. As per clause 2 and 3 of the allotment letter read with clause 15 and 16 of the agreement, the respondent was supposed to pay Rs.151.65/- per sq. ft, per month as assured return to the complainant, from the date of full payment till the completion of the building and Rs. 130/- per sq. ft. per month after completion of building up to 3 years or till the unit is put on lease, whichever is earlier. Further, the complainant vide same clauses, has authorised the respondent no. 1, to lease out the said unit and by virtue of the said leasing clause the unit in question was subject to lease upon completion.

XIV. As per the terms of the agreement, the unit was supposed to be leased out upon the completion as per clause 16 of the agreement and in case the complainants wish not to lease the unit then as per the provision of clause 17, the unit was proposed to be handed over

within an estimated period of 48 (forty-eight) months from the date of execution of Agreement. But, in the present complaint, it is an undisputed fact that the complainants had opted for leasing out and authorized the respondent to lease out the unit.

XV. As per the provision of clause 16 read with clause 16.8, the unit in question were in deemed legal possession but the complainants were not entitled to claim the physical possession of the said unit as it is on lease.

XVI. The unit in question was deemed to be leased out upon completion and the respondent has already put the unit on lease. As the complainant had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.

XVII. The agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Leasing Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not "allottee" but investors who have invested the money for making steady monthly returns.

XVIII. The objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the Real Estate Sector and form balance amongst the promoter, allottee and real estate agent. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding

returns on investment or lease rentals between the builder and the buyer.

XIX. The complainants herein had authorized the respondent no. 1 to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of the respondent no. 1.

XX. The respondent was committed to complete the development of the project and put the unit on lease with the proposed timelines. It is pertinent to apprise the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.

S. NO	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 - 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 - Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)

5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 – 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr.Bhure Lal, Chairman	Complete Ban	01.11.2019 – 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 – 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021	3 months
TOTAL		**1.7 years (approx.)**	

XXI. Due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That it is pertinent to mention herein that such delay was not intentional. It is also submitted that the respondent was bound to adhere with the order and notifications of the Courts and the Government. The delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date of completion of building. That after

considering the above delay, the date of completion of the building has to be extended by approximately 1.7 years.

XXII. Considering the above, it can conclusively be said that the COVID-19 pandemic was an act of God and therefore is Force majeure. Upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.

XXIII. The respondent is entitled for the extension of 6 months' time period on account of the delay so caused due to worldwide spread of covid-19, which the Ld. Authority and other courts had considered it as a *force majeure* circumstance and allowed extension of 6 months to the Promoters at large on account of delay so caused as the same was beyond the control of the Respondent. It is also required to be considered that the Ld. Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 had considered the period affected from the second wave of Covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 (three) months extension to all the promoters. Therefore, as the project of the respondent herein was also affected by the second wave of Covid-19, and therefore, the extension for a period of 3 months may be allowed.

XXIV. That despite these obstructions and changes in the prevailing laws, the respondent was able to complete the construction in 2020 and

applied for occupation certificate on 12.08.2021, which was issued by concerned authority on 06.09.2021. It is pertinent to mention herein that the assured return was to be paid at Rs.151.65/- from the date of receiving the full payment till completion of construction i.e., 2020 and Rs.130/- per sq. ft. after completion of construction up to three years or when the unit is put on lease, whichever is earlier.

XXV. The complainant herein has claimed a compensation for the differential rental month, by alleging that as per clauses of allotment letter and builder buyer agreement, the respondent is obligated to pay Rs.133/- per sq. ft for every Re.1/- by which the rental achieved is less than Rs.130/-. It is pertinent to mention herein that the complainant is claiming the said relief amount on the basis of the lease rental achieved for 2nd lease as per email dated 23.11.2023. As per the clauses of allotment letter and agreement, the said compensation is only applicable on first lease. Hence, the claim of compensation on the basis of the rental value achieved for the second lease is not as per the agreement and therefore shall be dismissed.

XXVI. The "addendum agreement " was duly sent to the complainants on 08.07.2019, via email, with the intent of apprising them of the necessary amendments to the builder-buyer agreement (BBA). The email explicitly advised the Complainants to review these changes carefully and return a signed copy upon full understanding. However, the complainants disregarded this communication. The fact that they have attached a copy of the email dated 08.07.2019, along with the "addendum agreement" substantiates their receipt

and awareness of the document. Despite this, they elected not to respond or seek clarification from the respondents.

XXVII. The entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld. Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant.

XXVIII. The complainants herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Ld. 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 Ld. Authority and in the interest of justice.

7. The complainants have filed the complaint against Vatika One on One Pvt. Ltd. and Vatika Limited as R2. As per documents placed on record, the Authority has observed that the buyer's agreement has been executed between the complainants and both the respondents in which R1 is the developer and R2 is the confirming party. The reply dated 10.01.2025 was filed on behalf of both respondents in which it has been mentioned that R2 is a confirming party in the buyer's agreement confirming the rights and interest of R1 in the project. It is further mentioned in it that all the rights and liens of the project have been acquired by R1 only. Moreover, payments have been made to R1 and the assured return has also been paid by R1 to the complainants. Thus, R1

i.e., Vatika One on One Private Limited is solely liable to the complainants-allottees.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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:

11. 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.

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

F. Findings on objections raised by the respondents:

F.I Objection regarding delay due to force majeure conditions:

13. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court banning the construction for a shorter period of time on account of weather conditions in NCR region and COVID-19 outbreak. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to forthwith disburse the assured return at the rate of Rs.151.65/- per square foot per month, commencing from the date of our initial booking till the completion, in adherence to their contractual obligations delineated in clause no. 15, 16.1, and

16.5 of the agreement, supplemented with due interest accrued @ 11% owing to the delay.

G.II Direct the respondent to pay stipulated rental amount of Rs.130/- per square foot per month, prompt restitution amounting to Rs.133/- per square foot per month, reflective of their recent lease transaction with Air India.

G.III Direct the respondent to pay interest for delay in possession on investment of Rs.83,36,000/- (Reference proviso to section 18(1) of the Act, 2016) from the due date the possession is actually due from date of occupancy certificate i.e., 01.09.2021 to 15.10.2023 till the date of leasing to Air India.

14. The common issue with regard to assured return and delay possession charges conveyance deed is involved in the aforesaid complaint.

- **Assured returns**

15. The complainants are seeking unpaid assured returns on monthly basis as per builder buyer's agreement dated 23.02.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said builder buyer agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.*** wherein the authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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 complainants-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

17. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return as well as committed return to the complainants-allottee as per clause 15 and 16 of the builder buyer agreement dated 23.02.2016.

- **Delay possession charges.**

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

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

19. A builder buyer agreement executed between the parties and the due date of completion of the project is calculated as per clause 17 of BBA i.e., 48 months from the date of execution of this agreement. The relevant clause is reproduced below:

> *"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit **within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in this Agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments."*

20. In view of the above, the due date of possession of the subject unit was 23.02.2020. Further as per the builder buyer's agreement, the respondent developer was under an obligation to further lease out the unit of the complainant's post completion.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as

may be prescribed and it has been prescribed under Rule 15 of the Rules. ibid. Rule 15 has been reproduced as under:

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

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

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

22. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

23. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

24. On consideration of documents available on record and submissions made by the complainants and the respondents, the authority is satisfied that the respondent no. 1 is in contravention of the provisions

of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 23.02.2020.

25. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA. The rate at which assured return has been committed by the promoter is Rs.151.65/- per sq. ft. of the super area per month from the date of execution of the BBA till the completion of the building which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the delayed possession charges as per section 18 of the Act is much better i.e., assured return in this case is payable at Rs.75,825/- per month till completion of building whereas the delayed possession charges are payable approximately Rs.75,024/- per month.

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

28. In this case assured return is higher as compared to delayed possession charges. Accordingly, the respondent is obligated to pay unpaid assured

returns @ Rs.151.65/- per sq. ft. per month in terms of buyer's agreement dated 23.02.2016.

- **Determination**

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 builder buyer's agreement, DPC and Lease Rental/Committed return. As per the BBA dated 3.01.2016, the promoter had agreed to pay assured return to the complainant allottee Rs.151.65/- per sq. ft. on monthly basis till the construction of the said commercial unit is complete. It is matter of record that the assured return was paid by the respondent-promoter till September, 2018 at the rate of Rs.151.65/- per sq. ft., 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 peculiar facts and circumstances of the present case, wherein the complainants are seeking both assured return as well as DPC, the assured return being higher than delay possession charges are payable w.e.f. October, 2018 till the completion of the project on obtaining occupation certificate from the competent authority i.e., 06.09.2021.

31. Considering the facts of the present case, the respondent is obligated to pay the amount of **assured return** at the agreed rate i.e., @ Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., w.e.f. October 2018 till completion of project from the competent authority i.e., 06.09.2021.

- **Lease Rentals**

32. Further, the respondent has stated in its written submissions that the unit allotted to the complainant had been put on lease on October, 2023 and as per which lease rentals are to be paid from April, 2024. Clause 16.1 of the BBA enumerates the liability of the respondent to pay lease rental to the complainant. Clause 16.1 of the BBA is reproduced herein for the ready reference:

> ***"16. LEASING AGREEMENT (OPTIONAL)***
> *16.1 The Developer will pay to the Buyer Rs.130/- (Rupees One-hundred thirty Only) per sq. ft. super area of the said unit per month as committed return* ***for up to three years from the date of competition of construction of the said Building or the said Unit is put on Lease, whichever is earlier****. The Buyer will start receiving lease rental in respect of the said Unit in accordance with the lease document as may be executed and as described hereinafter from the date of commencement of lease rental. If there is a provision in the lease document for any rent-free period on account of fit-out by the lessee or any other account, then the Buyer shall not be entitled for any rent during the same.*

33. Therefore, the respondent is obligated to pay **committed return/lease rental** @ Rs.130/- per sq. ft. per month after the completion of the building i.e., 07.09.2021 till the date the said unit is put on lease or for the first 3 years from the date of completion of the project, whichever is earlier in terms of clause 16.1 of the BBA. The respondent may deduct an amount of Rs.3,64,670/- already paid on account of lease rentals.

G.IV Direct the respondent to eliminate the clauses pertaining to 'escalation cost', 'property maintenance fee' and DHBVN charges from the lease intimation particulars vis-a-vis Air India.

34. In the present complaint, the buyer's agreement was executed between the parties on 23.02.2016 which is prior to the commencement of the Act, 2016. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously.

However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

35. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any

other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Thus, no directs to this effect.

G.V Direct the respondent to furnish the current status of the case and the litigation initiated for recovery proceedings vis-a-vis Google Connect India Services Pvt. Ltd.

36. As per the documents available on record, the lease deed with Google Connect India Services Pvt. Ltd. has already been terminated way back on 31.12.2021 and the complainants have acknowledged the same vide letter dated 01.02.2022. As the above-mentioned lease deed is already terminated and there is no privity of contract between the complainant and Google Connect India Services Pvt. Ltd. Hence, no direction can be given to this effect.

H. Directions of the authority:

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

i. The respondent is directed pay the amount of **assured return** at the agreed rate i.e., @ Rs.151.65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., w.e.f. October 2018 till the due date of possession i.e., 23.02.2020. 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 complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

ii. The respondent is obligated to pay **committed return/lease rental** @ Rs.130/- per sq. ft. per month after the completion of the

building i.e., 07.09.2021 till date the said unit is put on lease or for the first 3 years from the date of completion of the project, whichever is earlier in terms of clause 16.1 of the BBA 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. The respondent may deduct an amount of Rs.3,64,670/- already paid on account of lease rentals.

iii. The respondent-promoter is directed to execute the conveyance deed of the allotted unit upon payment of requisite stamp duty and other outstanding dues, if any, by the complainants as per section 17 of the Act, 2016.

iv. The respondent shall not charge holding charges and anything from the complainant which is not the part of the buyer's agreement.

38. Complaint stands disposed of.

39. File be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 20.01.2026