

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

**Date of decision:** 12.12.2025

Rajesh Thareja HUF through its Karta Mr.  
Rajesh Thareja

**R/o:** - B-124, First Floor, Sarvodaya  
Enclave, New Delhi

**Complainant**

Versus

M/s Vatika Ltd.

**Office address:** Flat no. 621A, 6<sup>th</sup> Floor  
Devika Towers, 6, Nehru Place, New Delhi.

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Gaurav Rawat  
Ankur Berry

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 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 provisions of the Act or the Rules and regulations made there under 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 complainant, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Vatika India Next City Centre, Sector-83
2.	RERA Registered/ not registered	Un-registered
3.	License no. and validity	Not available
4.	Unit no.	507, 5th floor, BLOCK B [Page 39 of complaint]
5.	Unit area admeasuring	500 sq. ft. (super area)
6.	Date of allotment	Not available
7.	Date of Builder buyer agreement	14.06.2010 (page 44 of complaint)
8.	Addendum agreement	27.07.2011 (page 64 of complaint)
9.	Assured Return Clause	<b>32.2</b> Rs. 71.50/- till completion of building Rs. 65/- per sq. ft. per month for the first 36 months after the date of the completion or till the date the said unit is put on lease, whichever is earlier.
10.	Possession clause	<b>D.</b> The developer will complete the construction of the said complex within 3 years from the date of execution of this agreement.
11.	Due date of possession	14.06.2013 (3 years from the date of BBA)

12.	Total sale consideration	Rs.25,00,000/- (as per BBA on page 27 of complaint)
13.	Amount paid by the complainant	Rs.25,00,000/- (as per payment receipts on page 42 of complaint)
14.	Occupation certificate	Applied in 2017 & 2018 but not received yet [as per reply]
15.	Notice of possession	Not offered
16.	Intimation of execution of lease deed	20.03.2018 (page 35 of reply)
17.	Assured return paid by respondent	Rs.34,41,750/- till sept 2018 [ledger at page 44 of reply]

**B. Facts of the complaint**

3. The complainant has submitted as under:

- i. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant, booked a commercial unit in the project by paying towards the booking of the said unit bearing no. B-0508, 5<sup>th</sup> Floor, in Sector 112, having super area measuring 601 sq. ft. to the respondent October,2012 and the same was acknowledged by the respondent.
- ii. That the respondent sent an allotment letter to the complainant confirming the booking the said unit and also mentioning the moonshine reputation of the company and the location of project. Further, providing the details of payment to be made by the complainants.
- iii. That the respondent sent allotment letter to original allottee, confirming the booking of the unit, allotting a unit no. 0508, 5<sup>th</sup> Floor, measuring 601 Sq. Ft (super built-up area) in the aforesaid project of

the developer for a total sale consideration of the unit i.e. Rs. 40,83,295.00, which includes basic price, Plus EDC and IDC, and other Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- iv. That a buyer's agreement was executed between complainant and respondent on 05.09.2013.
- v. As per clause 27 of the buyer's agreement the Respondent had to deliver the possession within a period of 36 months plus 6 months from the date of start of ground floor roof slab of particular tower. The date of start of ground floor roof slab of particular tower is 01.06.2014. Therefore, the due date of possession is calculated from the date of agreement i.e. 01.06.2014. Hence, the due date of possession comes out to be 01.06.2017.
- vi. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 37,65,428.99/- towards the said unit against the total sale consideration of Rs. 40,83,295.00.
- vii. That though the payment to be made by the complainants was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.
- viii. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper

approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- ix. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
- x. That in terms of clause 27 of the said buyer's agreement, respondent was under dutiful obligation to complete the construction and to offer the possession within 36 months from the date of start of construction. That complainants approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon.
- xi. That complainants requested the respondent to show/inspect the unit before complainants pay any further amount but respondent failed to reply.
- xii. The respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and

- contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- xiii. The complainant after many request and emails; received the intimation/offer of possession on 23.07.2019.
- xiv. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the buyer agreement i.e. electricity charges, dual energy meter, fiber to the home, VAT, FTTH And power backup charges etc.
- xv. That offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the agreement, by the complainant and hence the offer of possession.
- xvi. That the respondent asked the complainant to sign the indemnity bond as perquisite condition for handing over of the possession. Complainant raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainant do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- xvii. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.

xviii. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.

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

4. The complainant has sought following relief(s):
  - i. To direct the respondent to pay delay possession charges at the prescribed rate to the complainant for the period of delay accrued from the due date of possession to the date of offer of possession along with occupation certificate by respondent.
  - ii. To direct the respondent to deliver possession of the booked unit along with occupation certificate.
  - iii. Direct the respondent to pay the due amounts towards assured returns.
  - iv. To direct the respondent to execute and register the sale deed in the concerned sub registrar office in favour of complainant of the booked unit.
5. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds:
  - i. That from the submissions of the complainant and from the records placed in the complaint, without the same being admitted, it may be noted that in the year 2010 invested in the commercial unit for

financial gains after learning of the financial gains that could be received by investing in commercial project with benefits of assured return. That after developing a keen interest in the project constructed by the respondent, the complainant independently paid consideration for a 500 sq. ft. commercial space for getting assured return which is calculated as per the size of the commercial space. It is clear that the complainant was fully aware of the project's status and chose to invest to secure consistent monthly returns, without raising any objections or complaints.

- ii. That the respondent was initially, provisionally allotted commercial unit no. 1727, 17th floor, Tower A, Vatika Trade Centre (admeasuring 500 sq. ft.) to the complainant as per the builder buyer agreement the total investment to be made for the said commercial unit was Rs. 25,00,000/-. That, upon learning of the assured return scheme, the complainant, paid the entire amount of Rs. Rs. 25,00,000/- in order to secure steady monthly returns.
- iii. Thereafter, since the possession is never intended and only benefit of earning lease rentals are intended, a strategically better location was chosen and the investment of the complainant moved to another project/unit thus the respondent vide letter dated 31.07.2013, allocated commercial unit bearing no. 507, 5thFloor, Block 'B' admeasuring 500 Sq. Ft in the INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favour of the complainant.
- iv. That it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Hon'ble Authority as

the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Hon'ble Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, continue 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".

- v. That it is submitted that the complainant has invested in the commercial unit of the project and also paid the amount immediately, after learning about the assured return scheme. It can be clearly seen from the BBA of the complaint, that the complainant in total investment of Rs. 25,00,000/- However, till now, the complainant has already received an amount of Rs. 34,41,750/-, assured return from the respondent as shown in assured return calculation sheet. It is pertinent to mention that the complainant herein has already received has been returned the complete consideration amount by means of bifurcated monthly assured returns that were paid since 2010 to 2018.
- vi. the company completely stopped the payment of assured returns in October, 2018 and the terms of the BBAs were amended. The Company circulated drafts of addendums to the BBAs capturing, inter alia that: (a) the clauses on assured returns in the original BBA/Allotment Letter shall stand deleted; (b) any payments in relation to assured returns

shall be stopped; and as a one-time settlement the amount as stipulated therein will be payable by the company to the allottee at the time of leasing of the unit or within ninety days of execution of such addendum, whichever is earlier; and (c) the clause on leasing arrangement was amended to remove commitment of the company towards minimum guaranteed rent or procuring minimum rent for the unit, as identified in paragraphs above. The company has further represented that considering the change in law, some of the buyers have already executed these addendums.

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

**E. Jurisdiction of the authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

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

**E. II Subject-matter jurisdiction**

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

**Section 11(4) (a)**

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

**Section 34-Functions of the Authority:**

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

11. 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. Relief sought by the respondent.**

**F.I. To direct the respondent to pay delay possession charges at the prescribed rate to the complainant for the period of delay accrued from the due date of possession to the date of offer of possession along with occupation certificate by respondent.**

**F.II. To direct the respondent to deliver possession of the booked unit along with occupation certificate.**

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

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

13. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
14. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee

arises out of the same relationship and is marked by the original agreement for sale.

15. 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 complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the addendum executed inter-se parties on 27.07.2011.

#### **G.II. Delayed possession charges**

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

***“Section 18: - Return of amount and compensation***

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

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

17. As per clause D of the BBA dated 14.06.2010 the possession was to delivered within 3 years from the date of agreement. Therefore, the due date of possession comes out to be i.e., 14.06.2013.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

19. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., 14.06.2013.
21. 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?

22. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of application form and provisions in the addendum dated 27.07.2011. The assured return in this case is payable as per "BBA" the promoter had agreed to pay to the complainants allottee ₹71.50/- per sq. ft. on monthly basis till completion and ₹65/- per sq. ft. on monthly basis after the completion of the building. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹35,750/- per month whereas the delayed possession charges are payable approximately ₹22,250/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.
23. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of

completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. Accordingly, assured returns, being higher in nature, are allowed.

24. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and addendum executed thereto along with interest on such unpaid assured return. As per addendum dated 27.07.2011, the promoter had agreed to pay to the complainant allottee ₹71.50/- per sq. ft. on monthly basis till completion and ₹65/- per sq. ft. on monthly basis after the completion of the building till the said unit is put on lease thereafter the lease rent as agreed between the parties. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
25. Admittedly, the respondent has paid an amount of ₹34,41,750/- to the complainant as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not

been paid i.e., September 2018 till the date of completion of the project after obtaining occupation certificate from the competent authority and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of buyers agreement.

26. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

**G. III. Possession**

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

**G. IV. Conveyance deed**

28. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
29. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*“17. Transfer of title.-*

*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

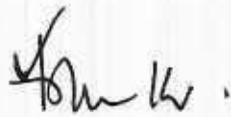
30. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

**G. Directions of the authority:**

31. 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):
- The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid till the date of completion of building i.e., the date of receipt of OC from the competent Authority

- and thereafter, ₹65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease or for the first 36 months after the completion of the project, whichever is earlier in terms of the BBA.
- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
  - iii. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
  - iv. 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.
  - v. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
32. Complaint stands disposed of.
33. Files be consigned to registry.

**Dated: 12.12.2025**

  
**(Arun Kumar)**  
Chairman  
Haryana Real Estate  
Regulatory authority,  
Gurugram