

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

**Date of decision:** 21.11.2025

Manoj Kumar

**R/o:** - H. No. 23, Red Wood Street, Malibu  
Towne, Sohna Road, South City-II,  
Gurugram, Haryana-122018

**Complainant**

Versus

M/s Vatika Ltd.

**Office address:** Unit no. A-002, INXT City  
Centre, Ground Floor, Block A, Sector-83,  
Vatika India Next, Gurugram-122012.

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shrikant Samantara  
Venket Rao

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 (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 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 complainants, 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.	714, 7th floor, block no. F (page 47 of reply)
5.	Unit area admeasuring	500 sq. ft. (super area)
6.	Date of allotment	18.11.2011 (page 17 of complaint)
7.	Date of Builder buyer agreement	18.01.2012 [Page 19 of complaint]
8.	Assured Return Clause	12. Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation, and use, the Developer has agreed to pay Rs.71.5/- per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of

		<p>construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party.</p> <p>(page 34 of complaint)</p>
9.	Lease rental clause	<p>12(i)</p> <p>The Developer will pay to the Buyer Rs. 65/- per sq. ft. super area of the said Commercial said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said Commercial Unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said Commercial Unit in accordance with the lease document as may be executed and as described hereinafter.</p> <p>(page 34 of complaint)</p>
10.	Possession clause	<p><b>10.</b></p> <p>Subject to the aforesaid and subject to timely payment by the buyer of the sale</p>

		price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of execution of this agreement.
11.	Due date of possession	18.01.2016 (as per possession clause)
12.	Total sale consideration	Rs. 24,37,500/- [as per SOA on Page 48 of reply]
13.	Amount paid by the complainant	Rs. 24,37,500 /- [as per SOA on Page 48 of reply]
14.	Occupation certificate	Applied in 2017 & 2018 but not received yet [as per reply]
15.	Notice of possession	Not offered
16.	Assured return paid by respondent	Rs. 31,19,241/- (page 50 of reply)

**B. Facts of the complaint**

3. The complainant has submitted as under:

- i. That the complainant is an innocent allottee of the real estate project INXT City Center, Gurugram developed by respondent company.
- ii. That the respondent company is a real estate development company and is engaged in development of multiple real estate projects across Gurugram.
- iii. The respondent company issued allotment letter dated 18.11.2011 in favour of complainant.
- iv. The builder buyer agreement was duly executed between the allottees and the respondent on 18.01.2012 in respect of booked unit no 306, 3<sup>rd</sup>

Floor, Block A in real estate project namely 'INXT City Center' situated in sector 83, Gurugram.

- v. As per clause 12 of builder buyer agreement, the respondent company was liable to pay assured return amount of Rs 71.50/- per sq ft per month from the date of execution of builder buyer agreement i.e. 18.01.2012 till date of completion of construction of booked unit.
- vi. The respondent company has failed to obtain occupation certificate in respect of Block A where booked unit is situated.
- vii. The respondent company has failed to pay any assured return amount October 2018 till date to the complainant.
- viii. As per clause 12 of builder buyer agreement, the respondent was also liable to pay assured return amount of Rs 65/- per sq ft per month from the date of offer of possession till first 36 months i.e. 3 years from date of completion or till the date the said unit is put on lease, whichever is earlier.
- ix. As per clause 10 of the builder buyer agreement dated 18.01.2012, the respondent company was liable to deliver possession of the booked unit within a period of 48 months from the date of execution of the agreement. Therefore, the due date of delivery of possession is 18.01.2016.
- x. The respondent has failed to offer lawful and legal possession of the booked unit along with Occupation Certificate to the complainants till date.
- xi. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at in order to allure the complainant.

However, the respondent has failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.

**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 the complainant is seeking relief of assured return in the garb of lease rentals in the present complaint. That the respondent has already paid the amount of assured returns as promised till completion of construction i.e. till Feb 2018. It is pertinent to mention herein that the

construction of the project was completed in March 2018. It is further pertinent to mention that the complainant is trying to mislead the Ld. Authority to treat the amount of Lease Rentals as Assured Returns. It is submitted that according to Clause 12 of BBA dated 18.01.2012 executed between the parties, the Respondent was supposed to pay Rs. 71.5/- per sq. ft. super area of the Unit till completion of the construction way of assured returns from the date of execution of this agreement till the completion of construction of the said Building and lease rentals @ Rs. 65/- per sq. ft. as lease rentals. That with due respect it is submitted that this Ld. Authority doesn't have jurisdiction to decide upon the issues of Lease rentals and the said issue is a matter of trial in the civil courts.

- ii. The present complaint is filed beyond the prescribed limitation period. The cause of action for the non-payment of assured returns as per the complainants arose in 2018, when the respondent ceased to pay the assured returns. However, the complainant did not raise any grievance or communicate the issue at that time. Instead, they have filed the present complaint after a lapse of six years, despite the fact that the limitation period to file a complaint for such a cause of action is three years. Therefore, the complaint is barred by limitation.
- iii. That the BBA was executed in between the complainant and the respondent dated 18.01.2012. That the date of executing of the BBA is much prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016.
- iv. At the outset, it is pertinent to bring into the attention of the Ld. Authority that the complainant herein being an investor had booked

the commercial unit in project being developed by the respondent. It is evident that the complainant is merely an investor who purchased the unit for making steady monthly returns. It is submitted that the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the RERA, 2016.

- v. That it is an established fact herein that the complainant booked the units 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 unit.
- vi. That in the year 2011, the complainant, being in search of investment opportunities learnt about the project launched by the respondent titled as "Vatika INXT City Centre" at Sector 83, in Gurugram and visited the office of the respondent to know about the details of the said project. The complainant further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.
- vii. That after having dire interest in the commercial project constructed by the respondent, the complainant decided to invest and thus had booked unit no. 306 admeasuring super area of 500 sq. ft. under the assured return scheme, vide application for allotment dated 18.11.2011. Furthermore, upon knowing about the assured return scheme, the complainant upon own will paid the entire sale consideration amount to the respondent for making steady monthly returns.

- viii. That the respondent had sent a letter dated 17.09.2013 to the complainant, informing the same about the change of number of units from unit no. 306 on 3rd floor to unit no. 714 of 7th floor in Block F.
- ix. It is pertinent to mention that the complainant paid a total amount of Rs. 25,25,860/- towards the said unit against the total sales consideration to the respondent.
- x. That it is humbly submitted that the complainant had booked the unit under the monthly assured return plan. That as per clause 12 of the BBA, the Respondent was supposed to pay Rs. 71.5/- per sq. ft. super area of the Unit by way of assured returns from the date of execution of this agreement till the completion of construction of the said building.
- xi. That furthermore, it may be humbly submitted that the respondent, in accordance to BBA read with addendum dated 25.02.2010 has paid a total sum of Rs. 31,19,241/- to the complainant as assured returns.
- xii. Furthermore, as per the terms of the BBA dated 18.01.2012, the respondent is not liable to pay any further assured returns after completion of project. It is further submitted that the complainants are not entitled to get any further amount with respect to assured returns.
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 BBA executed inter-se parties on 18.01.2012.

#### **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 10 of the BBA dated 18.01.2012 the possession was to delivered within 48 months from the date of agreement. Therefore, the due date of possession comes out to be i.e., 18.01.2016.
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., 21.11.2025 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., 18.01.2016.
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 BBA dated 18.01.2012. The assured return in this case is payable as per "BBA" 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. 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 ₹22,039/- 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 BBA dated 18.01.2012, 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 01.03.2019 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 ₹31,19,241/- to the complainant as assured return till 01.03.2019. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 01.03.2019 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 BBA dated 18.01.2012.

**G. IV. Conveyance deed**

28. With respect to the conveyance deed, clause 6 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):
- i. 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. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the

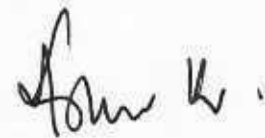
concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

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.

32. Complaint stands disposed of.

33. Files be consigned to registry.

**Dated: 21.11.2025**



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

**HARERA**  
**GURUGRAM**