

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

Complaint no.: 1418 of 2024
Date of filing of complaint: 05.04.2024
Date of Order: 13.01.2026

Bharat Raj Thukral **Complainant**
R/o: House No.-1008, Sector-31, Gurugram-122003.

Versus

M/s Vatika Limited **Respondent**
Regd. Office at: Flat No. 621 A, 6th Floor, Devika Towers, 6, Nehru Place, New Delhi-110019
Corporate Office at: 7th floor, Vatika Triangle, Block-A, Sushant Lok Phase-1, M.G. Road, Gurugram-122002

CORAM: **Chairman**
Shri Arun Kumar

APPEARANCE:
Sh. Kanish Bangia (Advocate) **Complainant**
Ms. Ankur Berry (Advocate) **Respondent**

HARERA
ORDER

1. This 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Vatika INXT City Center" at Sector 83, Gurugram, Haryana.
2.	Project area	10.718 acres
3.	Nature of project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 valid up to 13.06.2016
5.	Name of Licensee	M/s Trishul Industries
6.	Unit no.	4th floor, Block-A in " India Next City Centre " (As mentioned in clause E of BBA at page no. 27 of complaint) And 144, 1st floor at Block-C in " India Next City Centre " (As mentioned in endorsement letter annexed with BBA on page no. 47 of the complaint)
7.	Unit area	500 sq. ft. (super area) (As mentioned in clause E of BBA on page no. 27 of the complaint)
8.	Date of execution of buyer's agreement (with Mamta Dhingra i.e., Original allottee)	19.01.2012 (As per page no. 25 of the complaint)
9.	Possession clause	10. Force Majeure <i>"Subject to the aforesaid and subject to timely payment by the buyer of sale 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</i>

		<p><i>complete the construction of the said commercial unit within 48 months of the execution of this agreement.</i> (As per page no. 39 of the complaint)</p>
10.	Due date of Possession	<p>19.01.2016 (Note: Due date to be calculated 48 months from the date of execution of agreement i.e., 19.01.2012)</p>
11.	Assured return clause As per BBA	<p>12.ASSURED RETURN AND LEASING ARRANGEMENT <i>"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.71.50/- per sq it 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 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. It is further agreed that:</i> <i>(i) The Developer will pay to the Buyer Rs.65/- per sq. ft. super area of the said Commercial unit as committed return for up to three years from the date of completion of construction of the said Building or till the said Commercial Unit</i></p>

		<p><i>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...</i></p> <p>[Emphasis Supplied]</p> <p>(As mentioned in clause 12 of BBA on page no. 39-40 of the complaint)</p>
12.	Date of Endorsement [in favor of complainant]	<p>19.01.2012</p> <p>(As per page no. 41 of the reply)</p>
13.	Buyer-assignee affidavit	<p>04.01.2018</p> <p>(As per page no. 39-41 of the reply)</p>
14.	Total sale consideration	<p>Rs.24,37,500/-</p> <p>(As mentioned in clause 1 of BBA on page no. 27 of the complaint)</p>
15.	Amount paid against the allotted unit	<p>Rs.24,37,500/-</p> <p>(As mentioned in clause 1 of BBA on page no. 27 of the complaint)</p>
16.	Assured return paid	<p>Rs.2,77,444/-</p> <p>(From Feb, 2018 till May, 2019)</p> <p>(As per details provided on page no. 125 of the reply)</p>
17.	Consent letter - for lease offer (by original allottee)	<p>10.12.2017</p> <p>(As per page no. 126 of the reply)</p>
18.	Intimation of execution of lease deed (to complainant)	<p>20.03.2018</p> <p>(As per page no. 127 of the reply)</p>
19.	Rent payments	<p>Rs.2,83,500/-</p> <p>(From January, 2023 till February, 2024)</p> <p>(As per details provided on page no. 124 of the reply)</p>
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions:
 - I. That the respondent announced the launch of their project by the name of "Vatika Trade Centre", now "India Next City Centre" and thereby, invited

applications from prospective buyers for the purchase of units in the said project. The unit was first allotted to Mrs. Mamta Dhingra. According to builder buyers' agreement, signed on 18.01.2012 between original allottee and Vatika Limited, the allottee will receive by way of monthly commitment charges against the said unit at Rs.71.50/- till completion and Rs.65/- post completion for 36 months or till leasing, whichever is earlier.

- II. That the original allottee was confirmed the booking of apartment bearing unit no. 144 on 4th floor in Block C, super area measuring 500 sq. ft. in the project of the respondent.
- III. That the original allottee sold her above-mention unit in favour of the complainant, i.e., Mr. Bharat Raj Thukral. It is pertinent to mention here that the original allottee initially paid an amount of Rs.24,37,500/- at the execution of the builder buyer's agreement.
- IV. That the complainant having paid the entire sum of money towards the total sale consideration were hoping to get regular returns on his investment. However, he stopped receiving the returns. Hence, the complainant vide email dated 25.03.2021 which remained unpaid since April, 2019. After multiple emails request complainant received only one payment for the month of July, 2023.
- V. That the respondent deliberately and with a mischievous intent tricked the investors including the complainant through false promises and forced into paying up huge amounts to the respondent. The said dishonest intent of the respondent is amply evident from their entire conduct and omissions on part of the respondent set out hereinafter:
 - i. Failure to reply to the complainant's concerns and to act in an absolutely high-handed manner.

- ii. Deliberately committing absolute breach of the promises and projections at the time of booking.
 - iii. Complete failure to keep the promised schedule of completion and delay without any valid reason whatsoever.
 - iv. Failure to pay the assured returns for the promised time period.
- VI. That the respondent did not care to keep the complainant informed about the delay in possession despite multiple attempts made by the complainant to obtain such information and hence, the principle of equity does not favor the respondent. The respondent is required to offer the possession as required under law as the complainant have waited for a long time period of 9 years since the booking of the said unit.
- VII. That the inordinate delay on part of the respondent in delivering the possession amounts to deficiency in the services offered by the respondent. As per Section 18 and 19 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. The complainant is therefore entitled for interest for the delayed period till the actual proper handover of the unit.
- VIII. That the complainant now being the allottee is entitled to receive the assured return against the unit at Rs.65/- per sq. ft. after the completion of the building. However, the respondent has failed to make these payments on timely basis and on a myriad occasions citing frivolous reasons has simply not paid the complainants, after 2016. Therefore, the respondent is liable to compensate the complainant for the number of assured returns due till date.
- IX. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondent advertised the said project, it also arose when the respondent inordinately and unjustifiably and with no

proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainant has not been given possession of his unit and has not been paid the amount of interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.

- X. That the complainant is entitled to get compensation for the said deficiency in service. The complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law.
- XI. That the present complaint is within the prescribed period of limitation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons.
 - ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per Act, 2016 from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
 - iii. Direct the respondent to pay the due amount towards assured returns.
 - iv. Direct the respondent not to charge anything which not the part of the payment plan and as agreed upon.
 - v. Direct the respondent to not execute any agreement or conveyance deed/ sale deed with any third party in respect of the unit allotted to the complainant.

- vi. Direct the respondent to compensate the complainant for mental agony and harassment on account of deficiency in service and litigation costs.
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 respondent:

6. The respondent has contested the complaint on the following grounds:
 - I. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 19.01.2012. It is brought to notice of this Hon'ble Authority that complainant is subsequent purchaser who bought the commercial unit from the erstwhile allottee on 16.02.2018.
 - II. That at the outset, it is imperative to bring into the knowledge of the Ld. Authority that the complainant herein is merely an investor who has booked commercial unit under assured return scheme to make steady monthly return. The complainant does not come within the definition of allottee and is rather speculative investor, who intended to invest in the commercial unit for commercial gains only.
 - III. That in the year 2012, the erstwhile allottee invested in the commercial unit for financial gains and thereafter in January, 2018 the present complainant learned about the project titled as "Vatika INXT City Centre" situated at Sector-83A, Gurugram and directly approached the erstwhile allottee for buying the commercial unit.
 - IV. That after developing a keen interest in the project constructed by the respondent, the complainant independently bought a unit under the assured return scheme from the erstwhile allottees. It is clear that the complainant

was fully aware of the project's status and chose to book the unit to secure consistent monthly returns, without raising any objections or complaints.'

- V. That an assignment/endorsement was executed by the previous allottee to transfer her rights and benefits under the BBA dated 19.01.2012 to the complainant. In the BBA/Addendum the respondent assured to provide assured return of Rs.71.50/- per sq. ft., till the completion of the building and Rs.65/- per sq. ft., after completion of building for thirty-six months or till the unit is put on lease, whichever is earlier.
- VI. That thereafter the respondent vide letter dated 13.07.2013, the respondent herein allocated a new unit to the complainant and allotted a unit bearing no. 144, 4th Floor, Block 'C' admeasuring 500 sq. ft. in the INXT City Centre, situated at NH-8, Sector-83, Gurgaon, in favor of the erstwhile allottee in place of the erstwhile unit.
- VII. That the unit in question was bought by the complainant from the erstwhile allottee under the sale agreement dated 04.01.2018, wherein under clause 6 the complainant undertook and acknowledged that the said unit was never meant for physical possession and only a symbolic possession was to be handed over.
- VIII. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. That upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. The respondent company having not taken registration cannot run, operate,

continue an assured return scheme. Thus, the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus, the relief prayed in the present complaint cannot survive due to operation of law.

- IX. Further, it pertinent to mention herein that the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- X. Therefore, the terms of the allotment letters or any other understanding of these kinds without approval after February 2019 is violation of BUDS Act, and if any assured return is paid thereon or continued therewith may be in complete contravention of the provisions of the BUDS Act.
- XI. In view of the above discussion, it is submitted that in the present complaint the respondent has offered Assured Returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. And upon coming into force of the BUDS Act, any such unregulated deposits which are not approved have become illegal and continuing the same shall expose the respondent to strict penal provisions of the Act.
- XII. That under the scheme of the statute, the respondent submits that if this Ld. Authority takes a contrary view it is going to only create undue ambiguity for the real estate sector, which would be contrary to the mandate of the statute. It would create an ambiguity if the two Authorities act at cross purposes with the result that a project giving assured returns.

- XIII. Further, any orders or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent act passed post the RERA Act, which, is not violating the obligations or provisions of the RERA Act. Therefore, enforcing an obligation on a Promoter against a Central Act which is specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.
- XIV. That the respondent herein was committed to complete the construction of the project and subsequently lease out the same as agreed under the agreement. However, the respondent in due compliance of the terms of the agreement has paid assured return till June, 2018.
- XV. That the present complainant has received an amount of Rs.2,77,443/- as assured return right from the date of assignment up to Jan, 2019 and rent of Rs.2,83,500/- from January, 2023 to December, 2023, further the erstwhile allottees also received the assured return amount before the present complainant got the unit assigned in his favour. Thus, assured return received by original allottee was Rs.25,74,000/- and assured returns received by complainant (erstwhile allottee) is Rs.2,77,443/- and rentals of Rs.2,83,500/- were also received till date. Thus, a total of Rs.31,34,943/- have already been received by in respect of the present unit.
- XVI. That the BUDS Act, 2019 being a subsequent act from RERA Act, 2016 shall prevail over the provisions over the RERA Act. The matters pertaining to the assured return shall be regulated by the competent authority appointed under Section 7 of the BUDS Act. Therefore, the Ld. Authority has no jurisdiction over the assured return scheme matters.
- XVII. That it is also relevant to mention here that the commercial unit of the complainant were not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income.

Furthermore, as per the Agreement, the said commercial space shall be deemed to be legally possessed by the complainant.

- XVIII. That further the relief of delayed possession charges, as claimed by the complainant cannot be allowed since the complainant has been enjoying the benefit of lease rental on the said property which he acquired in February, 2018 and has been enjoying lease rental also thereon. The delayed possession charges could only be imposed if the possession as per the BBA was not handed whereas the BBA executed between the complainant and the respondent did not contain a possession clause and rather clause for leasing of the unit was made.
- XIX. That the complainant has intentionally hidden relevant fact from this Hon'ble Authority. It is to be noted that vide Letter dated 10.12.2017, the erstwhile allottee had already consented to the lease offer of the commercial unit to DPA Institute. Further a letter dated 20.03.2018 the respondent duly issued intimation of execution of lease deed to the complainant and thus the unit having already been leased the claim as raised by the complainant is devoid of any merit.
- XX. That the respondent has always been devoted towards its customer and have over the years kept all its allottees updated regarding the amendments in law, judgments passed by the Hon'ble High Courts and the status of development activities in and around the project. That being the customer centric company and abiding by the laws of India the respondent company, issued communications to all its allottees of committed returns/assured returns project when the Parliament enacted various laws to restrict the transaction involving real estate investment trusts which were required to periodically pay interest and dividend to its investors. It is highly pertinent to note that vide email dated 31.10.2018, the respondent company sent a communication

to all its allottees qua the suspension of all return-based sales and further promised to bring detailed information to all investor of assured return-based projects.

XXI. That since in October, 2018 the amendments being made in the laws were at ripe stage the respondent could not engage in acts/omissions that may create criminal culpability upon the respondent itself thus in furtherance of the email dated 31.10.2018, the respondent sent another email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all return based/assured/committed return based sale. The email communication of 30.11.2018 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project since the respondent did never intend to cheat or even leave its customer in lurch. Further vide email dated 28.12.2018 the respondent sent email to all its allottees including the complainant regarding the stoppage of monthly return and reconciliation of all dues by June, 2019, and issued communication regarding Addendum Agreement containing revised clauses excluding assured return / committed return clause alternatively giving option to allottees to shift to another project and also gave option to the allottees to shift to alternate project with quarterly return benefits, yet the complainant chose to ignore the option and thereby letting go of her rights to monthly assured returns.

XXII. That the respondent on 14.06.2019, issued update to all allottees regarding reconciliation of accounts as of 30.06.2019 and issuance of Addendum-Agreement for revising the clause of assured return and finally stopping the

future returns. The allottees who chose to cancel the allotment were also provided required document emails and were refunded investments. Thus, it is observed that, the respondent admittedly paid assured returns from the date of execution of BBA till June, 2018 and at the time of stoppage of assured return in June 2018, the respondent timely provided detailed communication to all allottees in the project.

- XXIII. That the respondent further sent communication to its allottee including the present complainant on 25.02.2020, regarding ongoing transaction and possible leasing of the Block A, B, D, E & F in the Project INXT City Centre.
- XXIV. That the complainant was sent the letter dated 26.03.2018 informing of the completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed.
- XXV. That the various contentions raised by the complainant is fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That none of the relief as prayed by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
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 these undisputed submissions made by the parties.

E. Jurisdiction of the Authority:

8. 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:

9. 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:

10. 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."

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 complainant at a later stage.

F. Findings on the objection raised by the respondent:

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

12. The respondent took a stand that the complainant is the investor and not the consumer and therefore, is not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is

pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the acknowledgement letter, it is revealed that the complainant is a buyer and has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the builder buyer's agreement as well as buyer-assignee affidavit dated 04.01.2018, it is crystal clear that the complainant is not the allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

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

14. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in **CR/8001/2022** titled

as "*Gaurav Kaushik and Anr. Vs. Vatika Ltd.*" has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons.**
- G.II Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per Act, 2016 from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.**
- G.III Direct the respondent to pay the due amount towards assured returns.**
15. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
- **Assured returns**
16. The complainant is seeking unpaid assured returns on monthly basis as per the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said agreement. Though for some time, the assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019. The authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022* titled as "*Gaurav Kaushik and Anr. Vs.*

Vatika Ltd.” wherein the authority has held that when payment of assured returns is part and parcel of builder buyer’s agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(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.

17. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
18. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on. In

view of the above, the respondent is liable to pay the unpaid assured return to the complainant-allottee in terms of the agreement dated 19.01.2012 as well as the letter dated 14.06.2019 wherein the respondent itself has agreed to pay the assured return till 30.06.2019.

- **Delay possession charges.**

19. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges with respect to the subject unit 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."*

20. In the present case, the builder buyer agreement was executed on 19.01.2012. As per clause 10 of the buyer's agreement dated 19.01.2012, the contemplates to complete the construction of the said commercial unit within 48 months of the execution of this agreement. Clause 10 of the buyer's agreement is reproduced below for the ready reference:

10. Force Majeure

"Subject to the aforesaid and subject to timely payment by the buyer of sale 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 the construction of the said commercial unit within 48 months of the execution of this agreement.

21. Thus, the construction of the unit of the complainant has to be completed within 48 months from the date of agreement i.e., 19.01.2012. Therefore, the construction of the project was to be completed by 19.01.2016.
22. **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. *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.”

23. 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., 13.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%. The definition of term ‘interest’ as defined under Section 2(z) 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:

“(z) “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. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter

which is the same as is being granted to them in case of delayed possession charges.

25. The complainant in the present complaint is subsequent allottee and had purchased the apartment in question from the original allottee and thereafter, the same has been acknowledged vide buyer-assignee affidavit dated 04.01.2018, i.e. after due date of handing over of possession which is 19.01.2016. Thus, the complainant stepped into the shoes of the original allottees after the due date of possession. In terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***, the complainant is entitled to delayed possession charges w.e.f. the date of nomination i.e., 04.01.2018 as the complainant stepped into the shoes of the original allottee after the due date of possession.
26. 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 construction of the project was to be completed by 19.01.2016. However now, the proposition before the Authority 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?
27. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per the agreement dated 19.01.2012 and the respondent is liable to pay assured return to the complainant-allottee @ Rs.65/- per sq. ft. on monthly basis till 30.06.2019. 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 at Rs.35,750/- per month till

- completion of the building whereas the delayed possession charges are payable approximately Rs.21,937/- per month.
28. By way of "the agreement dated 19.01.2012", the respondent is liable to pay assured return to the complainant-allottee Rs.65/- per sq. ft. on monthly basis till 30.06.2019. The purpose of delayed possession charges after due date of completion of project is served on payment of assured return. 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 without prejudice to any other remedy including compensation.
29. The Authority further observes that the respondent has failed to complete the construction of the project and to obtain occupation certificate in respect of the project where the unit of the complainant is situated. As delineated hereinabove, the assured return is payable till 30.06.2019 as agreed between the parties vide "the agreement dated 19.01.2012". However, the liability to pay delay possession charges as per proviso to section 18(1) of the Act is still continuing and the same is payable w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority.
30. Accordingly, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.65/- per sq. ft. per month from the date the payment of assured return has not been paid till 30.06.2019. The respondent is directed to pay the outstanding assured return amount, if any, 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.

31. During proceedings of the day dated 13.01.2026, it has been recorded that the complainant has sought the relief of delayed possession charges and the counsel for the respondent stated that the amount of Rs.2,77,444/- already paid on account of Assured returns shall be adjusted. Thus, the Authority has allowed the delayed possession charges along with interest from the date of nomination i.e., 04.01.2018 till valid offer of plus two months after obtaining occupation certificate or actual handing over of possession, whichever is earlier. Also, the amount of assured return already paid by the respondent shall be adjusted in the DPC amount. However, while preparing the detailed order it has been observed that on 14.06.2019 the respondent has issued a letter regarding reconciliation of accounts as on 30.06.2019 and finally stopping the future returns. Moreover, considering the request of the respondent, the Authority has also allowed the respondent to adjust the assured return amount towards the delayed possession charges. However, the said direction can be granted only in cases where the relief of refund of the paid-up amount is allowed. But in the present complaint, the Authority has allowed the unpaid assured returns as well as delayed possession charges under the provisions of the Act, 2016. In view of the above stated reasons, the direction regarding adjustment of assured return amount of Rs.2,77,444/- can not be read as a part of this order. Thus, the respondent is directed to pay delay possession charges @ 10.80% p.a. on the amount paid by the complainant(s) w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every

month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules, *ibid*.

- **Possession**

32. With respect to the aforesaid reliefs, the authority observes that there is no clause in the entire BBA which obligates the respondent to handover physical possession of the unit to the complainant. Furthermore, as per clause 12 of the agreement dated 19.01.2012, it was agreed between the parties that on completion of the project the developer shall put the said unit on lease and the unit shall be deemed to be legally possessed by the complainant. The authority further observes that the complainant has failed to put forth any document to show that the agreement thereto was executed under protest. Also, no objection/protest whatsoever, was made by the complainant at any point of time since the execution of the BBA. Accordingly, handing over the physical possession was never the intent of the respondent rather the unit was to be leased out.

G.IV Direct the respondent to not execute any agreement or conveyance deed/ sale deed with any third party in respect of the unit allotted to the complainant.

33. In the present complaint, there is no clause in the entire BBA which obligates the respondent to handover physical possession of the unit to the complainant. Furthermore, as per clause 12 of the agreement dated 19.01.2012, it was agreed between the parties that on completion of the project the developer shall put the said unit on lease and the unit shall be deemed to be legally possessed by the complainant. As the Authority is allowing the same in the para 32 of this order, thus the above-sought relief becomes redundant.

G.V Direct the respondent not to charge anything which not the part of the payment plan and as agreed upon.

34. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement dated 19.01.2012.

- G.VI Direct the respondent to compensate the complainant for mental agony and harassment on account of deficiency in service and litigation costs.**
35. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357)*, has held that an allottee is entitled to claim compensation under Sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

H. Directions of the authority

36. 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., @ Rs.65/- per sq. ft. per month from the date the payment of assured return has not been paid till 30.06.2019. The respondent is directed to pay the outstanding assured return amount, if any, 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. Further, the respondent is directed to pay delay possession charges @ 10.80% p.a. on the amount paid by the complainant w.e.f. 01.07.2019 till the completion of the project after obtaining occupation certificate from the competent authority. The arrears of such interest accrued from 01.07.2019 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules.
 - iii. The respondent is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement.
 - v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
37. Complaint stands disposed of.
38. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026