



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	682 of 2025
Date of filing:	18.06.2025
Date of first hearing:	07.08.2025
Date of decision:	01.10.2026

1. **Sangeeta Nanda,**
W/o Sh. Kapil Nanda,
2. **Juhi Nanda,**
D/o Kapil Nanda,
Both R/o D-51 A, East of Kailash,
Delhi – 110065.

....COMPLAINANTS

VERSUS

Vatika Limited.
Vatika Triangle, 4th Floor, Sushant Lok, PH-1,
Block-A, Mehrauli-Gurugram Road,
Gurugram-122002.

....RESPONDENT

Complaint no.:	683 of 2025
Date of filing:	18.06.2025
Date of first hearing:	07.08.2025
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W

Poonam Nanda,
D/o Sh. PP Suri,
R/O D51-A, East Of Kailash,
Delhi - 110065,

....COMPLAINANT

VERSUS

Vatika Limited.
Vatika Triangle, 4th Floor, Sushant Lok, PH-1,
Block-A, Mehrauli-Gurugram Road,
Gurugram-122002.

....RESPONDENT

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

Present: - Mr. Sagar Chawla, Counsel for the complainants, through VC.
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. 682 of 2025 titled as "Sangeeta Nanda and Juhi Nanda vs Vatika Limited" as the lead case.
2. Present lead complaint was filed on 07.08.2025 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 682 of 2025	Details in complaint no. 683 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.
4.	Licensed Area	8.79 acres	8.79 acres
5.	Unit no.	329, 3 rd Floor Tower-D,	105-A, 1 st floor, Tower- C



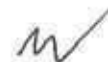
6.	Unit area	500 sq. ft.	500 sq.ft.
7.	Date of Allotment letter	20.11.2014	06.12.2013
8.	Date of builder buyer agreement	26.11.2014	06.12.2013
9.	Due date of offer of possession	26.11.2018 (As per BBA dated 26.11.2014)	06.12.2017(As per BBA dated 06.12.2013)
10.	Possession clause	<i>Clause 13- the completion of the said Commercial Unit/ Building Block/ Commercial Complex is delayed by reason of inability to procure or general shortage of steel and/or cement and/or other building materials or water supply or electric power or labour, equipment, facilities, materials or supplies or failure of transportation of building materials or due to slow down; strike or lockout or due to disputes between the Developer and its collaborators or with the construction agency(ies) engaged by the Developer and/or because of any civil commotion, or by reason of war, or enemy action, or</i>	<i>Clause 13- the completion of the said Commercial Unit/ Building Block/ Commercial Complex is delayed by reason of inability to procure or general shortage of steel and/or cement and/or other building materials or water supply or electric power or labour, equipment, facilities, materials or supplies or failure of transportation of building materials or due to slow down; strike or lockout or due to disputes between the Developer and its collaborators or with the construction agency(ies) engaged by the Developer and/or because of any civil commotion, or by reason of war, or enemy action, or</i>



	earthquake, or terrorist action, or any Act of God, or it non-delivery of possession is as a result of any law, notice, order, rule or notification of the Government and or any other Public or Competent Authority or Court of Law, or due to delay/ refusal for sanction of building/ zoning plans/ grant of completion/ occupation certificate by any competent authority or due to delay in any clearance or for any other reason beyond the control of the Developer, then in any of the aforesaid events the Developer shall be entitled to a reasonable extension of time in completion of the said Commercial Unit/ Building Block/ Commercial Complex and the time period shall correspondingly stand extended for the said purpose. The Developer as a result of such a contingency arising reserve the right to alter or vary the terms and conditions of sale or In the circumstance, beyond the control of	earthquake, or terrorist action, or any Act of God, or it non-delivery of possession is as a result of any law, notice, order, rule or notification of the Government and or any other Public or Competent Authority or Court of Law, or due to delay/ refusal for sanction of building/ zoning plans/ grant of completion/ occupation certificate by any competent authority or due to delay in any clearance or for any other reason beyond the control of the Developer, then in any of the aforesaid events the Developer shall be entitled to a reasonable extension of time in completion of the said Commercial Unit/ Building Block/ Commercial Complex and the time period shall correspondingly stand extended for the said purpose. The Developer as a result of such a contingency arising reserve the right to alter or vary the terms and conditions of sale or In
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	the Developer so warrant, the Developer may suspend the project for such period as it may consider expedient and no compensation of any nature whatsoever shall be claimed by the Buyer for the period of extension of time for completion of the project In consequence of the Developer abandoning the project, the Developer's liability shall be limited to the extent of refund of the amount paid by the Buyer without any interest or compensation whatsoever, subject to the Buyer not having boon in default and subject to deduction of interest paid/ payable and any other non-refundable charges. Subject to the aforesaid and subject to timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the developer, the	the circumstance, beyond the control of the Developer so warrant, the Developer may suspend the project for such period as it may consider expedient and no compensation of any nature whatsoever shall be claimed by the Buyer for the period of extension of time for completion of the project In consequence of the Developer abandoning the project, the Developer's liability shall be limited to the extent of refund of the amount paid by the Buyer without any interest or compensation whatsoever, subject to the Buyer not having boon in default and subject to deduction of interest paid/ payable and any other non-refundable charges. Subject to the aforesaid and subject to timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or
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		<i>developer contemplates to complete construction of the said commercial unit within 48 months of execution of this Agreement.</i>	<i>as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of execution of this Agreement.</i>
11.	Basic sale consideration	₹30,86,500/-	₹32,50,000/-
12.	Amount paid by complainants	₹32,00,948/-	₹33,70,510/-
13.	Offer of possession	Not given.	Not given.
14.	Occupation certificate	19.05.2020	11.12.2025

B. FACTS OF THE LEAD COMPLAINT

3. Facts of the present complaint is that the Respondent is a builder, promoter and colonizer engaged in the development and construction of real estate projects.
4. It is averred by the complainants that the Respondent launched a commercial project namely "Vatika Mindscapes", admeasuring approximately 8.793 acres, which was initially represented to the Complainants as being situated in Gurgaon, but was subsequently



informed to be located at Sector-27-B, Village Sarai Khawaja, Tehsil Badkhal, District Faridabad, Haryana.

5. It is the case of the Complainants that representatives of the Respondent approached them and represented the Project through brochures, marketing material, advertisements and other promotional material, making various representations regarding the amenities, facilities and other features proposed to be provided in the Project.
6. It is further averred that, relying upon the aforesaid representations of the Respondent, the Complainants booked a commercial unit bearing Unit No. 322, admeasuring 500 sq. ft. super area, situated on the 3rd Floor of Block-C of the said project.
7. That on 16.06.2014, the Complainants were induced to sign an application for allotment and paid an amount of ₹2,00,000/- towards booking amount. Thereafter, on 20.11.2014, a confirmation of allotment of the commercial Unit was issued by the Respondent, wherein the complete address and details of the Project were provided. Copies of the allotment letter and confirmation of allotment have been annexed with the complaint as Annexures C-2 and C-3, respectively.
8. Thereafter, a Builder Buyer Agreement dated 26.11.2014 was executed between the parties in respect of the Unit for a total consideration of



₹30,86,500/-. Copy of the BBA has been annexed with the complaint as Annexure C-4 with the complaint.

9. It is further averred that on 11.11.2019, the Respondent changed the Unit allotted to the Complainants including its unit number and block/location. Consequently, Unit No. 329 situated on the 3rd Floor of Block-D of the Project was allotted to the Complainants.
10. The Complainants have submitted that in terms of Clause 15 of the BBA, the Respondent was obligated to pay assured returns at the rate of ₹71.50/- per sq. ft. of super area per month from the date of execution of the BBA till completion of construction of the Unit/New Unit.
11. It is further submitted that as per the terms of the BBA, the Complainants had been assured that upon completion of construction and obtaining the occupation certificate the Respondent would offer physical possession of the Unit/New Unit to the Complainants, in case they did not opt for the leasing arrangement.
12. It is the case of the Complainants that they paid the consideration amount to the Respondent in the following manner: ₹2,00,000/- on 16.06.2014 vide cheque No. 406317; ₹25,00,948/- on 16.10.2014 vide cheque No. 406330; and ₹5,00,000/- on 16.10.2014 vide cheque No. 452637. It is submitted that, as per the statement of account/acknowledgment issued by the respondent the complainants had paid an amount of ₹32,00,948/- and had



consequently paid an amount of ₹1,14,448/- in excess, which is stated to be refundable by the Respondent. Copy of the statement of account/acknowledgment has been annexed as Annexure C-5 with the complaint.

13.The Complainants have alleged that despite the aforesaid payments, the Respondent failed to complete the Project and stopped making payment of the assured returns as contemplated under the BBA. It is submitted that an amount of ₹28,24,250/- towards assured returns is outstanding for the period from 01.10.2018 to 01.05.2025, calculated at the rate of ₹35,750/- per month. The Complainants have further claimed that the Respondent is liable to continue paying the assured return at the said rate till handing over of possession of the Unit/New Unit.

14.It is further averred that the Complainants recently visited the Project and found that despite considerable delay, the Project was still not functional and was not in a condition fit for occupation. Copies of photographs of the Project have been annexed with the complaint as Annexure C-6.

15.The Complainants have further alleged that despite not handing over possession of the New Unit and without obtaining the occupation certificate, the Respondent has started raising maintenance bills against them. It is contended that the Complainants had already paid the consideration amount and had complied with the demands raised by the

Respondent, while repeatedly following up with the Respondent regarding possession. However, no firm timeline for completion of the Project or handing over of possession was provided to them.

16. It is further submitted that the Complainants repeatedly approached the Respondent seeking updates regarding the progress of the Project, procurement of requisite approvals, licences and permissions and handing over of possession but no clear response was provided by the Respondent. The Complainants have also alleged that the terms of the BBA were one-sided and heavily tilted in favour of the Respondent and that they were compelled to accept the same after having already invested substantial amounts in the Project.

17. It is the case of the Complainants that the Respondent, despite its representations regarding timely completion of the Project failed to adhere to the promised timeline. The Complainants have submitted that they were assured that possession of the Unit would be handed over latest by 20.10.2017. However, despite repeated requests, personal visits and communications, the Respondent failed to provide any firm timeline for completion of the Project or handing over of possession.

18. The Complainants have further alleged that the Respondent failed to provide requisite information regarding the approvals, sanctions and licences pertaining to the Project and that the responses given by the



Respondent remained vague and inconclusive. The Complainants have accordingly sought directions to the Respondent to provide the relevant documents, licences, approvals and applications concerning the Project.

19. It is further alleged that the Respondent has indulged in unfair and restrictive trade practices by imposing one-sided and arbitrary terms upon the Complainants under the BBA, while failing to discharge its corresponding obligations regarding completion of the Project, payment of assured returns and handing over of possession.

20. It is alleged that due to the delay in completion of the Project and handing over of possession, the Complainants have suffered financial losses, including loss of interest, loss of rental income and loss of opportunity.

21. Aggrieved by the aforesaid acts and omissions on the part of the Respondent the Complainants have approached this Authority by way of filing the present complaint seeking appropriate reliefs.

C. RELIEFS SOUGHT

22. The Complainants are entitled to and the Respondent be held liable for:

- a) Direct the Respondent to give the physical possession of the fully developed/constructed New Unit with all amenities;
- b) Direct the Respondent to refund excess amount of INR 1,14,448/-
(Indian Rupees One Lakh Fourteen Thousand Four Hundred Forty



Eight only) which was taken in excess by the Respondent even before signing of the BBA;

- c) Direct the Respondent to pay assured returns @INR 71.50/- per sq. ft to be calculated w.e.f. October 01, 2018 alongwith interest @18% per annum on delayed payments till actual handover of possession of the Unit/ New Unit after obtaining of a valid occupation certificate from the competent authority;
- d) Direct the Respondent to pay delayed possession charges on the amount of INR 32,00,947/- (Indian Rupees Thirty Two Lakhs Nine Hundred Forty Seven only) On the amount paid by the allottee, at the prescribed rate from the dates of payments made till the actual physical possession of the Unit/ New Unit is handed over as per the proviso to section 18(1) of the RERA Act;
- e) Direct the Respondent to cease and desist from charging Maintenance charges until the possession is handed over and set aside the demands raised till date.
- f) Direct the Respondent to execute conveyance deed of the Unit/ New Unit in favour of the Complainants;
- g) Direct the Respondent to pay the following sums:-
 - (1) INR 45,000/- (Indian Rupees Forty Five Thousand only) per month being the interest towards loss of rental income on

the unit, for the period October 2018 till date of possession or payments of monthly rent;

(II) each month of delayed possession as per prevailing market rental rate along with the rate of interest of 24% per annum;

(III) INR 15,00,000/- (Indian Rupees Fifteen Lakhs only) towards mental agony, mental harassment caused to the Complainants due to the high headed conduct, unfair trade practices and abuse of dominant position by the Respondent;

(IV) INR 3,00,000/- (Indian Rupees One Lakh only) being cost of litigation.

h) Award interest pendente lite on the above amount from the date of this complaint till the date of actual payment of the amount by the Respondent to the Complainant;

i) Restrain the Respondent from giving effect to the unlawful clauses unilaterally incorporated in the Buyer Agreement

j) Pass such order (s) or further order (s) as this Hon'ble Authority deems fit and proper in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 03.11.2025 pleading therein:

23. 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.
24. 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.
25. Further, that the construction was complete and OC was also received on 19.05.2020. Additionally the allegation of the complainants that assured returns were stopped since October, 2018 and the present complaint has been filed in 2025. Therefore, the complaint is time barred and beyond limitation.



26. That the complainants have not impleaded Enviro Integrated Facility Services Pvt Ltd. which has charged complainants for the maintenance and is a necessary party.
27. 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. 9,43,339/- towards assured returns. Copy of assured returns computation sheet is annexed as Annexure R-2 with the reply.
28. 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.

29. 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.

30. 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.

31. 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.).

32. 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).

33. 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.

34. 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.

35. 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.

36. 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 hat this Ld. Authority has been dressed with.

37. 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."

38. 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.

39. 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.

40. 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.
41. 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.
42. 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.
43. 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.

44. 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.
45. 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.
46. 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.
47. 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.
48. 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;

49. 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.
50. 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'.
51. That the Complainants had invested their money in an Assured Return and Leasing Scheme of the Respondent Company and as per Clause- 15 of the Builder Buyer Agreement dated 26.11.2014 (Annexure C-4) it was agreed between the parties that the complainant shall receive assured return of Rs. 71.50/- per sq. ft. per month on super area on receiving of payment of full amount of basic sale consideration and the said assured return will be paid till the completion of the construction of said building.
52. Further, Vide Clause 16.1, it was agreed between the parties that post completion of construction of the said building the complainant shall



receive committed return of Rs. 65/-per sq. ft. per month on super area for upto 3 years from the date of completion of construction of the said building or the said unit is put on lease and lease deed is executed in respect thereof, whichever is earlier.

53.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 and committed returns of ₹9,43,339/- till September, 2018.

54.That such schemes of Assured Returns have been banned under the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act). In this regard, it shall be worthy to mention here 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. The complainant was duly apprised of the new law which came into force.

55. That the complaint has been filed primarily on the ground that the Respondents have not paid the commitment charges nor the possession of the unit has been delivered. so far as payment of commitment charges are concerned, the respondents are not liable to pay any assured or committed return of the complainant after the enacting of BUDS Act 2019, as the same is not permissible, and accordingly, the same cannot be allowed as that shall adversely affect the Project as well as the Developer.

56. 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.

57. 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.

58. It is the contention of the respondent that 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'.

59. That a conjoint reading of section 19 (3) and 19(4) of the act would show that the entitlement to claim the refund alongwith 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.

60. 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. It is, therefore, contended by respondent 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.

61. 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.

62. 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. That 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.

63. 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 validly executed contract cannot be novated or changed in any manner save with the mutual consent of the parties cannot be changed on basis of erroneous assumption of unilateral terms.
64. 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.
65. 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.



66. It is averred by the respondent that the relief of delay interest and the compensation as being claimed by the complainant is in various forms of interest which are not permissible within the provision of RERA Act.
67. That possession was never a part of agreement between the parties. Additionally, the complainants had invested in the said unit keeping in view the profitability of the scheme under which the said unit was bought by the complainants. The respondents had only given the detail of the project and the scheme in the brochure. No representation or assurance whatsoever was given by the respondent.
68. It is stated by the respondent that the complainants had voluntarily booked the said unit keeping in view the feasibility of earning profit by way of assured returns scheme qua the said unit.
69. Additionally, respondent has contended that Annexure C-2 is not an allotment letter but an application for allotment submitted by the complainants with the request for allotment of commercial space in the said commercial project. No body can coerce the investor to deliberately sign the application and deposit the booking amount for allotment of any unit.
70. That the complainants were well aware of the details of the project wherein they had voluntarily decided to invest. That the basic sale consideration did not include the service tax to be payable by the allottee and accordingly Rs. 1,14,448/- was paid by the complainants towards the statutory service tax over and above the basic sale consideration.

71. Additionally, that the Complainants voluntarily entered into the Builder Buyers Agreement with the Respondent, without raising any objection or pointing out any disagreement towards the terms and conditions of the said Agreement. The Complainants of their own free will, accepted and agreed to pay the total consideration amount of Rs. 32,00,948/- including service tax.
72. It is averred by the respondent that the said re-allotment was carried out only after obtaining the prior consent and approval of the Complainants, who willingly accepted the same without protest way back in November, 2019. Vide letter dated 11.11.2019, it was specifically stated that the said re-allotment had been done after seeking consent from the complainants which was also inconsonance with the various terms and conditions of the allotment letter/builder buyer agreement.
73. It is stated by respondent that the complainants who opted for leasing arrangement which was otherwise optional and the complainants could have opted for the possession of the unit which was to be handed over in case of non- leasing arrangement cases as per Clause 17 of the Builder Buyer Agreement. The leasing of the said unit is dependable on various market factors including demand of rental spaces.
74. That the complainants never requested either verbally or in writing for the physical possession of the said unit since 2014 till the filing of the present complaint.



75. That the complainants had made the payment of the entire sale consideration along with the service tax before execution of the builder buyer agreement dated 26.11.2014. A copy of application form dated 16.06.2014 for allotment submitted by the complainants is annexed herewith as Annexure R-10 whereby it is clearly stated that Rs. 1,14,447/- has been paid by the complainants against service tax. Further, that the service tax is mandatory nature which the complainants are liable to pay over and above the basic sale price while buying any property and hence if the complainants want the refund of the same then the complainants have to approach the appropriate Statutory Authorities.

76. That the commercial units were to be provided in rough state as bare shell so that when the floor is leased out the interiors and fit outs can be done by the tenants according to their requirements. All the commercial units are considered to be complete when the base building is complete along with the services in place.

77. That the respondent has averred that the Complainants were aware of their obligation to pay maintenance charges under Clause 5 of the Builder Buyer Agreement, either to the developer or the designated maintenance agency. It is contended that Enviro Integrated Facility Services Pvt. Ltd. has been providing facility management services at Vatika Mindscapes since 25.03.2018, and the Complainants are liable to pay the maintenance

charges due since May 2020. The respondent further submits that the Complainants, having enjoyed the property since 2020, cannot evade such charges and that Enviro Integrated Facility Services Pvt. Ltd. is a necessary party which has not been impleaded.

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

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

79. Today, learned counsels for respondent and complainants appeared and reiterated their written submissions.

G. ISSUES FOR ADJUDICATION:

Whether complainants are entitled to the reliefs so sought.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

80. 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 August 2008 and complaint could have been filed



only till 31.07.2011 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 complainants executing the agreement out of free will and therefore terms of the agreement become binding on the complainants.

The next objection taken by the respondent is that the complainants are bound by the terms of the agreement, as the same was executed by the



complainants out of free will. The primary contention of the respondent is that since the complainants had agreed to the clauses of builder buyer agreement voluntarily, the same is binding upon the complainants 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 aforesaid objection, it is apposite to examine the relevant terms of the Builder Buyer Agreement dated 26.11.2014. A plain reading of the agreement reveals that its terms are substantially weighted in favour of the promoter. Prima facie, the Builder Buyer Agreement does not prescribe a specific date for handing over possession; however, Clause 13 thereof provides an ascertainable contractual timeline by contemplating completion of construction of the unit within 48 months from the date of execution of the Agreement. It is also pertinent to note that the allotment letter dated 20.11.2014 contemplated that the flat would be completed and ready for lease by 31.12.2015. However, the Builder Buyer Agreement, being the subsequent and governing contractual document setting out the detailed rights and



obligations of the parties contains the specific stipulation of 48 months for completion of construction. Accordingly, for the purpose of determining the contractual timeline, the period stipulated under Clause 13 of the Builder Buyer Agreement is required to be taken into consideration.

Further, Clause 16 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, wherein it has been categorically stated that the commercial unit was never intended to be handed over in physical possession to the complainant. 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 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, i.e, inequality of bargaining power lack of choice and substantive unconscionability. 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)*. 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.

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 the leasing nature of the arrangement, the absence of a stipulation regarding physical possession to defeat the complainant's statutory entitlement under the Act. Accordingly, the objection raised by the respondent that the complainants are 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 complainants being speculative investors and not an allottee

The respondent has further contended that the complainants are merely speculative investors 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 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.329 situated on the 3rd Floor of Tower 'D' in the project Vatika Mindscapes, to the complainants for a total basic sale consideration of ₹30,86,500/-. 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 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 investors 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 26.11.2014 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. 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 Complainants as buyer and to respondent as developers. Clause E clearly stipulates that Complainants /buyer have approached the developer for purchase of unit of approximately 500 sq. ft. super area on 3rd floor of the building Block-C of the project. (which was later changed to Tower 'D')



A cursory reading of the opening recital A to H 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 Complainants.

This by itself leaves no doubt that the respondent is developer and Complainants are buyers 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.

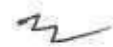
Further, In Clause-1 (a) of the agreement, unit allotted to the Complainants is properly identified as Unit no 322, admeasuring 500 sq ft. situated on the 3rd floor of Block C of said commercial complex. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, Complainants herein chose the option of down payments. An option of deferred payment was also available but Complainants did not opt for the same.



Clause-4, particularly clause 4.4, specifies the area deliverable to Complainants, 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, Complainants 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, Complainants allottee would be entitled to return on their up-front payments made which in this case has been named assured monthly returns. 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*".



Authority, therefore, has no hesitation in coming to a conclusion that a proper builder-buyer relationship exists between respondent and Complainants because Complainants had booked the unit for its physical delivery to her. Before completion of the project assured payment @ ₹71.5/- per sq. ft. per month was agreed and after completion it was to be @ ₹65/- 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 Complainants are very much entitled to possession of the booked unit. Complainants therefore are 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 Complainants are not allottee rather are depositor and does fall within the prohibitions provided in the BUDS Act.

Authority observes that the complainants squarely fall 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-

81. 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 20.11.2014 and BBA dated 26.11.2014 for sale consideration of ₹30,86,500/-. Against said sale consideration, as per the complainants payment of ₹32,00,948/- was made till date by them. 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. However, in clause iv of the allotment letter dated 20.11.2014 it is specifically mentioned that the flat would be completed and ready for lease by 31.12.2015. Accordingly, allottee would be paid lease rentals at Rs. 65/- per sq.ft. of space w.e.f 31st December, 2015 or from the building is ready, whichever is later. In the event the premises is leased any time after 31st December, 2015, the Developer shall be paying to rentals as per Clause no. (16.1).

82. Further, Authority observes that the builder buyer agreement dated 26.11.2014 has been executed between the parties wherein it is stated that subject to the timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of execution of the Agreement. Therefore, terms of BBA executed between the parties will prevail over the allotment letter.

83. In present complaint, the builder buyer agreement was executed on 26.11.2014. Accordingly, taking a period of 48 months from the date of

agreement, i.e, 26.11.2014 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to **26.11.2018**. 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 by 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-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.

84.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 complainants. 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.

85.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.

86. 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.

87. 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.

88. 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 2014 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 assured returns contemplated between the parties have also not been duly paid. The allottees have been made to run from pillar to post despite the fact that entire payment was made by them. Thus, the Respondent has retained the consideration paid by the Complainants without fully discharging its corresponding obligations.

89. In the absence of any contractual stipulation specifically governing interest payable on account of such delay, the entitlement 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.

90. *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 allottees 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 allottees on their 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."

91. At the same time, keeping in view that a certain amount towards assured returns has already been paid to the Complainants, 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 Complainants, so as to avoid duplication of relief for the same period.

92. 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. 26.11.2018, 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.

93. 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. 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. 682 of 2025

Sr. No.	Principal Amount	Deemed date of possession (26.11.2018) or date of payment whichever is later	Interest Accrued till the date of order i.e., 01.10.2026
1.	₹32,00,948/-	26.11.2018	₹27,15,421/-
	Total= ₹32,00,948/-		Total= ₹27,15,421/-
2.	Monthly interest		₹28,414/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹9,43,339/-			

Complaint no. 683 of 2025

Sr. No.	Principal Amount	Deemed date of possession (06.12.2017) or date of payment whichever is later	Interest Accrued till the date of order i.e., 01.10.2026
1.	₹33,70,510/-	06.12.2017	₹32,13,306/-
	Total=₹33,70,510/-		Total= ₹32,13,306/-
2.	Monthly interest		₹29,919/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹21,83,133/-			



94. Accordingly, in complaint no. 682 of 2025, the respondent is liable to pay the upfront delay interest of ₹27,15,421/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹32,00,948/- monthly interest of ₹28,414/- 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, ₹9,43,339/-

95. In complaint no. 683 of 2025, the respondent is liable to pay the upfront delay interest of ₹32,13,306/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹33,70,510/- monthly interest of ₹29,919/- 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, ₹21,83,133/-

96. The complainants under relief no. 2, have sought refund of an amount of ₹1,14,448/-, allegedly paid in excess of the basic sale consideration. In response, the respondent has averred that the complainants were fully aware of the details and charges pertaining to the project at the time of making the investment. It has been submitted that the basic sale consideration did not include the applicable service tax, and accordingly,



an amount of ₹1,14,448/- was paid by the complainants towards statutory service tax over and above the basic sale consideration.

97. The Authority has considered the submissions of both parties and perused the application for allotment dated 16.06.2014, placed on record by the respondent as Annexure R-10 to its written submissions. A perusal thereof reveals that service tax was specifically mentioned as an additional charge, separate from the basic sale consideration, and the amount payable towards the same was duly specified. The complainants having accepted the allotment on such terms and having raised no objection thereto at the relevant time cannot now seek refund of the said statutory charge. Accordingly, no refund of ₹1,14,448/- is allowed under this relief.

98. In view of the relief sought regarding assured returns, detailed observations in this regard have been recorded in aforementioned paragraphs and are not repeated here for sake of brevity.

99. 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: -

"5. MAINTENANCE OF THE SAID BUILDING BLOCK/ COMPLEX COMMON AREAS

5.1. The upkeep, maintenance and management of the Said Building Block/ Complex, their common areas & plant, machinery and equipment shall be organized by the Developer or a Maintenance Agency/ Company



nominated by it. All such costs, expenses shall be borne and paid by the Buyer to the extent of his share in the Said Building Block/ Complex. The charges so fixed and payable every month shall be apportioned by the Developer to which the Buyer hereby agrees to accept as final and binding. Such charges would be billed to the Buyer by the Developer / Maintenance Agency every month. At present these charges are Rs. _— per sq. ft. (RS.per sq. mtr.) super area per month. The charges so fixed shall be increased by 15% over the last rate 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 / Dept. / Maintenance Company and shall be paid by the Buyer as stipulated herein.

5.2 In order to secure due performance of the Buyer in paying promptly the maintenance bills and other charges as raised by the Developer or the Maintenance company/ agency, as the case may be from time to time, the Buyer agrees to deposit and to always keep deposited with the Developer/ Maintenance company/ agency an Interest Free Maintenance Security Deposit (IFMSD) calculated at the rate as may be fixed from time to time by the Developer. The present rate of IFMSD is Rs..... per sq. ft. super area which is subject to revision, as stated above. In case of failure of the Buyer to pay the maintenance bills, other charges on or before the due date, the Buyer in addition to permitting the Developer to deny him the right to avail the maintenance services also authorizes the Developer/ Maintenance company/ agency to adjust the said maintenance security deposit against such defaults. If due to such adjustment, the said maintenance security deposit falls below the agreed sum of IFMSD, then the Buyer hereby undertakes to make good the resultant shortfall within fifteen days of demand by the Developer/ Maintenance company/ agency. The Developer/ Maintenance company/ agency reserves the right to increase IFMSD from time to time in keeping with the increase in the cost of maintenance services and the Buyer agrees to pay such increases within the due date of such demand by the Developer/ Maintenance company/ agency. If the Buyer fails to pay such increase in the IFMSD or to make good the shortfall as aforesaid on or before its due date, then the Buyer authorizes the Developer/ Maintenance company/ agency to charge interest at the rate of @ 18% for the period of such delay and to stop/disconnect all maintenance services to the Said Commercial Unit till such sums due alongwith interest as stipulated hereinabove are paid by the Buyer. It is agreed by and between the parties hereto that this part of the Agreement relating to IFMSD as stipulated in this clause will survive the conveyance of title of the Said Commercial Unit in favour of the Buyer.



5.3. Maintenance and other charges shall be billed by the Developer/Maintenance Company/Agency every calendar month to the Buyer and the same shall become payable within 7 days of its intimation.

5.4. The Buyer has seen and read the terms of the draft Maintenance Agreement and has agreed to the terms and conditions contained therein. The Said Agreement shall be executed between the Buyer and the Developer/Maintenance Company/ Agency at the appropriate time and the Buyer shall not raise any objection with regard to the same."

100. Perusal of aforesaid clauses establishes the obligations which were casted upon the respondent to be followed in case of completion of project and handing over possession to allottee. Respondent after obtaining of occupation certificate was obligated to proceed further for execution of conveyance deed and then for execution of maintenance agreement. Argument of respondent is that there is no clause of handing over of possession of unit as unit was never meant for residential purpose. Complainants herein are aggrieved by arbitrary acts of respondent first in not handing over possession of the unit till date/not getting conveyance deed executed till date and secondly, raising demand of maintenance charges without any basis. Complainants who have already paid whole of total sale consideration in the year 2014 got stuck with respondent without any definite timelines of delivery of possession and execution of conveyance deed w.r.t. booked unit. The position of complainants even got worsened by the fact that respondent was in receipt of occupation certificate in year 2020, but there is no explanation available with respondent to not deliver possession and execute conveyance deed or to



delay said process till date. The allottee-complainants, invested in a tangible showroom space in a commercial project wherein a license was granted by DTCP under the Haryana Development and Regulation of Urban Areas Act, 1975.

101. Considering the obligations cast by the RERD ACT, the promoter-builder was obligated to deliver actual physical possession of booked unit along with execution of conveyance deed. Thereafter, maintenance agreement was to be executed between the parties including maintenance agency whereby all terms/conditions pertaining to issue of maintenance is detailed out/agreed by the parties. However, the respondent incorporated clause 5 in the BBA pertaining to maintenance but the charges are not specified in it. Furthermore, admitted fact is that no maintenance agreement got executed between the parties. As on date, no rate for charging of maintenance charges has been fixed. Execution of conveyance deed was the responsibility upon respondent. No explanation has been provided by the respondent in its written statement as to how and on what basis the demand of maintenance charges has been raised.

102. 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.

103. 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:

104. 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 94 and 95 of this order after deducting paid amount of assured returns within 90 days from the date of uploading of this order. Further, on the entire amount, 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.



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DR .GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]



.....
PARNEET SINGH SACHDEV
[CHAIRMAN]