HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1327 of 2022**
Date of filing:	**15.06.2022**
Date of first hearing:	**29.07.2022**
Date of decision:	**23.07.2026**

Shallu Kapil C/o Parveen Deolia,
R/o H. No. 8/3,
First Floor, Roop Nagar, Malka Ganj,
North Delhi, Delhi- 110007. ....COMPLAINANT

VERSUS

Vatika Limited,
Vatika Triangle,4th Floor, Sushant Lok,
Phase-I, Block-A, M.G Road,
Gurugram-122012 ....RESPONDENT

CORAM:	**Parneet Singh Sachdev**	**Chairman**
	Nadim Akhtar	**Member**
	Dr. Geeta Rathee Singh	**Member**
	Chander Shekhar	**Member**

Present: - Mr. Sunil Kumar, Counsel for the complainant through VC.
Ms. Vertika H. Singh, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint was filed on 15.06.2022 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	820, Block-B on 8th floor.

5	Unit area	1000 sq. ft.
6.	Date of builder buyer agreement	12.04.2013
7.	Due date of offer of possession	Not available.
8.	Possession clause	Not available.
9.	Total sale consideration	₹46,66,860/-
10.	Amount paid by complainant	₹46,66,860/- (Complainant in its affidavit dated 02.05.2024 has submitted that the total paid amount is ₹49,08,360/-. However, for an amount of 2,41,500/- a cheque is attached, moreover, it is claimed to have been paid on account of lease clauses. Therefore, the amount has been excluded from calculation)
11.	Offer of possession	No offer was given.
12.	Occupation certificate	14.10.2016

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the respondent is a builder, promoter and colonizer engaged in construction activities.

4. It is averred that M/s Vatika IT Park Private Limited acquired land admeasuring approximately 8.793 acres, situated at Village Sarai Khawaja, Tehsil and District Faridabad, Haryana, and obtained Licence No. 1133 of 2006 dated 22.09.2006 from the competent authority for the development of an I.T. Park on the said land. Subsequently, the Urban

Local Bodies Department, Haryana, vide Notification No. MCF/CTP/2010 dated 15.11.2010, converted the land use of Sectors 27-A, 27-B, 27-C and 27-D, Faridabad, from Industrial to Commercial. Pursuant thereto, the respondent applied before the Department of Town and Country Planning (DTCP), Haryana, seeking permission for conversion of the approved IT Park into a commercial project. Upon the requisite approvals being granted, the project was developed under the name and style of "Vatika Mindscapes."

5. It is the case of the complainant that he booked a commercial unit bearing Unit No. 820, admeasuring 1000 sq. ft., situated on the 8th Floor, Block-B, in the commercial project "Vatika Mindscapes", located at Sector-27-B, Faridabad, being developed and promoted by the respondent, for a total basic sale consideration of ₹46,66,860/-. It is further averred that the complainant paid the entire basic sale consideration amounting to ₹46,66,860/- on 12.04.2013 and 02.05.2013, which payments were duly acknowledged by the respondent in the Builder Buyer Agreement executed between the parties.

6. That on the same date, i.e., on 12.04.2013, the parties executed a BBA with respect to the said unit. Copy of the Builder Buyer Agreement is attached with the complaint.

7. The complainant has alleged that the respondent had made promise to hand over the possession of the unit within the stipulated time. However, the respondent did not offer possession to the complainant by 29.04.2022.

8. That the complainant has submitted that various correspondence by way of letters and emails were made by him and also by contacting the respondent by visiting the office of the respondent seeking status of the construction of the unit and handover of physical possession and demarcation of unit along with conveyance deed along with assured return and lease rentals but it was of no avail.

9. Additionally, the respondent kept on promising that the construction activities are going on at full swing at the project site while the construction was at halt which was only revealed when the complainant visited the site.

10. It is alleged that the respondent had been making demand from the complainant but have not complied with the payment plan/ assured return or lease assurance as mentioned in the agreement. That if the respondent had demanded payments complying with the payment plan then the project would have been completed on time. Additionally, it is also stated that the respondent has siphoned off funds meant for the project and utilised for own benefit.

11. The complainant further submits that repeated requests were made to the respondent for delivery of possession. however, no concrete assurance or timeline has been provided, and the construction remains incomplete.

12. The complainant has relied on section 12, 13, 18, 31 of the Act of 2016 and rules 15 and 16 stating that the complainant has been left with no alternative but to approach this Authority by filing the present complaint.

C. RELIEFS SOUGHT

13. Complainant in his complaint has sought following reliefs:

a. Direct the Respondent to offer physical possession after demarcation of Complainant Unit and execute Conveyance deed in favour of Complainant as earliest along with Delay Possession Interest as per RERA Act, 2016.

b. Direct the respondent to pay Assured Return as promised by the Respondent along with Interest as per RERA Act, 2016.

c. Request to the Hon'ble Authority to investigate for Lease out of Complainant unit since long back as whenever the Complainant asked for Rent then Respondent said your unit space is vacant, not leased. However whenever complainant went on 8th Floor, B-Block none space found vacant over there all space rented and occupied seems.

d. Direct the Respondent to pay Assured Return in full down payment cases @ 68.75 per sq. ft. super area every month by way of assured return from the date of execution of B.B.A Agreement until unless execute Conveyance deed in favour of Complainant along with Interest as per RERA Act, 2016.

e. Direct the Respondent to pay to the Complainant Leasing Arrangement @ 62.50 per sq. ft. super area as committed return upto three years from the date of completion of construction of said commercial unit or till the same is put on lease with Interest as per RERA Act, 2016.

f. Direct the Respondent to return / refund Premium amount which had demanded by the Respondent in lieu of Leasing out Space on Premium for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs. 62.50 per sq. ft. super area per month. However, premium taken in advance by the Respondent for whole life lease rental but within a year he broke the payments of lease rental by stating Lessor company fleed away in between. Hence looking refund / return entire premium amount taken by Respondent with Interest as per RERA Act, 2016.

g. Direct the Respondent to pay legal expenses of 21,00,000/- (one lakh) incurred by the Complainant.

h. Any other damages, interest, relief, compensations which the Hon'ble Authority, Panchkula may deem fit and proper under the circumstances of the case, may kindly be passed in the favour of the Complainant and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 30.11.2022 pleading therein:

14. That the complaint has been filed with an ulterior motive to harass and pressurize the respondent to submit to unreasonable demands of the complainant. That the complainant has not come with clean hands and has suppressed vital facts and on this ground, alone, the complainant is liable to be dismissed.

15. That the issues raised relate to contractual matter arising out of the terms and conditions of the Expression of Interest/ Agreement and interpretation thereof, which can only be adjudicated in civil proceedings. Additionally, the issue cannot be decided in summary proceedings. Hence, the present complaint deserves to be dismissed being not maintainable.

16. It is contended that the complainant cannot challenge the terms of the agreement qua delay compensation and interest etc at this instance because she had willingly signed the same without any coercion or undue

influence and acted in accordance.

17. That the complainant has failed to make out any case either of deficiency in service or otherwise to warrant any consideration from this Hon'ble Authority.

18. That the complainant has no cause of action in her favour and against the answering respondent as present complaint has been filed on false, frivolous, and vexatious grounds. The allegations put up by the complainant are sham, untenable and the same are not Bonafide, as such the complaint deserves to be dismissed on this ground alone.

19. That in the present complaint, the complainant is seeking additional benefits beyond the agreement which was executed prior to the commencement of RERA. Further, the parties are bound by the terms of the contract. There is no power or jurisdiction under the act to direct modification of any article of the agreement. An article of agreement which is agreed to and binding between the parties has to be implemented in terms thereof.

20. That the project of respondent consists of total 4 towers i.e. Tower A, B, C and D. That out of these four towers, the Company has already received the Occupation certificate for Tower A, B and D and these towers are fully operational. A copy of Occupation certificate dated 14.10.2016 issued for Block 'A' and 'B' and certificate dated 19.05.2020

issued to Block 'D' are annexed as Annexure R-8 with the reply.

21. That on perusal of the BBA dated 12.04.2013, a bare reading of clauses F to H and I, 15, 16, 17, 18 and 24 reveal that the complainant had invested her money in Assured return scheme of the respondent company and in compliance of the said arrangement between the parties, the respondent company had already made the payment of assured return till October 2016. It was agreed between the parties that the developer shall pay minimum committed return of ₹62.50/- per sq ft per month on super area for first 36 months after the date of the completion of the project or till the date the said unit is put on lease, whichever is earlier. The intimation regarding the same was sent to the complainant vide letter dated 31.03.2015. Copy of letter dated 31.03.2015 is annexed as Annexure R-2. That the first lease with the tenant was signed in May, 2017 and the rent realized from the tenant was passed on to the complainant. Copy of letter dated 25.05.2017 issued by company for lease to the complainant annexed as Annexure R-3.

22. That the respondent has averred that the schemes of Assured Returns have been banned under the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act). It is mentioned that during July 2018, the Union Government introduced a Banning of Unregulated Deposit Scheme Bill 2018 in the Lok Sabha and the same was passed on 13.02.2019 but it

could not be taken up for consideration in the Rajya Sabha. Subsequently, on 21.02.2019, the Banning of Unregulated Deposit Scheme Ordinate 2019 (the BUDS Ordinance') was promulgated and thereafter, in July, 2019 the Banning of Deposit Schemes Act 2019 was notified. On 12.02.2020, the rules framed under the BUDS Act 2019 were also notified. In light of the above regulatory restraint and with the support of severability clause of the BBAs/Application Form, the Company completely stopped the payment of assured returns from October 2018 and the Company circulated drafts of addendums to the BBAs, capturing, inter alia, that:-

(a) the clauses on assured returns in the original BBA/Allotment Letter shall stand delete;

(b) any payments in relation to assured returns shall be stopped, and as one-time settlement the amount as stipulated therein will be payable by the Company to the allottee at the time of leasing of the unit, or within ninety days of execution of such addendum, whichever is earlier; and

(c). the clause on leasing arrangement was amended to remove commitment of the Company towards minimum guaranteed rent or procuring minimum rent for the unit.

23. That the complaint has been filed on the ground that since the Respondent company has not paid the commitment charges nor the possession of the unit has been delivered. Hence, the complainant is claiming committed rentals. In this regard, it is submitted by the respondent that so far as payment of commitment charges are concerned, since the tower in question Tower 'B' had already been constructed and occupation certificate regarding the same has already been received by the Company, admittedly the complainant had received the payments in terms of agreement and further the rentals received in terms of clause of Leasing Arrangement in the BBA.

24. That the complainant had been intimated regarding the completion of construction of Block 'B' vide letter dated 31.03.2015 which is annexed herewith as Annexure R- 2. However, after the enacting of BUDS Act 2019, it is not permissible, accordingly, the same cannot be allowed as that shall adversely affect the Project as well as the Developer. A copy of occupation certificate dated 14.10.2016, is being annexed herewith as Annexure R-4.

25. That the respondent in its submissions have relied on some of the relevant provisions as would be germane to the decision of the instant complaint like Sections 18, 19, 31, 71 & Section 72 of the Real Estate (Regulation & Development Act), 2016.

26. That this Hon'ble Authority/Forum has not been clothed with the jurisdiction to try & decide the instant complaint for the alleged frivolous violations mentioned in the complaint.

27. That the instant complaint is liable to be dismissed on the ground that no cause of action has arisen to the complainant to file the instant complaint under the provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '2016 Act) and also the Haryana Real Estate (Regulation & Development) Rules 2017 (hereinafter referred to as '2017 Haryana Rules"). Section 4 of 2016, Act deals with applications for registration of real estate projects. This provision states that every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. Section 4(2) prescribes requirement of necessary documents and information along with the application. A long list of documents is mentioned under Section 4(2) which is required to be submitted for the purposes of application for registration. Under Clause l of Section 4(2)(l), a declaration has to be given by the promoter in respect of the time limit during which the promoter would complete the development work. This is a voluntary act to be performed by the promoter as he has to mention the period for completion of construction. Considering the scheme of RERA, in case the

promoter mentions unreasonable period to complete construction, certainly the Authority would not register such an application of the promoter and issue necessary directions to the promoter, taking into consideration the facts of each case. Section 4(2)I)I enables the promoter to give time line so that he is not visited with penal consequences laid down under RERA. Thus, as on date, the Complainant has no cause of action to file the instant complaint under Real Estate (Regulation & Development) Rules, 2017.

28. It is the contention of the respondent that the the provisions which are in favour of the Promoters, should also be read into the agreements. It is submitted that as per sub-clause(C) of Clause (i) Section Sub- section (2) of Section 4, possession would be due on the date as given in the declaration at the time of registration of the project with the Regulatory Authority and as accepted by the Haryana RERA, Panchkula by granting RERA registration to the above said Commercial Project 'VATIKA MINDSCAPES'.

29. That a conjoint reading of section 19 (3) and 19(4) of the act would show that the entitlement to claim the refund along with interest and compensation would only arise once the possession has not been handed over as per the declaration given by the Promoter under Sub Clause (C) of Clause (i) of Sub Section 2 of Section 4. As per the declaration

submitted by the Promoter at the time of registration of the Project, the completion time of the Project granted by Haryana RERA, Panchkula at the time of granting RERA registration to the above said Commercial Project 'VATIKA MINDSCAPES', was 14.09.2022. Further, Tower 'B' is already complete and occupation certificate has already been issued with respect to Tower 'B'. Moreover, owing to prevailing situations of pandemic of Corona-virus restrictions/lock down imposed by the government/ administrations were in force/applicable. As such on account of Force Majeure condition/situation the respondent-company could not be held liable. Hence, the present complaint is not maintainable.

30. It is contended that non-adherence to the completion schedule cannot be termed as a violation of the Act, Rules and Regulations. The Act, Rules and Regulations nowhere provide for completion schedule of a project except for where the declaration has been made to this effect by the Promoters. The said declaration can at the most be read as violation of the agreement for sale but certainly not of the Act, Rules and Regulations. As regards completion schedule given under Section 4 of RERA, the provisions of the Act, Rules or Regulations are put into action to ensure the Promoters adhere to that completion schedule. It is relevant to mention here that there is no provision in the Act, Rules or the

Regulations that enables a Regulator Authority to initiate penal proceedings for non-adherence to the completion schedule given by the Promoters and also of the fact that the which in any case, is permissible in case of violation of the Act. Rules and Regulations. Such action by a Regulatory Authority is not permissible in case of violation of the terms and conditions of the agreements for sale and in this regard, reliance is placed in Section 7 of RERA that enumerates factors that could lead to suspension or revocation of registration. However, the consequences of such penal action by the Authority could lead to frustration of contracts between the Promoters and its Allottees;

31. It is, therefore, argued that the remedy available to the allottee arises out of the alleged frustration of contract and not from any violation of the Act, Rules or Regulations.

32. It is further submitted that after the coming into force of the RERA Act, 2016, the prescribed rate of interest is being read into the existing Buyers Agreements but the nature of the interest remains compensatory in nature especially, where the Allottee gets possession of unit albeit with delay. In this regard, be it prescribed rate of interest or interest simpliciter, Clause 7.6 of the Model Agreement of Sale has placed the same under the heading 'Compensation' only.

33. That the respondent has cited that the award of Interest for delay caused due to delay in completion of the project is a situation covered by Section 73 and 74 of the Indian Contract Act, 1872. Further, mentioning of prescribed rate of interest in a Buyers' Agreement or rate of Compensation is at the most an amount in lieu of compensation or penalty stipulated therein.

34. That penalty stipulated in the contracts cannot be axiomatic but a person claiming such amount, or penalty must prove/substantiate its loss. Compensation can only be given for damage or loss suffered and if damage or loss is not suffered, the law does not provide for a windfall as has been held by the Supreme Court in the case of M/s. Kailash Nath Associates V. Delhi Development Authority (Para 33, 42-44) 2015(4) SCC 136

35. That the award of statutory rate of interest is completely misconceived, in as much as, it would have the effect of novation of contract already executed between the parties. It is stated that a validity executed contract cannot be novated or changed in any manner save with the mutual consent of the parties. It is stated that rate of interest and other Penal provisions agreed to by the parties in the Agreement for Sale cannot be changed based on erroneous assumption of unilateral terms.

36. It is submitted that the provisions of the RERA Act cannot be read into contracts already executed between the promoter and the allottee. Such contracts confer substantive rights and obligations upon the parties, which were determined at the time of their execution after taking into consideration the prevailing technical and financial parameters. These substantive rights and obligations cannot subsequently be altered. It is further contended that it is a settled principle of law that legislative enactments affecting substantive rights operate prospectively unless expressly provided otherwise. In support of this contention, reliance is placed on the judgment of the Hon'ble Supreme Court in ***M/s Shanti Conductors (P) Ltd. & Anr. v. Assam State Electricity Board & Ors.***, wherein it was held that the liability to pay a higher rate of interest operates prospectively and not retrospectively.

37. That the substantive legislation operates prospectively and cannot be applied to acts or contracts already executed. It is contended that in terms of Section 62 of the Indian Contract Act, 1872, a contract is the product of the free consent of the parties and an executed contract can be altered only with their mutual consent, unless it is declared illegal or opposed to public policy which, according to the respondent is not the case herein.

38. That a perusal & joint reading of the provisions of the 2016 Act and also the Haryana Rules, would make it evident that in terms of Section 4 (1), a

Promoter is required to file an application to the 'Authority' for registration of the real estate project in such form & manner within such time and accompanied by such fee as may be proscribed. The terms 'Prescribed' has been defined under section 2 (z)(i) to mean prescribed by rules made under this act. Further Section 4(2)(g) of 2016 Act provides that a Promoter shall enclose, along with the Application referred to in Sub-Section 1 of Section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act inter alia provides that a Promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the same may be, as an advance payment or an Application Fees, from a person, without first entering into a written agreement for sale.

39. That no Agreement for Sale as contemplated under the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Rules, 2017, was executed between the parties. Instead, the rights and obligations of the parties are governed by the Builder Buyer Agreement dated 12.04.2013, which was executed prior to the coming into force of the Act. Accordingly, it is contended that the present complaint is not maintainable.

40. Respondent has further taken a plea that complainant is a speculative buyers, who invested in the project of the respondent company for

monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bhatti Knitting vs DHL by Hon'ble Apex Court.

41. That the company had already made the payment of assured return till October 2016. It is further contended that Commercial Unit No. 823 was leased by the respondent to **M/s Sagoon India Pvt. Ltd.** for a period of nine years vide Lease Deed dated 01.05.2017, and the same was communicated to the complainant vide letter dated 25.05.2017, a copy whereof has been annexed as Annexure R-2.

42. It is averred that the complainant received a security deposit of ₹3,96,000/- from M/s Sagoon India Pvt. Ltd. vide letter dated 25.07.2017, a copy whereof is annexed as Annexure R-3. A copy of the ledger account of the complainant's unit for the period 01.04.2017 to 31.10.2022 has also been placed on record as Annexure R-4. It is alleged that the complainant has concealed these material facts while filing the present complaint. It is further submitted that Clause 16.12 of the Builder Buyer Agreement specifically provides that the commercial unit was sold under a scheme intended for earning rental income and not for the buyer's personal occupation or use. It is also contended that the complainant has

sought to invoke the provisions of the RERA Act, which came into force after the execution of the Builder Buyer Agreement dated 12.04.2013, a copy whereof is annexed as Annexure R-5. The respondent therefore, asserts that there has been no lapse on its part in providing services to the complainant.

43. That the complainant enjoyed the lease rentals received from the tenant. It is further contended that the tenant vacated the commercial unit during the lock-in period in the year 2019, for which the respondent cannot be held liable, having duly performed its obligations under the Builder Buyer Agreement. It is also averred that the security deposit of ₹3,96,000/- paid by the lessee was remitted by the respondent to the complainant and was retained by the complainant.

44. It is further submitted that Clause 16.1 of the Builder Buyer Agreement expressly provides that the committed return was payable for a period of three years from the date of completion of construction of the commercial unit or till the unit was leased out, whichever occurred earlier. It was further stipulated that upon the unit being leased, the payment of committed returns would cease and the buyer would thereafter be entitled to receive the lease rentals in respect of the commercial unit.

45. It is submitted that the complainant is not entitled to the reliefs prayed for in the present complaint. It is further contended that this Authority lacks

the jurisdiction to adjudicate upon and grant the compensation claimed. Accordingly, it is prayed that the present complaint be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

46. Learned counsel for complainant has submitted that as per order dated 11.12.2025, a show cause notice under Section 63 was issued to the respondent for non-compliance of directions issued as per order dated 11.09.2025. However, possession of the booked unit has not been offered till date. Occupation certificate has been issued by the competent authority with respect to tower in question, i.e., tower B on 14.09.2016. Facts of the case clearly depicts that respondent is at fault by not honouring terms of buyer's agreement in providing assured returns as well as in not handing over of possession of unit till date. Further, he stated that writ petition referred by respondent in its reply does not have application/effect on this case as there is no bar created upon RERA Authority to not to proceed with assured returns cases. He requested that reliefs sought be awarded in favor of complainant.

47. Learned counsel for respondent appeared and submitted that since the respondent company has revived from moratorium proceedings recently, the directions could not be complied with. She further sought for one opportunity to comply with the directions of this Authority. She

submitted that as per the order dated 11.09.2025, Conveyance deed can be done however, possession cannot be offered by the respondent.

E. ADDITIONAL DOCUMENTS PLACED ON RECORD BY PARTIES

Respondent has placed on record the status of unit allotted vide its application dated 04.09.2025 stating therein-

48. That vide order dated 03.04.2025 this Hon'ble Authority had issued directions to the respondent to provide status of unit in order to ascertain the fact that whether conveyance deed of unit can be executed or not. The respondent was further directed to file plan of the whole floor on which complainant's unit is located and out of that which space is earmarked for complainant's unit.

49. That the respondent-company has never denied execution of the conveyance deed of the unit allotted to the complainant. The Unit No. 820, 8th Floor in Tower 'B' of the project 'Vatika Mindscapes' Faridabad allotted to the complainant is encumbrance free and the conveyance deed of the same can be executed as and when the complainant approaches the Respondent company as it is the complainant who has to deposit the stamp duty and Registration charges for the same. That the complainant is liable to clear all the dues before execution of conveyance deed including the maintenance charges as per the terms and conditions of the Builder Buyer Agreement.

50. That the floor plan on which the unit of the complainant is located is annexed as Annexure R-9 with the submissions. The location of the unit is clearly demarcated in floor plan.

51. That as far as the question of possession of the said unit is concerned the said commercial unit was never meant for physical possession to the complainant and the complainant had voluntarily agreed upon the terms and conditions of the Builder Buyer Agreement. That as per Clause 16.12 of the Builder Buyer Agreement, it was agreed upon by the complainant that the Scheme under which the said commercial unit was agreed to be sold i.e. under 'leasing arrangement' was specifically designed for earning rental income from the unit and not for the personal physical occupation or use by the buyer. Hence the said unit was never meant to be handed over physically to the complainant. Moreover, the said unit is a part of common bigger platform and the respondent company is diligently looking out for arranging to put the said unit on lease. The complainant were never entitled for the possession of the said unit as the complainant had opted for leasing arrangement. The Builder Buyer Agreement specifically contemplates two categories of allottees i.e., Ones who opted for 'Leasing' and Ones who did opted for 'Non-Leasing' of units.

52. Handing over physical possession is only for those allottees who have opted for non-leasing arrangement. Vide Clause 17 of Builder Buyer

Agreement the procedure has been provided for handing over possession to 'non-leasing' allottees. The demarcation clearly separates them from the present complainant (Leasing Allottee).

53. That the complainant has been benefitted with the assured rentals and committed lease rentals for 3 years which accumulates to be more than the sale consideration paid against the said unit.

54. That the respondent has relied on the case 'Kapil Dev Khullar and Anr Vs Advance India Projects Ltd. (Complaint No. 1910 of 2022 decided on 10.12.2024 by Hon'ble HRERA, Gurugram) wherein it is stated that-

'...*22. Accordingly, the physical possession was never the intent at the stage of booking of the unit itself and therefore, the constructive possession of the unit dated 15.01.2022 is valid. Moreover, the above clauses have to be read in continuation to application form duly signed by original allottee wherein it was clearly stipulated that the unit is for leasing purposes and not for self use. In view of the above findings no delay in handing over the possession of the subject unit on part of respondent is established and accordingly no case of delay possession charges is made out."* A copy of order dated 10.12.2024 passed by Hon'ble HRERA, Gurugram is annexed as Annexure R-10.

F. ISSUES FOR ADJUDICATION:

i. Whether complainant is entitled to the reliefs so sought.

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

55. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

I. <u>Objection raised by the respondent with respect to agreement executed prior to coming into force of the Act.</u>

The respondent has raised an objection that the complainant is seeking reliefs which would amount to modification or re-writing of the binding agreement executed between the parties prior to the commencement of the Real Estate (Regulation and Development) Act, 2016.

In this regard, the Authority is of the considered view that the RERA Act neither expressly provides nor can it be construed to imply that all pre-existing agreements are to be re-written upon the coming into force of the Act. Rather, the provisions of the Act, the Rules framed thereunder, and the terms of the agreement are required to be interpreted harmoniously. However, in situations where the Act or the Rules specifically provide for regulating a particular aspect, such matters shall be governed in accordance with the provisions of the Act and the Rules from the date of their enforcement. The said contention has been upheld in the landmark judgement of ***Neelkamal Realtors Suburban Pvt. Ltd.***

vs. UOI and others (W.P 2737 of 2017) decided on 06.12.2017 which provides as under:

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

Thus, while agreements between the parties are sacrosanct, they remain subject to the provisions of the Act to the extent the same have been modified or overridden by statute: Additionally, ***in M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors., Civil Appeal No(s). 6745–6749 of 2021*** the Hon'ble Supreme Court held (particularly in paras 41 and 54) that the provisions of the Act are retroactive in character. The Court clarified that though the statute is not retrospective in the strict sense, it operates upon pre-existing contractual relationships in future and, therefore, the mere fact that an agreement for sale was executed prior to the Act does not exclude the applicability of the provisions of the Act and the Rules thereunder.

In the present case, the complainant is primarily seeking possession of the allotted unit, execution of conveyance deed of the said unit, delay interest along with other reliefs. Section 18 of the RERA Act, 2016 clearly provides that where the allottee does not intend to withdraw from the project, the promoter is liable to pay interest for every month of delay till the handing over of possession. Accordingly, the objection raised by the respondent is devoid of merit and does not sustain.

<u>II. Objection raised by the respondent with respect to complainant executing the agreement out of free will and therefore terms of the agreement become binding on the complainant.</u>

The next objection taken by the respondent is that the complainant is bound by the terms of the agreement, as the same was executed by the complainant out of free will. The primary contention of the respondent is that since the complainant had agreed to the said clause voluntarily, the same is binding upon the complainant and cannot now be challenged. Further, that this Authority has no power or jurisdiction under the act to direct modification of any Article of the agreement. An article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope.

In order to adjudicate upon the present issue, it is apposite to examine the relevant terms of the Builder Buyer Agreement dated 12.04.2013. A plain reading of the agreement reveals that its terms are manifestly onesided and substantially weighted in favour of the promoter. Significantly, the agreement neither prescribes a definite date for handing over possession nor stipulates any deemed date of possession of the allotted commercial unit. Further, Clause 16.12 provides that the scheme under which the commercial units were offered was conceived as a leasing arrangement, specifically designed to enable the buyers to earn rental income from their respective units and not for their personal physical occupation or use. The contractual framework therefore indicates that the promoter did not contemplate delivery of physical possession to the allottees in the ordinary course.

This contractual position stands further reinforced by the respondent's own submissions dated 04.09.2025, wherein it has been categorically stated that the commercial unit was never intended to be handed over in physical possession to the complainant and that the arrangement envisaged only what the respondent has described as "virtual possession." Such an admission lends further credence to the conclusion that the agreement consciously omits any obligation on the part of the promoter to deliver physical possession of the unit within any specified timeframe, thereby underscoring the inherently one-sided nature of the contractual arrangement.

At the heart of Indian contract jurisprudence lies the doctrine that consent must not only be free, but also fair in substance when examined against the realities of bargaining power. The ***doctrine of unconscionable contracts***, though not expressly codified, has been firmly embedded within Sections 16 and 23 of the Indian Contract Act, 1872. It postulates that where a term is so one-sided that it shocks the conscience of the Court, and is imposed by a party wielding overwhelming bargaining power, such a term cannot be permitted to masquerade as a valid contractual stipulation. In such situations, Courts typically look for procedural unconscionability (inequality of bargaining power/lack of choice) and substantive unconscionability (overly harsh, one-sided terms). Further, the 199th Law Commission Report also explained procedural and substantive unfairness in Proposed Bill and laid down guidelines to find if a contract is procedurally or substantially unfair.

In India, The Hon'ble Supreme Court, in ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986) 3 SCC 156***, authoritatively held that a clause which is "unfair and unreasonable, and unconscionable, having been entered into between parties who are not equal in bargaining power," is opposed to public policy and therefore void under Section 23 of the Indian Contract Act, 1872. Although, this judgment is on the issue an unconscionable employment contract, however, the principle elucidated by the Hon'ble Apex Court applies across the domain of contract law.

When the present clause is tested on that anvil, its infirmities become manifest. It declares that any act or omission subjectively determined by the developer shall constitute a default, with the developer's decision being "final and binding." It further confers upon the developer an unbridled right to cancel the agreement, forfeit substantial sums including earnest money and other payments, and thereafter resell the property without any obligation to account for the proceeds to the allottee. Such a clause not only lacks reciprocity but extinguishes, in one stroke, all substantive rights of the allottee while insulating the developer from any corresponding liability.

The Hon'ble Supreme Court has in its subsequent decisions, consistently frowned upon such one-sided builder-buyer stipulations. In ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan (2019) 5 SCC 725***, the Court struck down similar clauses in a builder-buyer agreement, holding that terms which are "wholly one-sided, unfair and unreasonable" cannot bind the allottee, particularly where the agreement is a standard-form contract drafted by the developer. The Court emphasised that a homebuyer, faced with a take-it-or-leave-it contract, cannot be said to have exercised real freedom of choice. The apex court observed that clauses in builder-buyer agreements which are wholly one-sided and disproportionately favour the developer constitute an unfair trade practice and cannot be enforced against the allottee. Given that the definition of "unfair trade practice" under the RERA Act is pari materia, the same principle is equally applicable in the present context.

Earlier, in ***LIC of India v. Consumer Education and Research Centre (1995) 5 SCC 482***, it was reiterated that contractual clauses which are arbitrary, unfair, and unreasonable are violative of public policy and cannot be enforced.

In that view of the matter, a clause such as the present one cannot be accorded judicial imprimatur. Such a stipulation is hit by the ***doctrine of unconscionability***. The law does not countenance a contract where one party is clothed with absolute dominion and the other reduced to a position of complete subservience.

Additionally, to adjudicate this issue, reference is made to para 122 of judgement of ***Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and***

others (W.P 2737 of 2017) reproduced above. In light of the said judgment, it is well settled that a law can be enacted to affect subsisting or existing contractual rights between parties in the larger public interest. The Real Estate (Regulation and Development) Act, 2016 provides specific statutory remedies, particularly under Section 18, in cases where the promoter fails to hand over possession within the stipulated time. Such statutory provisions override the contractual terms to the extent of inconsistency. Thus, while agreements are generally sacrosanct, they remain subject to statutory intervention where the Act expressly provides otherwise.

Further, it is observed that builder-buyer agreements are typically drafted in a manner that leaves little or no scope for negotiation by the allottee. The allottee is in most cases compelled to sign on pre-drafted, standard-form agreements without any meaningful opportunity to alter or negotiate the terms. Therefore, such agreements cannot be said to be executed on an equal footing or as a result of true free consent in the strict sense. It is evident that the present case involves a misuse of dominant position by the developer, who occupies a controlling and commanding position. The Hon`ble Apex Court in its various judgments has categorically concluded that when the terms of the agreement authored by the developer don't maintain a level platform between the developer and the allottee and the stringent terms imposed on the allottee are not in consonance with the obligation of the developer to meet the timelines for construction and handing over the possession, the same does not constitute a fair bargain.

As already observed while deciding Preliminary Objection No. I, the statutory obligations imposed under the Act operate upon the contractual relationship between the parties and prevail to the extent of any inconsistency. Consequently, the respondent cannot rely upon an unfair contractual stipulation, or the absence of an agreed timeline for possession, to defeat the statutory remedies available to the complainant under the Act. Accordingly, the objection raised by the respondent that the complainant is irrevocably bound by every term of the Builder Buyer Agreement merely because it was voluntarily executed is without merit and is hereby rejected.

III. Objection of the respondent with respect to complainant being a speculative investor and not an allottee

i. The respondent has further contended that the complainant is merely a speculative investor who invested in the project with the sole objective of earning assured returns and lease rentals and, therefore, cannot claim the status of an "allottee" under the provisions of the RERD Act, 2016. It has further been submitted that the Builder Buyer Agreement was executed under an assured return and leasing arrangement, under which the respondent had paid assured returns till October, 2016 and thereafter lease rentals upon the unit being leased. Additionally, in the written submissions submitted by the respondent, the respondent has averred that subsequently an addendum agreement was also signed by the complainant whereby the clauses on assured returns in the original BBA/Allotment Letter stand deleted and further, any payments in relation to assured returns shall be stopped, and a one-time settlement the amount as stipulated therein will be payable by the Company to the allottee at the time of leasing of the unit, or within ninety days of execution of such addendum, whichever is earlier. However, there is no proof as regards to such onetime settlement nor the addendum agreement has been placed on record. Additionally, as per the respondent, the complainant cannot invoke the provisions of the Act as the transaction was purely in the nature of an investment. The aforesaid contention is misconceived and deserves to be rejected.

At the outset, it is pertinent to note that the Act does not recognise any distinction between an allottee who purchases a unit for self-use and one who purchases it as an investment. The only relevant enquiry under the Act is whether the person satisfies the definition of an "allottee" as contained in Section 2(d) of the Act.

Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 defines an "allottee" to mean a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter and includes a subsequent transferee, while specifically excluding only a person to whom such plot, apartment or building has been given on rent. Significantly, the legislature has not carved out any exception in respect of purchasers who may have acquired the unit for commercial purposes or with an expectation of earning rental or investment returns.

In the present case, the material placed on record demonstrates that the respondent allotted a specifically identifiable commercial unit, namely Unit No. 820 situated on the 8th Floor of Tower 'B' in the project Vatika Mindscapes, to the complainant for a total basic sale consideration of ₹46,66,860/-. The Builder Buyer Agreement records the description of the allotted unit, the sale consideration, the rights and obligations of the parties, and contemplates execution of a conveyance deed in favour of the complainant upon completion of the transaction. These are the essential attributes of a promoter-allottee relationship recognised under the Act.

The respondent has laid considerable emphasis upon the clauses relating to assured returns and leasing arrangements. However, the existence of such clauses does not alter the legal character of the transaction. The assured return and lease arrangement merely regulate the contractual rights and obligations inter se the parties and constitute one of the commercial features of the transaction. They do not convert an allottee into a depositor or investor, nor do they obliterate the relationship of promoter and allottee otherwise established under the agreement.

This conclusion is further fortified by the terms of the Builder Buyer Agreement itself. The agreement is not confined merely to payment of assured returns. On the contrary, it contains all the essential features ordinarily found in a Builder Buyer Agreement, including the allotment of a specified commercial unit, the agreed sale consideration, the mode of payment, the rights and obligations of the parties, and the eventual execution of a conveyance deed. The assured return and leasing clauses are only incidental contractual stipulations and cannot eclipse the substantive nature of the transaction. Further, detailed observation on nature of BBA is explained in proceeding paragraphs.

The Maharashtra Real Estate Appellate Tribunal, in ***M/s Srushti Sangam Developers Ltd. v. Sarvapriya Leasing (P) Ltd. & Anr.*** (Appeal No. 0006000000010557, decided on 29.01.2019), has also observed that the concept of an "investor" is alien to the scheme of the Act and that the legislation contemplates only the relationship between a promoter and an allottee. This Authority respectfully concurs with the said view.

It is equally significant that the respondent itself has consistently treated the complainant as an allottee under the Builder Buyer Agreement by acknowledging receipt of the entire sale consideration, allotting a specific commercial unit, issuing communications concerning the project and leasing arrangement, and contemplating execution of the conveyance deed. Having itself acted upon the Builder Buyer Agreement in this manner, the respondent cannot now be permitted to contend that the complainant was never an allottee but merely an investor.

Acceptance of the respondent's submission would amount to introducing into Section 2(d) a distinction which the legislature has consciously chosen not to enact. Such an interpretation would enable promoters to exclude an entire class of purchasers from the protection of the Act merely because the transaction involved an assured return or leasing arrangement, a consequence wholly inconsistent with the object and purpose of the legislation.

Accordingly, this Authority holds that the complainant squarely falls within the definition of an "allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 and is, therefore, fully entitled to invoke the jurisdiction of this Authority. The preliminary objection raised by the respondent that the complainant is merely a speculative investor is, therefore, rejected.

ii. Nature Of Builder Buyer Agreement-

Further, for adjudication of present complaint Authority would like to refer to nature of the agreement dated 12.04.2013 executed between both the parties.

Clause-A, B & C of opening recitals of the agreement provides that respondent-company is owner in possession of 8.793 acres land in revenue estate of Sarai Khawaja, Tehsil and District Faridabad, Sector-27, Faridabad. M/s Vatika I.T. Parks Pvt. Ltd. i.e. respondent no.2 had obtained licence No. 1133 of 2006 from Director, Town & Country Planning Department, Haryana, for constructing upon the said land an IT park. Clause-C of the opening recital states that Director, Town & Country Planning Department, has already approved demarcation/ zoning plans and building plans of the said IT park vide their memo No. 16150 and 1315 dated 20.06.2007 and dated 08.04.2008. It further states that said IT park has been named as "Vatika Mindscapes".

Clause F, G and H repeatedly refers to Complainant as buyer and to respondent as developers. Clause F clearly stipulates that Complainant /buyer have approached the developer for purchase of units of approximately 1000 sq. ft. super area on 8th floor of the building Block-B of the project.

A cursory reading of the opening recital A to I leaves no doubts that respondent is builder-promoter of the project 'Vatika Mindscapes'. They have properly obtained licence from State Government. They have got their building plans etc. duly approved. They have properly negotiated for sale of specified and identified units to the Complainant.

This by itself leaves no doubt that the respondent is developer and Complainant is a buyer and a proper builder-buyer relationship exists between both the parties and any dispute relating to the agreement between them is preferable to this Authority only. It again strengthens the fact that Jurisdiction of the Authority, therefore, for dealing with this dispute is undisputable and objections raised by respondent to the jurisdiction of the Authority are without any basis.

Further, In Clause-1 (a) of the agreement, unit allotted to the Complainant is properly identified as Unit no 820, situated on the 8th floor of Block B of said commercial complex. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, Complainant herein chose the option of down payments. An option of deferred payment was also available but Complainant did not opt for the same.

Clause-4, particularly clause 4.4, specifies the area deliverable to Complainant, including covered area of the unit as well as pro-rata share of common areas of the entire building. Definition of the common area has also been specified in the agreement.

Reading of the remaining clauses of the agreement there is no doubt that this was a proper builder-buyer agreement as per prevailing market practice.

Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, Complainant chose to make down payment and in return claim monthly assured returns. As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, Complainant allottee would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.

Authority, therefore, has no hesitation in coming to a conclusion that a proper builder-buyer relationship exists between respondent and Complainant because Complainant had booked the unit for its physical delivery to her. Before completion of the project assured payment @ ₹68.75/- per sq. ft. per month was agreed and after completion it was to be @ ₹62.50/- per sq. ft. per month for upto 3 years from the date of completion of construction of the said unit or till the same is put on lease, whichever is earlier Further, it is mentioned that after the said commercial unit is put on lease, then payment of aforesaid committed return will come to an end and the buyer will start receiving lease rental in respect of the said commercial unit. In view of above discussion, it again reinforces the aspect of unconscionable contracts and it is stated that the Complainant is very much entitled to possession of the booked unit. Complainant therefore is entitled to relief sought i.e., possession of the unit with payment of interest as well as execution of conveyance deed as per provisions of the agreement.

V. Objection regarding applicability of the Banning of Unregulated Deposit Schemes Act, 2019

Respondent has taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondent argument is that since the Complainant is not an allottee rather is a depositor, does fall within the prohibitions provided in the BUDS Act.

Authority observes that the complainant squarely falls within the definition of 'allottee' under the RERA Act as already discussed. Without going into the merits under the BUDS Act, it is clear that the BUDS Act does not override the provisions of the RERA Act.

Respondent has so far denied the legitimate rights of the Complainant as are admissible to her in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016. However, it is to be considered that the Respondent in its reply has referred to Civil Writ Petition no. 26740 of 2022 titled as Vatika Ltd vs Union of India & Anr. which is pending before Hon'ble High Court of Punjab and Haryana, Chandigarh. Vide order dated 22.11.2023 passed in aforesaid Writ Petition, Hon'ble High Court has observed that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them.

Findings of this Authority on merits-

56. Examining the complaint on merits, complainant in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide BBA on 12.04.2013 for sale consideration of Rs 46,66,860/-. Against said sale consideration, as per the complainant

payment of Rs 49,08,360/- was made till date by him. It is again reiterated that no clause has been incorporated by respondent in said agreement towards timeline for handing over of possession of allotted unit. Authority observes that the builder buyer agreement has been executed between the parties. But in absence of specific clause of deemed date of possession in allotment letter as well as builder buyer agreement, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Real Estate Appellate Tribunal has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC** **titled as** **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the builder buyer agreement was executed on 12.04.2013. Accordingly, taking a period of 3 years from the date of agreement, i.e. **12.04.2013** as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to **12.04.2016**. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of the unit till date as no date was ever specified for handing over possession of unit in allotment letter as well as buyer agreement. Complainant has duly accepted such type of buyer agreement for the reason that complainant has invested her money for monetary gains which in this case is assured returns. Said returns were duly paid to complainant till October, 2016 and was stopped thereafter due to enactment of BUDS Act,2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose. Complainant herein is aggrieved due to the arbitrary acts of respondent, i.e., not handing over the possession. In this case respondent has not incorporated any specific clause for handing over of possession in the builder buyer agreement and rather accepted money only on the basis of assured return scheme. Complainant who has already paid total sale consideration got stuck with respondent without any date of handing over of possession w.r.t. unit booked. If we look at the intent of allotee-complainant, he has chosen to invest in a tangible property-showroom space not any open share market where there is no definite/precise mode of transaction to be carried out. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under ambit of RERA Act,2016. Investment in commercial property does not imply that complainant-allottee never ever wanted to own that property by perfecting the title in his name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit.

57. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take the benefit of his wrong (by not delivery possession of unit till date). By virtue of Section 18 of RERA Act,2016, the respondent is obligated to either refund the paid amount with interest to the allotee on its failure to complete or non-delivery of possession of unit in accordance with agreement/any other date specified therein and in case, where complainant intend to continue with the project then to pay interest for the delay caused in delivery of possession of unit till a valid offer is made to complainant. So, the contention of respondent that unit was never meant for possession and no loss of any kind is caused to complainant due to non-handing over of possession does not hold any merit and the complainant is unequivocally entitled to lawful physical possession of the subject unit together with

execution and registration of the conveyance deed in accordance with law.

58. At this juncture, it is also pertinent to note that the respondent obtained the Occupation Certificate in respect of Tower 'B' on 14.10.2016. However, despite obtaining the Occupation Certificate, the respondent has failed to make any valid and unconditional offer of physical possession to the complainant till date, even after the institution of the present complaint. This Authority would like to take a note on the conduct of the respondent in the present case.

59. Vide order dated 11.09.2025, this Authority directed the respondent to hand over actual physical possession of the subject unit and execute the conveyance deed in favour of the complainant on or before 11.11.2025. The said directions were neither complied with nor was any justifiable explanation furnished for such non-compliance. Consequently, when the matter was taken up on 11.12.2025, this Authority recorded that the respondent had persistently failed to comply with its lawful directions and, accordingly, deemed it appropriate to initiate proceedings under Section 63 of the Real Estate (Regulation and Development) Act, 2016 by issuing a show cause notice calling upon the respondent to explain as to why penalty should not be imposed for failure to comply with the directions of this Authority?

60. Pursuant thereto, a show cause notice dated 12.01.2026 was duly served upon the respondent. However, even on the subsequent date of hearing, i.e., 23.07.2026, no credible, satisfactory or legally sustainable justification was furnished for the continued non-compliance. The ld. counsel appearing on behalf of the respondent merely sought further accommodation and submitted that possession would be handed over and the conveyance deed would be executed at a later stage. Mere assurances, bereft of any concrete steps towards compliance, cannot be permitted to frustrate the implementation of the orders passed by this Authority.

61. The continued and deliberate disregard of the directions issued by this Authority reflects a conscious and persistent non-compliance with the statutory mandate under the Act. Such conduct not only undermines the efficacy of the regulatory framework envisaged under the Real Estate (Regulation and Development) Act, 2016 but also impedes this Authority from securing timely and effective redressal of the grievances of allottees. The respondent cannot be permitted to indefinitely delay compliance by repeatedly seeking adjournments while retaining both the possession of the unit and the consideration paid by the complainant.

62. Accordingly, this Authority is satisfied that the respondent has failed to comply with the lawful directions issued by this Authority without any

sufficient cause and is, therefore, liable for action under Section 63 of the Real Estate (Regulation and Development) Act, 2016.

> ***"63. Penalty for failure to comply with orders of Authority by promoter***
> *If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority."*

63. In view of the foregoing, a token penalty of ₹10,00,000/- is imposed upon the respondent under Section 63 of the Act to be deposited with the office registry by 30.09.2026. In case of non-deposit of penalty, Registry is further directed to initiate a suo motu complaint of the Act for recovery of the aforesaid penalty in accordance with law.

64. Further, it is established that the respondent is in contravention of section 11(4) (a) of the Act and accordingly, the complainant is entitled for delayed interest along with the offer of possession. Complainant however is also interested in getting the possession of the booked unit and does not wish to withdraw from the project.

65. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the apartment the allottee can also demand, and respondent

is liable to pay, delay interest for the entire period of delay caused at the rates prescribed.

66. It is pertinent to note that the respondent in its builder buyer agreement has not specified any provision for delay interest however, instead have offered assured returns. The object of assured returns is similar to that of delay interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016, as both provide interest on the amount paid by the allottee under certain circumstances. Therefore, the relief sought by the allottee is in substance, a claim for interest on account of the delay caused by the respondent. It is an admitted position that the Builder Buyer Agreement was executed between the parties in the year 2013 and that the entire consideration was paid by the Complainant to the Respondent. Despite the lapse of more than a decade, the complainant has neither been handed over possession of the unit nor has the conveyance deed been executed in its favour, and the assured returns contemplated between the parties have also not been duly paid. The allottee has been made to run pillar to post despite the fact that entire payment was made by him. Thus, the Respondent has retained the consideration paid by the Complainant without fully discharging its corresponding obligations. The Respondent has also failed to make

payment of the lease rentals in accordance with the terms agreed between the parties.

67. In the absence of any contractual stipulation specifically governing interest payable on account of such delay, the entitlement of the Complainant is required to be determined in accordance with the statutory mandate contained in Section 18 of the Act, and the applicable rate of interest shall accordingly be awarded as prescribed thereunder.

68. Moreover, the concept of awarding interest, in both the cases-be it possession or refund essentially remains same. The builder is burdened with direction to pay interest on the paid amount because he has ultimately failed to deliver the possession of booked unit within stipulated time. At this stage, the option of refund or possession are exercisable by the allottee. Fundamental logic behind awarding of interest in both the cases depicts that respondent had kept/utilised the money of allottee since booking and could not deliver as per the agreed terms. Hence, the interest on paid amount is ordered for that unauthorised/wrongful retain of paid amount. In a way, assured returns are also awarding of interest to the allottee on his paid amount on monthly basis. In support of this reliance is place upon order dated 03.02.2022 passed by this Authority in complaint no. 343/2021 namely "*Tanya Mahajan vs Vatika Limited*"

Relevant part of order is reproduced below for reference:-

"Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, complainants chose to make down payments and in return claim monthly assured returns. ***As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, complainant allottees would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.***

Till such time as a lawful offer of possession is made, complainants are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft. ***Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e. MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case."***

69. At the same time, keeping in view that a certain amount towards assured returns has already been paid to the Complainant, and also considering that the issue pertaining to assured returns is presently pending adjudication before the Hon'ble Punjab and Haryana High Court, this Authority deems it appropriate and reasonable that the amount already paid towards assured returns be deducted from the delay interest

otherwise payable to the Complainant, so as to avoid duplication of relief for the same period.

70. In the present case, the Respondent has admittedly not made any valid offer of possession to the Complainant till date. Accordingly, the Authority concludes that the Complainant is entitled to delay interest from the deemed date of possession, i.e. 12.04.2016, till the date on which a legally valid offer of possession is made to the Complainant, subject to adjustment of the assured returns already paid, as observed hereinabove.

71. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 23.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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"*

Sr. No.	Principal Amount	Deemed date of possession (12.04.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 23.07.2026
1.	₹1,00,000/-	12.04.2016	**₹ 1,11,107/-**
2.	₹45,66,860/-	12.04.2016	**₹ 50,74,094/-**
	Total= ₹46,66,860/-		Total= **₹51,85,201/-**
3.	Monthly interest		₹41,426/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns.			

72. Accordingly, the respondent is liable to pay the upfront delay interest of **₹51,85,201/-**to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹46,66,860/- monthly interest of **₹41,426/-** shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. Since, it is averred by the respondent that assured returns have been paid till October, 2016 but no such cogent proof is available on record with respect to the amount of assured returns. It has not been deducted by the authority. The respondent shall make the payment of upfront delay interest after deduction of paid amount of assured returns.

73. Further, the complainant has under reliefs (c) and (e) of the complaint has sought directions to the respondent to investigate the leasing of the complainant's unit and to pay lease rentals in accordance with the leasing arrangement contained in the Builder Buyer Agreement. However, it is pertinent to note that the jurisdiction of this Authority extends only to adjudicating violations of the provisions of the Act, the Rules and the Regulations framed thereunder.

74. The reliefs sought by the complainant regarding investigation into the leasing of the commercial unit and enforcement of the leasing arrangement or payment of lease rentals arise out of contractual

obligations between the parties and do not constitute matters falling within the regulatory jurisdiction of this Authority under the Act. Adjudication of such disputes would necessarily require examination of contractual rights and obligations relating to lease management, occupation by third parties, rental accounting and allied issues, which lie beyond the scope of proceedings under the Real Estate (Regulation and Development) Act, 2016. Accordingly, reliefs (c) and (e) sought by the complainant cannot be granted in the present proceedings.

75. Further, the complainant is seeking legal expenses of ₹21,00,000/- .In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors." (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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, the complainant is advised to approach the Adjudicating Officer for seeking the litigation charges.

H. DIRECTIONS OF THE AUTHORITY:

76. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Respondent is directed to hand over the legal and valid possession of the unit to the complainant. Respondent is further directed to get conveyance deed executed in favor of complainant within 90 days of valid offer of possession being made to complainant.

ii. Respondent is directed to pay the upfront delay interest of ₹51,85,201/-to the complainant towards delay already caused in handing over the possession as calculated in para 53 of this order to the complainant within 90 days from the date of uploading of this order. Further, on the entire amount of ₹46,66,860/-monthly interest of ₹41,426/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The respondent shall make the payment of delay interest after deduction of paid amount of assured returns which both parties may agree to with proof.

Accordingly, Complaint is **Disposed of**. File be consigned to the record room after uploading of order on the website of the Authority.

CHANDER SHEKHAR
[MEMBER]

DR .GEETA RATHEE SINGH
[MEMBER]

NADIM AKHTAR
[MEMBER]

PARNEET SINGH SACHDEV
[CHAIRMAN]