



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	585 of 2025
Date of filing:	07.05.2025
Date of first hearing:	10.07.2025
Date of decision:	01.10.2026

1. Ashmita Chadha,

W/o Sh. Haripreet Singh Chadha.

2. Kusum Chadha,

W/o Sh. Surinder Pal Singh Chadha.

Both R/o K-225, Lane W 12 B,

Western Avenue, Sainik Farms,

Pushpa Bhawan, S.O. South Delhi,

Delhi – 110062.

....COMPLAINANTS

VERSUS

Vatika Limited.

Unit No. A-002, INXT City Centre,

4th Floor, Block- A, Sector 83,

Vatika India Next,

Gurugram, Haryana -122012

....RESPONDENT

Complaint no.:	586 of 2025
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1. **Dilpreet Sahi,**
S/o Sh. S. Ranjit Singh Shahi
2. **Teresa R. Bedi,**
W/o Sh. Mohan Bedi.
Both R/o C-62, 2nd Floor,
Vipul World, Sector-48,
South City-II, Gurugram,
Haryana

....COMPLAINANTS

VERSUS

Vatika Limited.
Unit No. A-002, INXT City Centre,
4th Floor, Block- A, Sector 83,
Vatika India Next,
Gurugram, Haryana -122012

....RESPONDENT

CORAM:

Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh

Chairman
Member
Member

Present: - Mr. Neeraj Goel, Counsel for the complainants, in person
Ms. Vertika H. Singh, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as they involve similar issues and are related to same project of the respondent. This final order is being passed by taking complaint No. 585 of 2025 titled as "Ashmita Chadha & Kusum Chadha vs Vatika Limited" as the lead case.



2. Present lead complaint was filed on 07.05.2025 by the complainants 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

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details in complaint no 585 of 2025	Details in complaint no. 586 of 2025
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad	Commercial Building Vatika Mindscapes,

			Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.	1133 of 2006.
	Licensed Area	8.79 acres	8.79 acres
4.	Unit no.	520 B, 5 th Floor Tower- Tower- D	520 A, 5 th Floor Tower- D
5	Unit area	500 sq. ft.	500 sq.ft.
6.	Date of Allotment letter	04.09.2007	12.09.2007
7.	Date of builder buyer agreement	06.09.2007	06.09.2007
8.	Due date of offer of possession	01.08.2008 (As per BBA dated 06.09.2007)	01.08.2008 (As per BBA dated 06.09.2007)
9.	Possession clause	<i>Clause 6 – The complex shall be ready for possession by 1st August, 2008. The Developer shall issue a notice in writing to every Allottee for taking over possession. All the possessions, subject to the payment of entire consideration along with</i>	<i>Clause 6 – The complex shall be ready for possession by 1st August, 2008. The Developer shall issue a notice in writing to every Allottee for taking over possession. All the possessions,</i>

		any other dues payable by the Allottee to the Developer, shall be handed over by 1st August, 2008. In the event of Allottee's failure to take over the possession, The Developer shall charge Rs. 5/- per Sq. ft. super area per month from the Allottee till the date of such possession, in addition to the payment of monthly maintenance charges as described in para 11 of this agreement.	subject to the payment of entire consideration along with any other dues payable by the Allottee to the Developer, shall be handed over by 1st August, 2008. In the event of Allottee's failure to take over the possession, The Developer shall charge Rs. 5/- per Sq. ft. super area per month from the Allottee till the date of such possession, in addition to the payment of monthly maintenance charges as described in para 11 of this agreement.
10.	Basic sale consideration	₹ 16,00,000/-	₹ 15,00,000/-
11.	Amount paid by complainant	₹ 16,00,000/-	₹ 15,00,000/-
12.	Offer of possession	Not given.	Not given.
13.	Occupation certificate	19.05.2020	19.05.2020



B. FACTS OF THE LEAD COMPLAINT

3. Facts of the present complaint is that the respondent is a builder, promoter and colonizer engaged in construction activities.
4. It is averred that the Respondent, a real estate company, launched the commercial project "Vatika Infotech Park" at Sector-27, Faridabad in 2007 under the Licence No. 1133 of 2006 dated 22.09.2006 issued by DTCP, Haryana, Chandigarh.
5. It is the case of the complainants that they booked a commercial unit bearing Unit No.520B, admeasuring 500 sq. ft., situated on the 5th Floor, Block- C-II (now renamed as Tower- D), in the commercial project "Vatika Infotech", located at Sector-27-B, Faridabad, being developed and promoted by the respondent, for a total basic sale consideration of ₹16,00,000/-.
6. That the complainants initially made a payment of ₹1,00,000/- in favour of the respondent vide cheque no. 812665 dated 17.08.2007 and subsequent payments even before the allotment letter. Thereafter, an allotment letter dated 04.09.2007 was issued in their favour. Copy of the Allotment letter is annexed with the complaint as Annexure-C-2.
7. It is further averred that the complainants have paid an entire basic sale consideration amounting to ₹16,00,000/- which payments were duly



acknowledged by the respondent in the Builder Buyer Agreement executed between the parties.

8. That as per the allotment letter, it was assured that the said unit would be completed and ready for lease by 31.07.2008 and accordingly, complainants would be paid lease rentals at ₹52/- per sq. ft. of space w.e.f 01.08.2008.
9. Thereafter, on 06.09.2007, a BBA with respect to the said unit was executed between the complainants and the respondent. As per clause 1(b) of the said agreement, respondent undertook that since the Allottee has paid the entire sale consideration on signing of the agreement, accordingly, respondent will make a payment of Rs. 52/- per sq. ft. super area being sold, every calendar month to the complainant as a committed return during construction period upto 31.07.2008 or in the event of any delay in completion of the project, upto the date of handing over of completed unit to the complainant. Copy of the Builder Buyer Agreement is attached as Annexure C-3 with the complaint.
10. The project comprising Towers C, D and the restaurant was subsequently registered under RERA in 2017, and its name was changed from "Vatika Infotech Park" to "Vatika Mindscape."
11. The complainants have alleged that the respondent has failed to comply with any of the terms and conditions of the builder buyer agreement till



date as neither possession letter for handing over of the possession of the unit nor assured returns have been provided. The complainants have only received assured returns till October, 2017.

12.It is alleged that the complainants have been subjected to unfair trade practice as well as harassment in the guise of a biased allotment letter.

13.That the respondent by failing to hand over possession and by non-execution of the conveyance deed within a stipulated period has violated section 17, section 12 and 11 (4) of RERA Act,2016.

14.Further, it is contended that the complainants for the very first time in month of October 2023 received monthly statement of maintenance from the respondent stating that an outstanding amount of ₹2,74,691/- is due towards maintenance of the unit in question. However, the said statement did not provide the calculations pertaining to pending assured return or status of the unit. Therefore, in absence of handing over of possession of the unit respondent cannot charge maintenance from the complainants.

15.That the respondent has failed to disclose the expenses incurred in the upkeep of the project and whether they bear correlation with maintenance charge.

16.That the complainants kept on approaching the respondent for payment of monthly return to the complainants. However, it was of no avail. Further,

the respondent has failed to execute the conveyance deed as is required of from them under BBA.

17. Aggrieved from the same, the complainant has been left with no alternative but to approach this Authority by filing the present complaint.

C. RELIEFS SOUGHT

18. The Complainant has prayed for the following relief(s):

- a) A direction shall be given to the respondent company for payment of the outstanding monthly return of Rs. 26,000/- per month from November 2017 till date along with interest @11.10% per annum from November 2017 till its realization, may kindly be issued.
- b) A direction shall be given to the respondent company for payment of further monthly returns till date, pendente lite and in future in relation to the unit of the Complainants, may kindly be issued.
- c) A direction shall be given to the respondent company to execute Conveyance Deed in favour of the Complainants and convey a clear title in respect of Unit in question as per the agreed terms of the agreement to sell, may be issued.
- d) Maintenance charges levied by the respondent company vide monthly maintenance statement, may kindly be quashed for the grounds mentioned in the complaint.



- e) An order to pay the delay in possession charges i.e., 11.10 % per annum interest on the amount paid by the complainant i.e., Rs. 16,00,000/- as agreed in clauses of the agreement to sell, may kindly be issued.
- f) A direction to the respondent to refund of all legal cost of Rs. 1,00,000/- (One Lakh Only) incurred by the complainant including cost related to this Complaint; may kindly be issued.
- g) Issue of such other appropriate order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case and in the interest of Justice, Equity and Good Conscience.
- h) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 26.09.2025 pleading therein:

19. That the present complaint has been filed with an ulterior motive to harass and pressurize the answering respondents into acceding to the unreasonable demands of the Complainants. The Complainants are guilty of *suppressio veri and suggestio falsi* and have deliberately concealed and suppressed material facts within his knowledge, which, if disclosed, would demonstrate that no cause of action subsists in their favour against the

answering respondents. The Complainants have not approached this Ld. Authority with clean hands and on this ground alone the present complaint is liable to be dismissed.

20. That the instant complaint is liable to be dismissed being barred by limitation. It is settled law that if a specific law does not define a timeframe for particular application, section 137 applies and provide a general 3-year limit from the date of cause of action accrued. In present complaint there is no provision pertaining to limitation under the Act and hence complaint can be filed only within 3 years from the date of cause of action. Since the possession was supposed to be delivered in August 2008, therefore complaint could have been filed only till 31.07.2011.

21. Further, that the construction was complete and OC was also received on 19.05.2020. Therefore, the complaint is time barred and beyond limitation.

22. That the Respondent has averred that the present complaint is not maintainable, as the reliefs claimed by the Complainants do not fall within the jurisdiction of this Authority. It is contended that, upon enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act), assured/committed returns on deposit schemes have been prohibited. The Respondent Company, having not obtained registration from SEBI, cannot run or continue an assured return scheme. It is further contended that the BUDS Act read with the Companies Act, 2013 and the Companies



(Acceptance of Deposits) Rules, 2014, such assured/committed return and similar schemes fall within the definition of "Deposit" and have consequently become illegal and infructuous by operation of law. Accordingly, the relief claimed by the Complainants cannot survive. It is further submitted that the Respondents had already paid Rs. 27,19,000/- towards assured returns. Copy of assured returns computation sheet is annexed as Annexure R-2 with the reply.

23. That as per Section 3 of the BUDS Act, all Unregulated Deposit Schemes have been banned, and deposit takers such as builders cannot directly or indirectly promote, operate, advertise, solicit participation in, or accept deposits under such schemes. Thus, the Assured Return Schemes of builders/promoters are illegal and punishable under law. Further, under the SEBI Act, 1992, Collective Investment Schemes can only be operated by a registered person/company. Hence, the assured return scheme of the Respondent Company has become illegal by operation of law and cannot be continued.

24. That the issue regarding jurisdiction over complaints pertaining to assured return is pending before the Hon'ble High Court of Punjab and Haryana, while various regulatory authorities have already held that assured return is beyond the purview of the Real Estate (Regulation and Development) Act, 2016.



25. That the Hon'ble High Court of Punjab and Haryana, in CWP No. 26740 of 2022 titled "Vatika Limited Vs. Union of India & Ors.", took cognizance of the Banning of Unregulated Deposit Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for recovery against deposits, till the next date of hearing.

26. That since the Hon'ble High Court has taken cognizance and the State of Haryana has notified the appointment of a competent authority under the BUDS Act to decide whether such deposits are covered under the said Act, this Hon'ble Authority lacks jurisdiction to adjudicate matters falling within the purview of the special enactment, i.e. the BUDS Act, 2019. Copy of the order dated 22.11.2022 in CWP No. 26740 of 2022 and Notification dated 31.12.2021 are annexed with the written statement as Annexure R-3 (Colly.).

27. That the Hon'ble HREAT, while considering Appeal No. 647 of 2021 titled "Vatika Limited vs. Vinod Agarwal", deferred the matter as the jurisdiction of the Hon'ble Tribunal in matters pertaining to Assured Returns is under challenge before the Hon'ble High Court. Copies of the orders dated 14.07.2023 and 11.09.2023 passed by the Hon'ble Appellate Tribunal are annexed as Annexure R-4 (Colly).

28. That the Hon'ble HRERA, Gurugram, while adjudicating Complaint No. 729 of 2023 titled "Divya Grover Vs. Vatika Ltd.", decided on 05.07.2024,

held that the issue of assured return is merely a contractual obligation but in the absence of any violation of the provisions of the Act, 2016, the complaint is not maintainable. It was further held that assured return does not fall within the ambit of delayed possession charges under Section 18 of the Act, 2016, and is neither defined under the Act, 2016 nor the Rules, 2017. Secondly, the issue of assured return on the basis of which the present complaint has been filed by the complainants is not in the nature of the delayed possession charges as covered under section 18 of the Act, 2016. The assured return was being paid by the respondent to the complainants much before the due date of possession which clearly shows the complainants have invested his money to get return on monthly basis which is merely a commercial transaction between them. Copy of order dated 05.07.2024 is annexed as Annexure R-5.

29. That the Hon'ble UPREAT, in Appeal No. 21 of 2022 titled "Meena Gupta Vs. One Place Infrastructures Pvt. Ltd.", held that the assured return or committed charges are independent commercial arrangements between the parties which are sometimes offered by a promoter/developer to attract buyers/investors. Therefore, issue of assured return does not fall within the ambit of the Act, 2016 and dismissed the appeal filed by the appellant/allottee. A copy of the order dated 29.09.2022 passed by the Hon'ble Uttar Pradesh Real Estate Appellate Tribunal in Appeal No. 21 of 2022 is annexed as Annexure R-6.

30. That the Ld. PBRERA, in the matter of "Lalita Chauhan Vs. Gupta Builders and Promoters Pvt. Ltd.", has held that the concept of assured return has no place under the Real Estate (Regulation and Development) Act, 2016. A copy of the order dated 06.10.2021 passed by the Punjab Real Estate Regulatory Authority in RERA/GC No. 0265 of 2021 is annexed herewith as Annexure R-7.

31. That this Ld. Authority not being a Civil Court could not assert to itself the jurisdiction to grant specific performance of the 'Assured return' which is a relief under the Specific Performance Act, 1963. That the complainants are praying for the relief of 'Assured return' which is beyond the jurisdiction that this Ld. Authority has been dressed with.

32. That it is submitted by the respondent that the Hon'ble J&K HC, while considering the issue of framing of charges in an FIR relating to non-payment of Assured Return, discussed the assured return liability and, in Para 24, held as follows:

"24. In view of the foregoing discussion and analysis of the allegations made in the impugned complaints, it is clear that the transaction between the petitioners and respondent is purely of civil nature and it has been given a criminal colour by the respondent/complainant. Thus, this is a fit case where this Court should exercise its powers under Section 482 of Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice."

33. That the Rajya Sabha Parliamentary Committee on Subordinate Legislation, in its Report No. 246 presented on 24.03.2021, considered the objectives of the BUDS Act, 2019, particularly the need for a special and comprehensive law to curb illicit deposit schemes. The Committee also emphasized the need to clarify which deposits constitute legitimate business transactions falling within the "normal course of business". The Committee further expressed concern over the lax implementation of the Act by several States/UTs, particularly their failure to notify the Designated Courts and their respective jurisdictions.
34. That the commercial unit of the Complainants is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the Agreement, the said commercial space shall be deemed to be legally possessed by the Complainant. Hence, the commercial space booked by the Complainant is not meant for physical possession.
35. That in Brihmjeet & Ors vs. Ms/ Landmark Apartments Pvt. Ltd. (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of Assured Return and hence the present complaint deserves to be dismissed at the very outset.



36. Further, in the matter of Bharam Singh & Ors. vs. Venetian Projects LP (Complaint No. 175 of 2018), the Hon'ble HRERA Gurugram upheld its earlier decision of not entertaining matters relating to assured returns.
37. Further, in Jasjit Kaur Grewal vs. M/s MVL Ltd. (Complaint No. 58 of 2018), Hon'ble HRERA Gurugram took a similar view and declined to entertain matters relating to a 'collective investment scheme' without the approval of SEBI.
38. That the issues raised relate to the 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. Further, the issues raised in complaint require elaborate evidence to be led by the parties and cannot be decided in summary proceedings. Hence, the present complaint deserves to be dismissed being not maintainable.
39. That the terms of agreement cannot be challenged by the complainants because it had willingly signed the same without any coercion or undue influence and acted according to it.
40. That it is submitted that the Complainants herein have failed to make out any case whatsoever either of deficiency in service or even otherwise as provided for under the Act to warrant any consideration from this Hon'ble Authority. The averments/contentions made in the present complaint are false, misleading and deserve to be dismissed with exemplary costs.



41. That the Complainants have no cause of action in their favour and against the answering Respondents as the present complaint has been filed on false, frivolous and vexatious grounds.
42. That this Hon'ble Authority cannot adjudicate upon the matter where the prima facie prayers are in the shape of modification or rewriting of the clauses of the agreement. In the instant complaint, the complainants are seeking additional benefits beyond the agreement. The complainants are virtually inviting this Hon'ble Authority to assume the power conferred on the Fora under the Criminal Court/ or under the Civil Court as the pleas, regarding fraud have been raised. Therefore, ex- facie, this Hon'ble Authority does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.
43. That the terms of the agreement are binding between the respective parties. It is a settled law that 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 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 thereof;
44. That Respondents have acted as per the terms and conditions of Agreement. The Complainants were aware about terms and conditions of the allotment letter and consequences thereof.

45. 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 19.05.2020 issued to Block 'D' and intimation dated 12.03.2018 regarding completion of construction work of Block D sent to the complainants are annexed as Annexure R-8 with the reply.
46. That the Complainants had invested their money in an Assured Return and Leasing Scheme of the Respondent Company and as per Clause- A(2)(b) of the Builder Buyer Agreement dated 06.09.2007(Annexure C-3), it was agreed between the parties that the complainants shall receive assured return of Rs.52/- per sq. ft. per month on super area being sold on receiving of 100% of basic sale consideration and the said assured return will be paid upto 31.07.2008 or in the event of any delay in completion of the project upto the date of handing over of completed unit to the allottee.
47. Vide Clause P, it was agreed between the parties that on completion of the project, the space would be let out by the developer at his own cost to a bonafide lessee at a minimum rental of Rs.52/- per sq. ft. per month less income tax at source. It was further agreed that in the event of the developer being unable to finalize the lease arrangement, it shall pay the minimum rent at Rs.52/- per sq. ft. to the allottee at Minimum Guaranteed Rent for



the first 36 months after the date of the completion of the project or till the date the said unit / space is put on lease, whichever is earlier.

48. It is pertinent to mention that the construction of the said building is complete and the Complainants had been duly intimated regarding the same. The Complainants had invested their money in an Assured Return Scheme of the Respondent Company and in compliance of the said arrangement between parties, the Respondent-Company had already made the payment of assured return till September, 2018.
49. That it was further intimated that the company was in active discussion with number of prospective tenants for the property and expected to lease out area in the building in due course.
50. That the complainants had opted for Leasing Arrangement as per Clause P of the Buyer Agreement. It was agreed upon by the complainants vide Clause P (c) that the unit shall be deemed to have been legally possessed by the allottee. Hence, the said unit was never meant to be physically handed over to the complainants as the said unit was supposed to be leased out by the developer.
51. 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.

52. 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.

53. Respondent has further taken a plea that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainants 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.



54. That in "Bihar State Electricity Board, Patna & Ors. Vs. Green Rubber Industries & Ors.", AIR 1990 SC 699, it was reiterated that a person who signs a document containing contractual terms is normally bound by such terms, even if he has not read them or is ignorant of their precise legal effect.
55. It is averred by the respondent that the quantum on interest and the compensation as being claimed by the complainants, is bereft of any evidence much less than any averment that there has been any disproportionate gain or unfair advantage as a result of the alleged default.
56. That the complainants have not impleaded Enviro Integrated Facility Services Pvt Ltd. which has charged complainants for the maintenance.
57. Respondent has contended that the complainant who had to come forward for getting the sale deed registered. The complainant had to deposit the stamp duty for execution of conveyance deed. However, the complainant never approached the respondent for execution of sale deed despite intimation of completion of construction work vide letter dated 12.03.2018. Thereafter, even the OC was issued by DCP, Haryana on 19.5.2020.
58. It is averred that the complainants with full knowledge and understanding of the terms and conditions voluntarily entered into the Builder Buyer Agreement which specifically contained the clause regarding lease of the unit.



59. The Complainants are barred from raising any grievance against the terms and conditions of the agreement as such a belated stage. The respondent has already completed the said Tower D as per the commitment and many of the units already stand leased out. It is reiterated that the said unit was supposed to be let-out and not to be handed over to the complainants as per the terms and conditions of the Builder Buyer Agreement.

60. In view of the aforesaid, it is prayed by the respondent that the present complaint be dismissed in the interest of justice.

E. ADDITIONAL DOCUMENTS PLACED ON RECORD BY PARTIES

Ld. counsel for the complainant has further submitted rejoinder dated 12.08.2026 wherein the Complainant has primarily denied the averments made by the Respondent and reiterated the contents of the complaint.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

61. Today, learned counsels for respondent and complainant appeared and reiterated their written submissions.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainants are entitled to the reliefs so sought or not?



H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

62. 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. Objection raised by the respondent with respect to the complaint being barred by limitation.

Respondent has taken an objection that the present complaint is grossly barred by limitation. It is contended by the respondent that the possession was to be delivered in 2008 and Occupation certificate with respect to the said tower was issued in 2020. The complainants have approached the Authority in 2025, i.e, after 4 years of obtaining occupation certificate. In this regard Authority places reliance upon the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. Additionally, the promoter has till date failed to fulfil its obligations, which herein this case is handing over of physical possession and execution of conveyance deed



because of which the cause of action is re-occurring. Therefore, this objection of the respondent is rejected.

II. Objection raised by the respondent with respect to agreement executed prior to coming into force of the Act.

The respondent has raised an objection that the complainants are 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 complainants are primarily seeking possession of the allotted unit, execution of conveyance deed and 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.

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

The next objection raised by the respondent is that the complainants are bound by the terms of the Builder Buyer Agreement, as the same was voluntarily executed without any coercion or undue influence. It is further contended that this Authority has no power to modify or rewrite the Agreement or to grant any relief contrary to its terms. The respondent has particularly relied upon the leasing arrangement under the Agreement and the provision regarding deemed legal possession of the commercial unit to contend that physical possession was never contemplated and no grievance regarding delay in possession can be raised.

The said contention is not tenable. The complainants are neither seeking modification of the Builder Buyer Agreement nor seeking to impose any new contractual obligation upon the respondent. The relief claimed is based on the rights and obligations arising from the Agreement itself read with the statutory remedies available under the Act of 2016. The fact that

the Agreement was voluntarily executed does not prevent this Authority from examining its terms and their legal effect. The Agreement has to be read as a whole and not by relying only upon those clauses which are favourable to the respondent.

In this regard, *Clause 6 of the Builder Buyer Agreement dated 06.09.2007 specifically provides that the complex shall be ready for possession by 01.08.2008 and that possession shall be handed over to the allottee by the said date, subject to payment of the entire consideration and other dues.* Thus, the Agreement itself provides a specific timeline for completion and handing over of possession. *The allotment letter dated 04.09.2007 had also contemplated that the unit would be completed and ready for lease by 31.07.2008.* However, the Builder Buyer Agreement, being the subsequent document governing the rights and obligations of the parties, specifically provides the date for readiness and handing over of possession. Accordingly, Clause 6 assumes significance for determining the contractual timeline agreed between the parties.

It is also relevant to consider Clauses A(2)(b) and (c) of the Agreement. These clauses provide for payment of assured return of Rs.52/- per sq. ft. per month during the construction period and, in case of delay in completion of the project, until the date of handing over of the completed unit to the allottee. Thus, the Agreement itself recognizes that completion

and handing over of the unit are distinct events and specifically provides for continuation of assured return in case of delay.

The respondent on the other hand, relies upon Clause P and the provision regarding deemed legal possession to contend that the unit was never intended to be physically handed over to the complainant. However, the said provision cannot be read in isolation. The leasing arrangement may govern the manner in which the commercial unit was to be dealt with after completion but it cannot by itself nullify the specific contractual stipulation regarding completion and handing over of the unit, particularly when the Agreement itself provides for assured return until such handing over in the event of delay.

The respondent cannot selectively rely upon one part of the Agreement while ignoring the corresponding obligations undertaken under the same Agreement. The issue is not whether the parties are bound by the Agreement but what the Agreement, when read as a whole actually requires the respondent to do. Further, contractual terms operate subject to the provisions of law and statutory remedies cannot be defeated merely by placing a particular interpretation on the contractual terms.

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)*. 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.

Accordingly, the respondent's contention that the complainants are bound by every interpretation sought to be placed by the respondent upon the Builder Buyer Agreement merely because it was voluntarily executed is misconceived. The Agreement is undoubtedly relevant for determining the rights and obligations of the parties, but its provisions have to be read as a whole and in accordance with the statutory framework under the Act, 2016. The respondent cannot rely upon the leasing arrangement or the concept of deemed possession in isolation to defeat the complainant's statutory rights, particularly when the Agreement itself contains a specific stipulation regarding the time for completion and handing over of the unit.

III. Objection of the respondent with respect to complainants being speculative investors and not an allottees



The respondent has further contended that the complainants are merely speculative investors who invested in the project with the sole objective of earning committed returns and lease rentals and 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 a committed return and leasing arrangement, under which the respondent had paid returns till September, 2018. Additionally, as per the respondent, the complainants 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. 520 B situated on the 5th Floor of Tower - D in the project Vatika Mindscapes, to the complainants for a total basic sale consideration of ₹16,00,000/-. 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 complainants 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 monthly returns and leasing arrangements. However, the existence of such clauses does not alter the legal character of the transaction. The assured/ committed 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 clauses of which are discussed in detail in following



paragraphs. The agreement is not confined merely to payment of committed 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 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 complainants 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 complainants were never allottees but merely investors.



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 complainants squarely fall 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 complainants are merely speculative investor is, therefore, rejected.

ii. Nature Of Builder Buyer Agreement-

Further, for adjudication of present complaint Authority would like to refer to the agreement dated 06.09.2007 executed between both the parties.

Clause-A (1) of the agreement states unit allotted to the complainants is properly identified as Unit no 520 B, situated on the 5th floor of Block C-II of said commercial complex. In Clause-2 (b) of the agreement, 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, Complainants herein chose the option of committed return plans. An option of down payment plan was also available but Complainants did not opt for the same.

Clause-8, particularly clause 8(a), specifies the area deliverable to Complainants, including definitions of the super built- up area, carpet area and common area have 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- A (2)(b) however, provides for payment of committed return plan. From a reading of this clause, 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 entire payment and in return claim committed 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, Complainants would be entitled to return on their up-front payments made which in this case has been named committed monthly returns. Description of which is given in



clause- A (2) (c). This view is fortified and is in consonance with the decision of this Authority in complaint no. 343 of 2021 titled as "*Tanya Mahajan vs Vatika Limited*".

Before completion of the project, i.e., before 01.08.2008 developer undertook to make payment by way of committed return during construction whereby proper dates of instalments are also specified. Further, it is expressly mentioned that the committed return would be paid by the developer upto 31.07.2008 or in the event of delay in completion of the project upto the date of handing over of completed unit to the Allottee. Further, clause (P) (h) of the said agreement provides for return on completion of the project and letting out of space whereby as per the terms of the agreement, upon completion of the project, the Developer was required to let out the said space to a bona fide lessee at a minimum rental of Rs. 52/- per sq. ft. per month, less applicable tax deducted at source. In case the Developer was unable to finalise the lease arrangement, it was obligated to pay the Allottee the said amount of Rs. 52/- per sq. ft. per month as Minimum Guaranteed Rent for the first 36 months from the date of completion of the project or until the Unit/space was leased out, whichever was earlier. The agreement further stipulated that where the actual lease rent was below Rs. 52/- per sq. ft. per month, the Developer would compensate the Allottee for the shortfall in the prescribed manner,



whereas, in the event of the lease rent exceeding the committed rental, the Allottee would be entitled to the benefit of the enhanced rental upon payment of the additional sale consideration as stipulated under the agreement.

In view of the aforesaid discussion, it is evident that the agreement executed between the parties was in the nature of a builder-buyer agreement under which the complainants had booked the identified commercial unit with the ultimate object of obtaining the unit upon completion of the project. The committed return arrangement was only a mechanism contemplated under the agreement during the period of construction and did not alter the fundamental nature of the transaction or the complainants right to the booked unit. The agreement further contemplated that upon completion of the project, the unit would be put to lease and the complainants would be entitled to the minimum guaranteed return in terms thereof. Thus, the contractual arrangement, when read as a whole clearly establishes the complainant entitlement to the booked unit and the corresponding obligation of the respondent to complete the transaction by handing over possession and executing the conveyance deed. Accordingly, the complainants are entitled to possession of the booked unit along with payment of the delay interest and execution of the conveyance deed in their favour in accordance with law.



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 the complainants are not allottees rather are depositors and fall within the prohibitions provided in the BUDS Act.

Authority observes that the complainants 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 denied legitimate rights of the Complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016. However, it is also 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-

63.Examining the complaint on merits, complainants in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide Allotment letter dated 04.09.2007 and BBA on 06.09.2007 for sale consideration of ₹16,00,000/-. Against said sale consideration, as per the complainants, entire payment of ₹16,00,000/- was made till date by them. Clause 6 of the Builder Buyer Agreement dated 06.09.2007 specifically provides that the complex shall be ready for possession by **01.08.2008** and that possession shall be handed over to the allottees by the said date, subject to payment of the entire consideration and other dues. Thus, the Agreement itself provides a specific timeline for completion and handing over of possession. Accordingly, Clause 6 assumes significance for determining the contractual timeline agreed between the parties.

64.In present complaint, the builder buyer agreement was executed on **06.09.2007**. Accordingly, the deemed date of possession as stated in the Builder Buyer Agreement is **01.08.2008**. 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 complainants due to non-handing over of possession of



the unit till date. Complainants have duly accepted such type of buyer agreement for the reason that complainants have invested their money for monetary gains which in this case is assured returns. Said returns were duly paid to complainants till September, 2018 and was stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainants are 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 complainants have purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose. Complainants herein are aggrieved due to non-hand over of the possession. Complainants who have already paid total sale consideration got stuck with respondent. If we look at the intent of allottee-complainants, they have chosen to invest in a tangible property, i.e., 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 complainants 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.



65. 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 non-delivery of 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 allottee 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 complainants 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 complainants due to non-handing over of possession does not hold any merit and the complainants are unequivocally entitled to lawful physical possession of the subject unit together with execution and registration of the conveyance deed in accordance with law.

66. At this juncture, it is also pertinent to note that the respondent obtained the Occupation Certificate in respect of Tower "D" on 19.05.2020. However, despite obtaining the Occupation Certificate, the respondent has failed to make any valid offer of physical possession to the complainants till date, even after the institution of the present complaint.

67. Further, it is established that the respondent is in contravention of section 11(4) (a) of the Act and accordingly, the complainants are entitled for delayed interest along with the offer of possession. Complainants however



are also interested in getting the possession of the booked unit and do not wish to withdraw from the project.

68. 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 allottees can also demand, and respondent is liable to pay, delay interest for the entire period of delay caused at the rates prescribed.

69. 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 committed returns. The object of committed 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 2007 and that the entire consideration was paid by the Complainants to the Respondent. Despite the lapse of more than a decade, the complainants have neither been handed over possession of the unit nor has the conveyance deed been executed in their favour, and the committed returns contemplated between the parties have also not been duly paid. The allottee has been made to run from pillar to post despite the fact that entire payment was made by him.



Thus, the Respondent has retained the consideration paid by the Complainants without fully discharging its corresponding obligations.

70. In the absence of any contractual stipulation specifically governing interest payable on account of such delay, the entitlements of the Complainants are 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.

71. 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 allottees. 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, committed 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."

72. At the same time, keeping in view that a certain amount towards committed returns have already been paid to the Complainants, and also considering that the issue pertaining to assured/ committed 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 committed returns be deducted from the delay interest otherwise payable to the Complainants, so as to avoid duplication of relief for the same period.

73. In the present case, the Respondent has admittedly not made any valid offer of possession to the Complainants till date. Accordingly, the Authority



concludes that the Complainants are entitled to delay interest from the deemed date of possession, i.e. 01.08.2008, till the date on which a legally valid offer of possession is made to the Complainants, subject to adjustment of the assured returns already paid, as observed hereinabove.

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

(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

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. 01.10.2026 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"

Complaint no. 585 of 2025

Sr. No.	Principal Amount	Deemed date of possession (01.08.2008) or date of payment whichever is later	Interest Accrued till the date of order i.e., 01.10.2026
1.	₹16,00,000/-	01.08.2008	₹31,41,646/-
	Total= 16,00,000/-		Total= ₹31,41,646/-
4.	Monthly interest		₹14,203 /-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹27,19,000/-			

Complaint no. 586 of 2025

Sr. No.	Principal Amount	Deemed date of possession (01.08.2008) or date of payment whichever is later	Interest Accrued till the date of order i.e., 01.10.2026
1.	₹15,00,000	01.08.2008	₹29,45,293/-
	Total= 15,00,000/-		Total= ₹29,45,293/-
4.	Monthly interest		₹13,315/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹27,04,000/-			



75. Accordingly, in complaint no. 585 of 2025, the respondent is liable to pay the upfront delay interest of ₹31,41,646/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹16,00,000/- monthly interest of ₹14,203/- 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 upfront delay interest after deduction of paid amount of assured returns, i.e, ₹27,19,000/-

76. In complaint no. 586 of 2025, the respondent is liable to pay the upfront delay interest of ₹29,45,293/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹15,00,000/- monthly interest of ₹13,315/- 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 upfront delay interest after deduction of paid amount of assured returns, i.e, ₹27,04,000/-

77. In view of the relief sought regarding committed returns, detailed observations in this regard have been recorded in paragraphs 70 to 73 and are not repeated here for sake of brevity.

78. Additionally, complainants have also sought relief for quashing maintenance charges levied by the respondent company.



At this stage, it is important to examine the relevant clause of the agreement in order to adjudicate the issues involved in this case. Said clause is reproduced below for reference:-

"11. The upkeep, maintenance and management of the building and of common areas, maintenance, operation and up keep of plant and machinery shall be organized by the developer or its nominated Maintenance Agency. All such costs, expenses, accruals to or provisions shall be borne and paid by the allottee to the extent of its share in the said building. The charges so fixed and payable every month shall be apportioned by the Developer to 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 these charges are in the range of Rs. 12/- 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 / Deptt. / Maintenance company and shall be paid by the Allottee as stipulated herein.

*12. The Allottee shall deposit an interest free Security Deposit of Rs.- per sq. ft. Super area with the Developer **at the time of taking over possession of the Unit.***

13. All expenses of consumable nature shall be billed every month as per actual consumption to each Allottee and the same shall become payable within 7 days of its intimation."

79. Perusal of above clauses reveal that the respondent has included the above-mentioned clause in its BBA. In the present case, the complainants have alleged that a maintenance demand dated 2023 was raised upon them for an outstanding amount of Rs. 2,74,691/-. It is their contention that no possession of the unit was handed over to them and that the demand did not contain the requisite calculation or particulars explaining the basis thereof. The respondent, on the other hand has contended that the maintenance was being charged by its Maintenance Agency, namely,



Enviro Integrated Facility Services Pvt. Ltd., and that the complainants had themselves failed to approach the respondent for execution of the conveyance deed despite intimation regarding completion of construction.

80. This Authority is of the view that the liability towards maintenance charges has to be examined in the context of the contractual obligations relating to possession of the unit and execution of the conveyance deed. Clause 11 of the BBA provides for payment of maintenance charges by the allottee towards upkeep and maintenance of the building and common areas. However, Clause 12 specifically contemplates payment of the interest-free security deposit **“at the time of taking over possession of the Unit”**, thereby indicating that the contractual obligations relating to possession were to precede the corresponding obligations of the allottee arising upon taking over the unit. In the present case, admittedly physical possession of the unit was never handed over to the complainants and the conveyance deed in respect of the unit was also not executed in their favour. It is pertinent to note that the respondent has relied upon its communication dated 12.03.2018 intimating completion of construction and has contended that the complainants failed to approach it for execution of the sale deed. However, mere intimation regarding completion of construction cannot be equated with actual handing over of possession of the unit or completion of the conveyance formalities.



81. The respondent being the promoter was required to take the necessary steps for completion of the transaction, including execution of the conveyance deed and to establish that the unit was duly offered and handed over. In the absence of actual handing over of possession and execution of the conveyance deed, the respondent cannot merely on the basis of a unilateral demand fasten upon the complainants the recurring liability towards maintenance as though they had taken over the unit.

Further, Clause 11 provides that the maintenance charges are to be billed to the allottee every month by the Developer/Maintenance Agency. Such provision cannot be read in isolation from the other contractual obligations of the parties. The maintenance liability necessarily presupposes that the unit has reached the stage where the allottee is placed in possession and the corresponding obligations contemplated under the agreement have arisen. In the present case, neither possession of the unit nor execution of the conveyance deed took place. Moreover, no separate maintenance arrangement was entered into between the parties specifying the commencement of maintenance liability and the particulars of the Maintenance Agency. Therefore, the respondent has failed to demonstrate a valid basis for commencing the maintenance liability against the complainants from the period for which the impugned demand has been raised.



82. Accordingly, this Authority is of the considered view that the respondent ought to have first completed the contractual formalities relating to the unit, including handing over possession and execution of the conveyance deed, before seeking to enforce recurring charges against the complainants. The complainants cannot be made liable for maintenance charges for a period during which possession of the unit was admittedly not handed over to them and the conveyance deed was also not executed in their favour. It is not the case that allottees are not at all liable to pay the maintenance charges. But proper line of action has to be followed first before holding the other person liable for making any payment. In view of aforesaid observations, Authority concludes that the demands issued to complainants for maintenance charges is arbitrary/unjustified and is therefore quashed.

83. Further, the complainants have sought cost of litigation. 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 complainants are advised to approach the Adjudicating Officer for seeking the litigation charges.

I. DIRECTIONS OF THE AUTHORITY:

84. 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 units to the respective complainants. Respondent is further directed to get conveyance deed executed in favor of complainants within 90 days of valid offer of possession being made to complainants.
- ii. Respondent is directed to pay the upfront delay interest to the respective complainants towards delay already caused in handing over the possession as calculated/mentioned in tables mentioned in para 74-76 of this order after deducting paid amount of assured/committed returns within 90 days from the date of uploading of this order. Further, on the entire amount of monthly interest as calculated in aforementioned paras shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate.

Accordingly, Complaints are **Disposed of.**



Files be consigned to the record room after uploading of order on the website of the Authority.



DR .GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]



PARNEET SINGH SACHDEV
[CHAIRMAN]