

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

Complaint no.: 4939 of 2024
Date of filing of complaint: 04.10.2024
Date of Order: 13.01.2026

Kiran Bajwa
R/o: - 1404, Sector-68, Mohali, Punjab-160062

Complainant

Versus

M/s Vatika Limited.
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

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Shri Aayush Rai (Advocate)
Shri Venkat Rao (Advocate)

Complainant
Respondent

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 allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Vatika INXT City Center at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	Unit no.	405C, 4th floor, in " Vatika Trade Centre " [Old unit] (As mentioned in the letter for allocation dated 17.09.2013 of unit on page no. 30 of the complaint)
4.	New unit no.	409, 4th Floor, Block C in " Vatika Next City Centre " [Current unit] (As per the letter for allocation dated 17.09.2013 of unit on page no. 30 of the complaint)
5.	Unit area (in super area)	750 sq. ft. (As per the letter for allocation dated 17.09.2013 of unit on page no. 30 of the complaint)
6.	Date of execution of buyer's agreement	01.10.2010 (As per page no. 19 of the complaint)
7.	Allocation of unit no.	17.09.2013 (As per page no. 30 of the complaint)
8.	Completion Clause	2. Sale consideration "The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement....." (As per page no. 4 of BBA submitted by the complainant on 26.09.2025)
9.	Due date of Possession	01.10.2013 (Note: Due date to be calculated 3 years from the date of execution of

		buyer's agreement i.e., 01.10.2013).
10.	Total sale consideration	Rs.30,00,000/- (as per account statement annexed at page 31-32 of complaint as well as at page 47-48 of reply)
11.	Amount paid against the allotted unit	Rs.31,08,750/- (As per account statement annexed on page no. 31-32 of the complaint as well as on page no. 47-48 of the reply)
12.	Assured return clause as per addendum agreement dated 01.10.2010	<p>"1. The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated offered for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder buyer's agreement dated 01.10.2010 A) Till offer of possession: Rs.71.50/- per sq. ft. B) After completion of the building: Rs.65/- per sq. ft." (As per page no. 8 of the reply)</p>
13.	Clause w.r.t lease return	<p>32.2 Return on completion of the project and letting out of unit (a) That on the completion of the project, the unit would be let-out by the Developer to a Bonafide lessee at a minimum rental of Rs.65/-per sq. ft. per month less tax deducted at source. In the event of the Developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs.65/- per sq. ft. per month to</p>

		<p>the Allottee as Minimum Guaranteed Rent for the first 36 months after the date of completion of the project or till the date the said unit is put on lease, whichever is earlier. If on account of any reason, the lease rent achieved is less than Rs.65/- per sq. ft. per month of super area, then the Developer shall return to the Allottee, a compensation calculated at Rs.120/- for every once rupee drop in the lease rental below Rs.65/- per sq. ft. per month.</p> <p>(b) If the lease rental exceeds Rs.65/- per sq. ft. super area per month, the allottee shall be required to pay additional sale consideration for the enhanced rental achieved over and above the committed rental.</p> <p>(c) Such additional consideration shall be calculated at 50% of Rs.120/- per sq. ft. for every one rupee increase in the lease rental. Upon payment of the additional sale consideration as described above, the benefit of the entire enhanced rental shall accrue to the allottee.</p> <p style="text-align: right;">[Emphasis Supplied]</p> <p>(As per page no. 14-15 of BBA submitted by the complainant on 26.09.2025)</p>
14.	Assured return paid by the respondent from 19.11.2010 to till 07.07.2018	Rs.49,67,625/- (As per page no. 49 of the reply)
15.	Lease deed (Between Vatika Ltd., Trishul Propbuild Ltd. & DPA Institute of	01.07.2018

	<i>Tourism and Hospitality Education)</i>	(As per page no. 33-48 of the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant, Mrs. Kiran Bajwa is residing at 1404 Sector-68, Mohali, Punjab. The complainant is a bonafide taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
- II. That pursuant to the elaborate advertisements, assurances, representations and promises made by Respondent in the brochure circulated by them about the timely completion of a premium Project with impeccable facilities and believing the same to be correct and true, the complainant in year 2010, considered the purchasing a property bearing no. unit no. 405 on 4th floor, Tower no. A admeasuring approx. 750 sq. ft. super area in Vatika INXT City Centre (Previously known as Vatika Trade Centre) Sector 82, Gurgaon for a total sale consideration of Rs.30,00,000/-. The payment receipts amounting to Rs.30,00,000/- were issued by the respondent for the amount paid by the complainant.
- III. That subsequently, the booking of the said unit was confirmed to the complainant vide builder buyer's agreement dated 01.10.2010 wherein the respondent explicitly assigned all the rights and benefits to the complainant. An addendum to the builder buyer's agreement was executed between the parties and therein the respondent promised the Assured Return.
- IV. That in a shocking event, the respondent executed an addendum to the agreement dated 17.09.2013 wherein the entire project was

relocated and the name of the project was changed to 'Vatika INXT City Centre'. Furthermore, the complainant received a letter from the respondent dated 17.09.2013, wherein the entire project of the respondent has been reallocated and a new unit was allocated to the complainant having unit no. 409 on 4th floor of Block C in India Next City Centre, NH-8, Sector-83, Gurugram. That it would not be out of place to mention that the aforementioned step of the respondent was completely arbitrary and lacked consent of the complainant for that purpose.

- V. That as per builder buyer's agreement, the respondent had promised an assured monthly return to be calculated @ Rs.65/- per sq. ft. per month till the completion of the building and @ Rs.65/- per sq. ft. per month after the completion of the building. The respondent had paid the complainant with assured return till July, 2018. Also, clause (32.2) of the builder buyer's agreement, the respondent promised the monthly rental to the complainant after the completion of the project, the unit would be let-out by the developer to a bona-fide lessee at minimum rental of Rs.65/- per sq. ft.
- VI. That the respondent had also executed a fictitious lease deed dated 01.07.2018 with DPA Institute of Tourism and Hospitality Education, a wholly owned subsidiary of school of Hospitality India private Limited Company and informed the complainant that the unit has been leased out to the said purposed lessee in terms of lease deed dated 01.07.2018. After executing the lease deed, it was found that the lease commencement date was agreed as 01.07.2018 but the complainant found that the rent commencement date was agreed after 12 months from the lease commencement date. It was also mentioned that there will be a one year rent free period as agreed

between the parties. This arrangement was clearly detrimental to the interest of the complainant. It is further stated that the respondent without obtaining permission from the complainant gave 12 month rent free period to the lessee. The respondent did not consider it to be important to intimate the complainant about giving such waiver to the lessee, However, it is pertinent to mention that the said lease deed is fictitious as the project has not received the occupation certificate from the competent Authority.

- VII. That despite the lapse of more than 13 years, the respondent has failed to complete the construction of the project and has voluntarily caused grave financial loss to the complainants by not paying Assured Returns and handing over the actual possession as per the conditions of the builder buyer's agreement.
- VIII. That, by the act and conduct of the respondent it's been unambiguously lucid that the respondent from the very beginning had malafide intention to cheat and defraud the complainant. The complainant has no other efficacious remedy with them but to file the present complaint against the respondent.
- IX. That the respondent is not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the complainant by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- X. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give satisfactory response to the complainant regarding the rent of the property, status of the construction and was never definite about the delivery of the possession.

- XI. That despite not obtaining the occupation certificate nor the handing over the unit to the complainant the respondent has raised maintenance bills. It is further stated that these maintenance bills are prima-facie illegal and have been raised to extort to even more money from the complainant.
- XII. That the respondent has not obtained the occupation certificate till date and still harassing the complainant by demanding maintenance charges for the unit which is against the clauses of builder buyer's agreement and Act, 2016.
- XIII. That the respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail's pace and the said project is far from completion and the same will not be able to deliver the possession within the stipulated time. The respondent has played a fraud upon the complainant and has cheated him fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.
- XIV. That the complainant having shattered and scattered dreams of owning his own unit herein are constrained and left with no option but to approach this Hon'ble Authority. Further, the complainant herein reserves his right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Authority.
- XV. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from

the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee by raising illegal demands without giving any heed to the construction linked payment plan attached to the builder buyer's agreement.

XVI. That the complainant after losing all the hope from the respondent, after being mentally tortured and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance.

XVII. That the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay the outstanding Assured Monthly Return at Rs.65/- per sq. ft. to the complainant (as no completion certificate has been procured till date).
- ii. Direct the respondent to expedite the application procedure for occupation and completion certificate and accordingly handover the actual possession of the unit bearing no. 409 on 4th Floor, Block C admeasuring approx. 750 sq. ft. Super Area in Vatika INXT City Centre (Previously known as Vatika Trade Centre) Sector 82, Gurgaon along with the all the rights, title and interests without any delay or default in terms with the Builder buyer agreement dated 01.10.2010.
- iii. Direct the respondent to register the sale deed for the aforementioned unit.

- iv. Direct the respondent to not demand the maintenance charges from the complainant.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - i. That the builder buyer's agreement executed in between the complainant and the respondent is dated 01.10.2010. The date of executing of the BBA is much prior to the coming into force of the Act, 2016. The obligations of the aforementioned agreements were as per the applicable laws at that point of time.
 - ii. That it is well settled law that the retrospective operation of statute may introduce such elements of unreasonableness. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively and accordingly no action can be lawfully initiated for anything before this Authority related to period prior to registration of project under Authority.
 - iii. That if a project is registered with the Authority, it can be held liable for the future deadlines, those it might breach after the registration with the Authority. Any default before the registration is beyond the ambit and beyond the purview of the Act, 2016 and hence beyond the jurisdiction of the Ld. Authority.
 - iv. That the complainant herein is merely an investor who purchased the unit for making steady monthly returns.
 - v. That the complainant had erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. It is imperative to note, that the Act, 2016, was passed with the sole intention of regularisation of real estate projects, promoters and for the dispute resolution between builders and buyers. The complainant booked the unit with the respondent for investment

purposes. The said complainant herein is not an "Allottee", as the complainant approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units.

- vi. That in the year 2010, the complainant being in search of investment opportunities learnt about the project launched by the respondent titled as "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 the license bearing no. 122 of 2008 and other plans and approvals for the development of the said project land were initially approved and renewed in the name of "M/s Trishul Industries". That M/s Trishul Industries was converted into a Public Limited Company i.e., M/s Trishul Prop. Build Ltd. by following the due procedure.
- viii. That thereafter, M/s Trishul Prop Build Ltd. went into voluntary winding up and the Hon'ble High Court of Punjab and Haryana, appointed an official liquidator against M/s Trishul Prop Build Ltd. Further, vide order dated 18.01.2019, the Hon'ble High Court had allowed for dissolution of M/s Trishul Prop Build Ltd.
- ix. That upon dissolution, the assets of M/s Trishul Prop Build Ltd. were subjected to be transferred to the respondent in terms of the approved "Scheme for Transfer of Assets".
- x. That it is pertinent to note herein that in view of the above facts and circumstances, the respondent was constrained to have the license, plans and other approvals with respect to the project in question

transferred in its name. The company on 27.12.2019 applied before the Director TCP for transfer of the license in its name. It is submitted that the said transfer is in process in the records of the Director, Town and Country Planning, Haryana and however, all the communication with the company are now being done in the name of the company only and acknowledging name of Trishul Industries has been changed to Vatika Limited.

- xi. That after having dire interest in the commercial project constructed by the respondent, the complainant decided to invest and thus had booked unit no. 405 on 4th Floor, Tower A admeasuring super area of 750 sq. ft. under the assured return scheme, vide the BBA dated 01.10.2010. 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.
- xii. That the complainant was aware of the status of the project and invested in the project of the respondent without any protest or demur, to make steady monthly returns upon their own judgement and investigation. The Complainant paid a total amount of Rs.31,08,750/- towards the said unit against the total sale consideration to the tune of Rs.31,08,750/- to the respondent.
- xiii. That the unit in question was deemed to be leased out upon completion. As the complainant had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.
- xiv. That the BBA clearly stipulated provisions for "lease" and admittedly contained a "leasing clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt

- that the complainant is not "allottee" but investor who has invested the money for making steady monthly returns.
- xv. That the objective of the Act, 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act, 2016. However, the entire Act, 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- xvi. That the complainant had booked the unit under the monthly assured return plan. As per addendum to the agreement dated 01.10.2010, the respondent was supposed to pay Rs.71.50/- 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, following which Rs.65/- per sq. ft. shall be paid to the complainant post the completion of the construction of the building.
- xvii. That the agreed assured returns were already paid by the respondent to the complainant at the agreed rate from the date of execution of the BBA till the completion of the construction of the project. The total assured returns already paid by the respondent is to the tune of Rs.47,72,625/- for the period from 07.10.2010 till 01.02.2018.
- xviii. That as per the said addendum to the agreement and as per clause 32.2 (a), the respondent was supposed to pay to the complainant Rs.65/- per sq. ft. as committed lease return for up to 36 months after the date of completion of construction of the building or till the said unit is put on lease, whichever is earlier. The respondent, in accordance to clause 32.2(a), has paid a total sum of Rs.1,95,000/-

as committed returns. Thus, the respondent has already paid a total amount of assured returns and lease rentals to the tune of Rs.49,67,625/-.

- xix. That the respondent has already sent a letter dated 03.01.2017 clarifying upon the introduction on the proposed Amnesty Scheme for payment of the Value Added Tax (VAT) under the Haryana Value Added Tax, 2003 (HVAT), wherein the respondent has clearly clarified that the VAT shall be recovered from the complainant in two equal instalments from the monthly Assured Return payable to the unit owners from the payments in the months of January, 2017 and February, 2017.
- xx. That the respondent had also sent a letter dated 17.09.2013 to the complainant informing about the change in the unit of the complainant from 405 on the 4th Floor in Tower A to Unit No. 409 on the 4th floor of Block C. This due intimation by the respondent clearly shows the clean intent of the respondent.
- xxi. That the respondent was committed to complete the development of the project and put the unit on lease with the proposed timelines. It is pertinent to apprise the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
- xxii. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got

decelerated. That it is pertinent to mention herein that such delay was not intentional. It is also submitted that the respondent was bound to adhere with the order and notifications of the Courts and the Government. Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project. Thus, all these factors being *force majeure* may be taken into consideration for the calculation of the period of the construction of the project. It may also be noted that the respondent had carried out its obligations in Agreement with utmost diligence.

- xxiii. That the BUDS Act, 2019 being a subsequent act from Act, 2016 shall prevail over the provisions over the Act, 2016. The matters pertaining to the assured return shall be regulated by the Competent Authority appointed under Section 7 of the BUDS Act. Therefore, the Authority has no jurisdiction over the assured return scheme matters.
- xxiv. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. It is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

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

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

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

E.II Subject-matter Jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent:

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

11. 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;"

12. 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.

13. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in *CR/8001/2022* titled as "*Gaurav Kaushik and Anr. Vs. Vatika Ltd.*" has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

F.III Objection regarding the circumstances being 'force majeure':

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as revision in planning approvals and regulatory changes mandated by the competent regulatory authorities which were beyond the control of the respondent, certain environment restrictions, weather conditions in NCR region, shortage of labour and COVID-19 outbreak etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due revisions in planning

approvals and regulatory changes were for a shorter period of time and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay the outstanding Assured Monthly Return at Rs.65/- per sq. ft. to the complainant (as no completion certificate has been procured till date).

G.II Direct the respondent to expedite the application procedure for occupation and completion certificate and accordingly handover the actual possession of the unit bearing no. 409 on 4th Floor, Block C admeasuring approx. 750 sq. ft. Super Area in Vatika INXT City Centre (Previously known as Vatika Trade Centre) Sector 82, Gurgaon along with the all the rights, title and interests without any delay or default in terms with the Builder buyer agreement dated 01.10.2010.

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 addendum agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022** titled as **"Gaurav Kaushik and Anr. Vs. Vatika Ltd."** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or

terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(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 her 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 assured return to the complainant-allottees in terms of the agreement dated 01.10.2010 (inadvertently mentioned as 01.10.2020 in the proceedings of the day dated 13.01.2026.

19. Subsequently, a new Addendum was executed inter se parties on 01.10.2010 itself whereby complainant agreed that the unit has been allotted with an assured monthly return of Rs.65/- per sq. ft. However, an additional amount of Rs.6.50/- per sq. ft. will be paid to the complainant till offer of possession. The relevant clauses of the Addendum are reproduced as under:

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

This addendum forms an integral part of builder buyer's agreement dated 01.10.2010

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

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

(Emphasis supplied)

20. The respondent in its reply dated 17.04.2025 admitted that on 01.10.2010 an addendum was executed between the complainant and the respondent vide which the assured return clause of the agreement was modified.
21. It is worth noting that the complainant has not challenged the said Addendum Agreement at any point of time and not even post the execution of the said Addendum Agreement, thus the complainant cannot raise the objection at such a belated stage. It is not a disputed fact that the aforesaid addendum was duly signed by the complainant and its execution is admitted by both the parties. Moreover, the complainant has failed to put forth any document to show that the Addendum agreement dated 01.10.2010 was executed under protest. Thus, the aforesaid Addendum becomes binding on both the parties and accordingly, the respondent is liable to pay assured returns @ Rs.71.50/- per sq. ft. per month w.e.f. 01.10.2010 till offer of possession and @Rs.65/- per sq. ft. post completion of building for 36 months or till the date on which the unit is put on lease, whichever is earlier.

• **Possession**

22. 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 2 of the agreement dated 01.10.2010, 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.III Direct the respondent to register the sale deed for the aforementioned unit.

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

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

G.IV Direct the respondent to not demand the maintenance charges from the complainant.

25. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. As per clause 7 of the agreement dated 01.10.2010, it was agreed between the

complainant and the respondent that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant clause is reproduced below for the ready reference:

7. Maintenance of the Building:

7.1 The upkeep, maintenance and management of common areas/ residual areas in the said complex including operation and up keep of plant and machinery shall be organized by the developer or its nominated maintenance agency. All such costs, expenses shall be borne and paid by the allottee to the extent of its share in the said building. The maintenance charges so fixed and payable every month shall be apportioned by the developer which the allottee hereby agrees to accept as final and binding. Such charges would be billed to the allottee by the developer/ maintenance agency every month. At present such charges are Rs.14/- per sq. ft. super area per month. The charges so fixed shall be increased by 15% after every 3 years. It is clarified that maintenance charges will be exclusive of water, electricity and other consumables for which separate bills will be raised by the developer/concerned agency/ department/ maintenance company and shall be paid by the allottee as stipulated herein.

26. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainant-allottee in terms of clause 7 of the agreement dated 01.10.2010 executed between the complainant and the respondent.

H. Directions of the authority:

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

- i. The respondent is directed to pay assured returns @ Rs.71.50/- per sq. ft. per month w.e.f. 01.10.2010 till offer of possession and @Rs.65/- per sq. ft. post completion of building for 36 months or till the date on which the unit is put on lease, whichever is earlier.
- ii. The respondent is directed to pay arrears of accrued assured return as per buyer's agreement dated 01.10.2010 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

- iii. The respondent is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
28. Complaint stands disposed of.
29. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026