HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**85 of 2023**
Date of filing:	**10.01.2023**
Date of first hearing:	**02.03.2023**
Date of decision:	**08.10.2026**

Vikram Singh,
Son of Lt. General Gurvinder Singh PVSM, AVSM, ADC
R/o 19/1, Silverton Estate,
Moti Tibba,
Dalhousie- 176304. ....COMPLAINANT

VERSUS

Vatika Limited.
Unit No. A-002, INXT City Centre,
Ground Floor, Block-A,
Sector-83, Vatika India Next,
Gurugram, Haryana-122002. ....RESPONDENT

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

Present: - Ms. Akanksha Dogra, proxy counsel for Mr. Aakash Vashishth, Counsel for the complainant, through VC.
Ms. Vertika H. Singh, Counsel for the respondent, through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint was filed on 10.01.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)

3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	742, 7th Floor, Tower- B
5	Unit area	500 sq. ft.
6.	Date of Allotment letter	05.02.2013
7.	Date of builder buyer agreement	05.02.2013
8.	Due date of offer of possession	05.02.2017 (As per BBA dated 05.02.2013)
9.	Possession clause	***Clause 13-*** *If 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 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 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 developer contemplates to complete construction of the said commercial unit within 48 months of execution of this Agreement.***
9.	Basic sale consideration	₹ 17,50,000/-
10.	Amount paid by complainant	₹ 18,04,075/-
11.	Offer of possession	Not given.
12.	Occupation certificate	14.10.2016

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the complainant is an allottee in the commercial project namely "Vatika Mindscapes" situated at Sector-27-B, Faridabad, Haryana, being developed by the respondent.

4. It is averred that the respondent is a reputed builder, promoter and developer and had launched the aforesaid commercial project in the year 2012 on land measuring 8.793 acres situated in the revenue estate of Village Sarai Khawaja, Tehsil and District Faridabad, Haryana. The project comprises various towers containing commercial/office units and other amenities.

5. It is the case of the complainant that the respondent represented that the project would be completed by 31.07.2013 and assured monthly returns/lease rentals at the rate of ₹68.75/- per sq. ft. during the relevant period, followed by lease rentals at the rate of ₹62.50/- per sq. ft. after completion of the project.

6. It is averred that relying upon the representations and assurances of the respondent, the complainant invested in the project and was allotted commercial Unit No. 742, admeasuring 500 sq. ft., situated on the 7th Floor of Tower-B, vide allotment letter dated 05.02.2013. The complainant has submitted that the entire sale consideration of ₹17,50,000/- was paid on

01.02.2013. Copy of allotment letter dated 05.02.2013 is attached as Annexure-A with the complaint.

7. It is further submitted that the respondent registered the project with this Authority in respect of Towers C and D and the restaurant in the year 2017. However, Towers A and B, including the tower in which the complainant's unit is situated, were not registered. A Builder Buyer Agreement was also executed between the parties against the said unit. Copy of BBA dated 05.02.2013 is annexed as Annexure- C.

8. The complainant has submitted that the respondent had undertaken to provide various amenities in the project, including landscaping, basement parking, food courts, a landscaped central urban plaza, restaurants, ATMs, a health club and eateries. It is alleged that the promised amenities have not been completed.

9. It is averred that the respondent obtained an Occupancy Certificate dated 14.10.2016. That despite the grant of the Occupancy Certificate, the respondent failed to execute and register the conveyance deed in favour of the complainant within the prescribed period or thereafter, notwithstanding repeated requests. The complainant has alleged that the project and the allotted unit remained encumbered by mortgages created in favour of various financial institutions, including IDBI Trusteeship Services Limited and LIC Housing Finance Limited.

10. The complainant has submitted that the respondent regularly paid assured returns from February 2013 till September 2016. Thereafter, vide email dated 10.04.2017, the respondent informed the complainant that the unit had been leased to ATS Services Private Limited vide lease deed dated 24.09.2016, at a rental of ₹54/- per sq. ft., amounting to ₹27,000/- per month, for a period of nine years. However, the complainant has alleged that a copy of the lease deed was not furnished to him.

11. It is the case of the complainant that the respondent subsequently entered into a fresh lease deed dated 25.09.2019 with ATS Services Private Limited, without obtaining his consent, whereby the leased area was reduced from 500 sq. ft. to 250 sq. ft. and the monthly rental was reduced from ₹27,000/- to ₹13,500/-.

12. It is further averred that the lease deed dated 25.09.2019 provided for a 15% increase in monthly rental and an enhanced security deposit. However, the respondent failed to ensure compliance with the said terms. The complainant has further submitted that rental payments were remitted in parts and at irregular intervals from September 2019 till January 2020.

13. It is averred that vide email dated 28.01.2020, the respondent informed the complainant that ATS Services Private Limited had surrendered an area of 250 sq. ft., leaving only 250 sq. ft. leased out from the complainant's unit. The complainant has alleged that the reduction in leased area and rental

was effected without his consent and that he is entitled to recover the differential rent of ₹13,500/- per month.

14. The complainant has further submitted that the respondent raised maintenance charges of approximately ₹75,734/- for the period from September 2019 to December 2020 in respect of the vacant area. It is alleged that the said amount was adjusted from the rentals receivable by the complainant. The complainant has disputed the maintenance charges and alleged that the respondent failed to disclose the expenses incurred towards upkeep of the project.

15. It is the case of the complainant that with effect from 01.01.2022, he became entitled to monthly rental of ₹27,000/- from ATS Services Private Limited, or, in the alternative, ₹13,500/- per month if the reduced rental is held applicable. However, the respondent failed to remit the rentals despite repeated requests and personal visits.

16. Subsequently, the respondent, vide email dated 21.06.2022, informed the complainant that ATS Services Private Limited proposed to reduce the rental rate from ₹54/- to ₹45/- per sq. ft., subject to a lock-in period of 12 months. The complainant sought clarification regarding the lease term, the area proposed to be leased and the consent of other allottees, besides requesting payment of outstanding rentals. However, no response was received.

17. The complainant has submitted that the respondent subsequently admitted its liability to pay rental of ₹13,500/- per month and assured payment by 15.06.2022. Despite the said assurance, the respondent failed to clear the outstanding rentals.

18. That the respondent had mortgaged Towers A and B, including the complainant's unit, in favour of various financial institutions on different dates in the year 2019. It is alleged that the respondent also mortgaged the rental receivables resulting in the rentals being diverted towards repayment of loans instead of being paid to the complainant and other unit holders.

19. That an FIR bearing No. 0038 dated 14.02.2021 was registered with the Economic Offences Wing in relation to the alleged acts of the respondent.

20. The complainant has alleged that the respondent violated Section 11(4)(h) of the RERA Act by creating mortgages over the project after entering into an agreement for sale with the complainant.

21. That despite repeated requests, the respondent failed to pay the outstanding lease rentals, execute and register the conveyance deed after redeeming the mortgages, and hand over maintenance of the common areas to an association of allottees.

22. Aggrieved by the aforesaid acts and omissions of the respondent, the complainant has approached this Authority under Section 31 of the Real

Estate (Regulation and Development) Act, 2016, seeking payment of outstanding lease rentals along with interest, refund of the security deposit allegedly adjusted by the respondent, execution and registration of the conveyance deed, transfer of maintenance to the association of allottees, imposition of penalty under the Act, compensation for mental agony and harassment, and litigation costs.

C. RELIEFS SOUGHT

23. The Complainant is entitled to and the Respondent be held liable for:

a) That the Complainant, respectfully pray that the Respondent be directed to pay an amount of Rs. 27,000 per month as the outstanding lease rentals along with interest @ 24% per annum from 01.01.2022 till date, pendente lite and in future.

b) In the alternative should this Hon'ble Court come to the conclusion that rent is Rs. 13,500 per month from January, 2022, then the rent at Rs. 13,500 per month be paid to the Complainant from 01.01.2022 along-with interest @ 24% per annum till date, pendente lite and in future.

c) That, the Respondent be directed to pay an amount of Rs. 67,500 which was arbitrarily deducted by the Respondent from the lease rental in the guise and colour of refund of security deposit.

d) That, the Respondent be directed to pay an amount of Rs. 75,734 which was arbitrarily deducted from the lease rental in the guise and colour of maintenance charges.

e) The Respondent be directed to execute and register a Conveyance Deed and convey a clear title in favour of the Complainant in respect of Unit No. 742, on Seventh Floor, having super area of 500 sq. ft. in Tower-B, Vatika Mindscapes, Faridabad at Sector 27B, Village Sarai Khawaja, Tehsil Badkhal, Faridabad. In default of the Respondent executing and registering the conveyance deed in favour of the Complainant, an officer of this Hon'ble Court be directed to execute and register the conveyance deed in favour of the Complainant on behalf of the Respondent. The Respondent be directed to redeem the entire mortgages for execution of the title documents.

f) The Respondent be directed to pay a penalty at the rate of 5% of the estimated cost of the real estate project in terms of Section 61 read with Section 11(4)(h) of the RERA Act for each of the mortgages and charges created on the entire Towers A and B subsequently affecting the rights and interests of its allottees, per se, the Complainant. Each mortgage charge/ encumbrance is a distinct and separate offence warranting imposition of fine/ penalty of 5% of the estimated cost of the total project. The Respondent/ Developer has

mortgaged/encumbered the entire Towers A and B (including the unit of the Complainant) on 12.02.2019 (modified on 13.02.2019 and 05.04.2019), 25.04.2019 and 26.04.2019.

g) Award compensation against the Respondent and in favour of the Complainant under Section 72 of the RERA Act being an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) for mental agony and harassment caused to the Complainant by the Respondent.

h) Cost of the complaint be allowed.

i) Pass any other order which this Hon'ble Authority deems fit and proper.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.12.2023 pleading therein:

24. That the present complaint has been filed with an ulterior motive to harass and pressurize the answering respondent into acceding to the unreasonable demands of the Complainant. The Complainant is guilty of *suppressio veri and suggestio falsi* and has deliberately concealed and suppressed material facts within his knowledge, which, if disclosed, would demonstrate that no cause of action subsists in his favour against the respondent. The Complainant has not approached this Ld. Authority with clean hands and on this ground alone the present complaint is liable to be dismissed.

25. That the respondent has further alleged that the present complaint is not maintainable in view of the judgment dated 11.11.2021 passed by the Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors., as Block 'B' of the project was not required to be registered and its Occupation Certificate was issued on 14.10.2016, prior to the commencement of the RERA Act.

26. That the Respondent has averred that the present complaint is not maintainable, as the reliefs claimed by the Complainant 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, 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 Complainant cannot survive. It is further submitted that the Respondents had already paid Rs. 16,38,839/- and that the unit of the complainant was leased out on 24.09.2019. Copy of AR account statement is annexed as Annexure R-2.

27. The respondent has contended that this Authority does not have jurisdiction to adjudicate upon the issues pertaining to the lease deeds and the rentals. If the complainant has an issue pertaining to lease deed and rentals, the complainant should have filed a petition before the Rent controller.

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 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.

33. That the commercial unit of the Complainant 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. That the complainant cannot challenge the terms of the agreement qua delay compensation and interest because he had willingly signed the same without any coercion or undue influence.

39. That it is submitted that the Complainant herein has 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.

40. That the Complainant has no cause of action in her favour and against the answering Respondents as the present complaint has been filed on false, frivolous and vexatious grounds.

41. 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 complainant is seeking additional benefits beyond the agreement. The complainant is 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.

42. 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;

43. That Respondents have acted as per the terms and conditions of Agreement. The Complainant was aware about terms and conditions of the allotment letter and consequences thereof.

44. That the respondent has stated that the project of respondent consists of total 4 towers i.e. Tower A, B, C and D. That out of these four towers, the Company has already received the Occupation certificate for Tower A, B and D and these towers are fully operational. A copy of Occupation certificate dated 14.10.2016 issued for Block 'A' and 'B' is annexed as Annexure R-F by the complainant.

45. That the Complainant had invested his money in an Assured Return Scheme of the Respondent Company and as per Clause 15 and clause 16 of the Builder Buyer Agreement, it was agreed between the parties that the complainant shall receive assured return of Rs. 68.75 per sq. ft. per month on super area on receiving of 100% of basic sale consideration and the said assured return will be paid till the completion of the construction of said building.

46. 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. 62.50 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, whichever is earlier.

47. It is submitted by the respondent that the construction of the said building is complete and the complainant had been duly intimated regarding the same vide letter dated 31.03.2015. Thereafter, the said commercial space of the complainant was leased out on 24.09.2016.

48. That, Clause 16.12 of the Builder Buyer Agreement provides that the commercial units are intended for earning rental income and not for personal occupation. It further stipulates that physical possession, if sought after vacation by the lessee, shall be handed over on an 'as is where is' basis. The Buyer shall bear responsibility for channelizing services such as air-conditioning, firefighting and electrical supply within the unit, as the Developer's/Maintenance Company's services shall be limited to units measuring 5,000 sq. ft. each.

49. The Respondent Company in compliance of the said arrangement between parties had already made the payment of assured return till March 2017. Further, respondent-company accordingly paid the committed assured return till September, 2016. Thereafter, the said unit was leased out on 24.09.2016 and the complainant received rental from the said unit.

50. 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 same vid email dated 30.11.2018.

51. 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.

52. 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'.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. It is averred by the respondent that the quantum on interest and the compensation as being claimed by the complainant, 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.

63. That as per clause 13 of BBA dated 05.02.2013, subject to force majeure circumstances and timely payment by the developer the developer contemplated to complete construction of the said unit within 48 months of the execution of the said Agreement. Hence, the probable date for completion of the said unit was 04.02.2017. However, occupation certificate had been already issued on 14.10.2016.

64. It is reiterated that construction of Tower 'B' was completed in March 2015, and the Occupation Certificate dated 14.10.2016 for Towers 'A' and 'B' was granted by DTCP, Haryana, after requisite clearances and certifications. Allottees were duly intimated of the same in 2016; hence, the complainant's claim of becoming aware of the certificate only in 2023 is denied. The allegation of violation of Section 17 of the RERA Act is also denied, as the complainant failed to approach the respondent for execution of the conveyance deed and payment of applicable stamp duty.

65. That the original lease was superseded after the lessee surrendered part of the commercial space and a fresh lease deed was executed with M/s ATS Services Pvt. Ltd., which was shared with the complainant on 28.01.2020 and accepted without objection. The complainant is not entitled to claim rent differential, and any such claim lies against the lessee. The agreement did not require obtaining the complainant's consent.

66. It is averred that the Maintenance charges were levied as per the agreement, and the complainant had authorised their adjustment against rental income vide email dated 11.01.2021.

67. The commercial unit was purchased under a rental-income scheme under Clause 16.12 of the BBA, and the complainant was aware of the maintenance charges, which were paid since 2016 without protest. The complainant also failed to approach the respondent for execution of the conveyance deed.

68. The respondent was merely authorised to collect and remit rent, and was not liable for the lessee's default as stipulated in the BBA. As per Clause 14 of the Builder Buyer Agreement dated 05.02.2023 (Annexure C), the complainant authorised the developer to raise finance/loans from any financial instituition/ Bank before execution of conveyance deed.

69. Respondent has contended that it is the complainant who had to come forward for getting the sale deed registered and pay for the stamp duty and registration charges but it was never done by him until before filing of present complaint.

70. 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 submitted an application dated 11.03.2025, contents of which are reiterated below-

71. That despite repeated requests, the Respondent has failed to execute the conveyance deed and resolve the issues relating to rental income, maintenance charges and possession of the commercial unit.

72. The Complainant has stated that the Respondent initially leased the entire 500 sq. ft. unit to M/s ATS Technologies Pvt. Ltd. at a rent of ₹27,000/- per month, but subsequently reduced the leased area to 250 sq. ft. under a revised lease deed dated 25.09.2019, thereby reducing the rent to ₹13,500/- per month, without obtaining his consent.

73. The Complainant has contended that the Respondent had been managing the rentals and dealing with the tenant as owner/landlord, despite the unit having been allotted to him.

74. The Complainant has further submitted that the Respondent demanded maintenance charges from him, which he requested to be adjusted against the rental income.

75. The Complainant has stated that he repeatedly approached the Respondent for refund/payment of rentals and execution of the conveyance deed, including through emails dated 09.10.2022, 11.10.2022 and 14.12.2022, but the same remained unresolved.

76. The Complainant has submitted that he thereafter filed the present complaint on 27.12.2022, and subsequently received an email dated 13.02.2024 informing him that the area surrendered by ATS Technologies had been leased to M/s Vikings Fire Product (India) Pvt. Ltd.

77. Despite subsequent correspondence and emails dated 10/11.12.2024 and 09.01.2025, the Respondent failed to resolve the dispute or pay the outstanding rental amount stated to be approximately ₹1.92 lakh.

78. The Complainant has also referred to the Respondent's communication regarding a proposed fresh lease from September 2025 at ₹45/- per sq. ft., and contended that the Respondent continued to deal with the unit and lease it at its own discretion without his consent.

79. The Complainant has disputed the Respondent's proposal to execute the conveyance deed while offering only "virtual possession", contending that physical possession of the unit has not been handed over to him and that the site plan supplied by the Respondent differs from the plan in his possession.

80. That in the absence of physical possession and a direct lease arrangement with the tenant, he would have no effective right to claim rental income from the leased premises. Accordingly, he has stated that he is willing to settle the matter if the amount invested by him is refunded along with interest by the Respondent.

81. The Complainant has also placed on record photocopies of Annexures A-1 to A-6 of email correspondences between the parties.

Respondent has submitted an application under section 38 and 39 of the Act read with section 151 of CPC, 1908 dated 18.08.2026 for setting aside show cause notice issued vide order dated 13.11.2025.

82. It has been contended that the directions issued vide order dated 21.08.2025 for handing over physical possession and execution of the conveyance deed were not liable to attract penalty, particularly as repeated communications were sent to the Complainant for execution of the conveyance deed, but he failed to appear.

83. It has been submitted that the Builder Buyer Agreement contemplated a leasing arrangement and not physical possession or self-use of the unit. Reliance has been placed on Kapil Dev Khullar & Sanju Khullar v. Advance India Projects Ltd., Complaint No. 1910 of 2023, decided on 10.12.2024 by HRERA, Gurugram, wherein constructive possession was held valid in a similar leasing arrangement.

84. It has further been contended that directing physical possession amounts to modification/re-writing of the contractual terms, which is impermissible in law, reliance being placed upon Venkataraman Krishnamurthy & Anr. v. Lodha Crown Buildmart Pvt. Ltd., Civil Appeal No. 971 of 2023, decided on 22.02.2024.

85.It has been argued that the units, being small spaces of approximately 50 sq. ft., were specifically offered under the leasing scheme, whereby portions of the common floor could be leased out for the benefit of the allottees.

86.It has also been contended that the order dated 21.08.2025 granted the substantive relief of possession and execution of conveyance deed at the interim stage, which is impermissible, reliance being placed upon U.P. Junior Doctors' Action Committee v. B. Sheetal Nandwani and Indore Development Authority v. Dr. Hemant Mandovra.

87.Further, it has been argued that the issues arising from the same Builder Buyer Agreement ought to be adjudicated together, and that granting possession while deferring the issue of assured returns amounts to piecemeal adjudication.

88.Lastly, it has been submitted that Section 63 of the RERA Act contemplates wilful and deliberate non-compliance with the Authority's directions, which is absent in the present case. Accordingly, it has been prayed that the penalty proceedings be dropped, there being no wilful default or contumacious conduct.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

G. ISSUES FOR ADJUDICATION:

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

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

90. 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 agreement executed prior to coming into force of the Act.

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

In this regard, the Authority is of the considered view that the RERA Act neither expressly provides nor can it be construed to imply that all pre-existing agreements are to be re-written upon the coming into force of the Act. Rather, the provisions of the Act, the Rules framed thereunder, and the terms of the agreement are required to be interpreted harmoniously.

However, in situations where the Act or the Rules specifically provide for regulating a particular aspect, such matters shall be governed in accordance with the provisions of the Act and the Rules from the date of their enforcement. The said contention has been upheld in the landmark judgement of ***Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and others (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

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

Thus, while agreements between the parties are sacrosanct, they remain subject to the provisions of the Act to the extent the same have been modified or overridden by statute; Additionally, *in* ***M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors., Civil Appeal No(s). 6745–6749 of 2021*** the Hon'ble Supreme Court held (particularly in paras 41 and 54) that the provisions of the Act are retroactive in

character. The Court clarified that though the statute is not retrospective in the strict sense, it operates upon pre-existing contractual relationships in future and the mere fact that an agreement for sale was executed prior to the Act does not exclude the applicability of the provisions of the Act and the Rules thereunder.

In the present case, the complainant is primarily seeking possession of the allotted unit, execution of conveyance deed 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 complainant executing the agreement out of free will and therefore terms of the agreement become binding on the complainant.

The next objection taken by the respondent is that the complainant is bound by the terms of the agreement, as the same was executed by the complainant out of free will. The primary contention of the respondent is that since the complainant had agreed to the said clause voluntarily, the same is binding upon the complainant and cannot now be challenged. Further, that this Authority has no power or jurisdiction under the act to

direct modification of any Article of the agreement. An article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope.

In order to adjudicate upon the aforesaid objection, it is apposite to examine the relevant terms of the Builder Buyer Agreement dated 05.02.2013. 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 05.02.2013 contemplated that the unit would be completed and ready for lease by 31.07.2013. 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 16.12 provides that the scheme under which the commercial units were offered was conceived as a leasing arrangement, specifically designed to enable the buyers to earn rental income from their respective units and not for their personal physical occupation or use. The contractual framework therefore indicates that the promoter did not contemplate delivery of physical possession to the allottees in the ordinary course.

This contractual position stands further reinforced by the respondent's own submissions, 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.

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.

As already observed while deciding Preliminary Objection No. I, the statutory obligations imposed under the Act operate upon the contractual relationship between the parties and prevail to the extent of any inconsistency. Consequently, the respondent cannot rely upon 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 complainant is irrevocably bound by every term of the Builder Buyer Agreement merely because it was voluntarily executed is without merit and is hereby rejected.

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

The respondent has further contended that the complainant is merely a speculative investor who invested in the project with the sole objective of earning assured returns and lease rentals and, therefore, cannot claim the status of an "allottee" under the provisions of the RERD Act, 2016. It has further been submitted that the Builder Buyer Agreement was executed under an assured return and leasing arrangement, under which the respondent had paid assured returns till March, 2017. Additionally, as per the respondent, the complainant cannot invoke the provisions of the Act

as the transaction was purely in the nature of an investment. The aforesaid contention is misconceived and deserves to be rejected.

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

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

In the present case, the material placed on record demonstrates that the respondent allotted a specifically identifiable commercial unit, namely Unit No. 742 situated on the 7th Floor of Tower 'B' in the project Vatika Mindscapes, to the complainant for a total basic sale consideration of ₹17,50,000/-. 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

complainant upon completion of the transaction. These are the essential attributes of a promoter-allottee relationship recognised under the Act.

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

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

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

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

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

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

ii. Nature Of Builder Buyer Agreement-

Further, for adjudication of present complaint Authority would like to refer to nature of the agreement dated 05.02.2013 executed between both the parties.

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

Clause F, G and H repeatedly refers to Complainant as buyer and to respondent as developers. Clause F clearly stipulates that Complainant /buyer have approached the developer for purchase of unit of approximately 500 sq. ft. super area on 7th floor of the building Block-B of the project.

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

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

Further, In Clause-1 (a) of the agreement, unit allotted to the Complainant is properly identified as Unit no. 742, situated on the 7th floor of Block B of said commercial complex. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic

sale consideration also have been clearly stipulated. It appears, there were multiple payment options available, however, Complainant herein chose the option of down payments. An option of deferred payment was also available but Complainant did not opt for the same.

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

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

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

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

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

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

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

Respondent has denied legitimate rights of the Complainant as are admissible to him 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-

91. Examining the complaint on merits, complainant in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide Allotment letter and BBA on 05.02.2013 for sale consideration of ₹17,50,000/-. Against said sale consideration, as per the complainant payment of ₹18,04,075/- was made till date by him. It is again reiterated that no clause has been incorporated by respondent in said agreement towards timeline for handing over of possession of allotted unit. However, in allotment letter dated 05.02.2013 it is specifically mentioned that "iv). the flat would be completed and ready for lease by 31.07.2013. Accordingly, allottee would be paid lease rentals at Rs. 62.50/- per sq.ft. of space w.e.f 31st July, 2013 or from the building is ready, whichever is later. In the event the premises is leased any time after 31st July, 2013, the Developer shall be paying to allottee rentals as per Clause no. (16.1).

92. Further, Authority observes that the builder buyer agreement dated 05.02.2013 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.

93. In present complaint, the builder buyer agreement was executed on **05.02.2013** Accordingly, taking a period of 48 months from the date of agreement, i.e, 05.02.2013 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to **05.02.2017**. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of the unit till date. Complainant has duly accepted such type of buyer agreement for the reason that complainant has invested his money for monetary gains which in this case is assured returns. Said returns were duly paid to complainant till March, 2017 and was stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose. Complainant herein is aggrieved due to non-hand over of the possession. Complainant who has already paid total sale consideration got stuck with respondent. If we look at the intent of allotee-complainant, he has 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 complainant-allottee never ever wanted to own that property by perfecting the title in his name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit.

94. 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 allotee on its failure to complete or non-delivery of possession of unit in accordance with agreement/any other date specified therein and in case, where complainant intend to continue with the project then to pay interest for the delay caused in delivery of possession of unit till a valid offer is made to complainant. So, the contention of respondent that unit was never meant for possession and no loss of any kind is caused to complainant due to non-handing over of possession does not hold any merit and the complainant is unequivocally entitled to lawful physical possession of the subject unit together with execution and registration of the conveyance deed in accordance with law.

95. At this juncture, it is also pertinent to note that the respondent obtained the Occupation Certificate in respect of Tower 'B' on 14.10.2016. However, despite obtaining the Occupation Certificate, the respondent has failed to make any valid offer of physical possession to the complainant till date, even after the institution of the present complaint.

96. Vide order dated 21.08.2025, this Authority directed the respondent to hand over actual physical possession of the units in the captioned complaint to the complainant with proper earmarking of space and to ensure execution of the conveyance deed by 28.10.2025. The said directions were neither complied with nor was any justifiable explanation furnished for such non-compliance. Consequently, when the matter was taken up on 13.11.2025, this Authority recorded that the respondent had persistently failed to comply with its lawful directions and, accordingly, deemed it appropriate to initiate proceedings under Section 63 of the Real Estate (Regulation and Development) Act, 2016 by issuing a show cause notice calling upon the respondent to explain as to why penalty should not be imposed for failure to comply with the directions of this Authority?

97. Pursuant thereto, a show cause notice dated 09.12.2025 was duly served upon the respondent. However, even on the subsequent date of hearing, i.e., 20.08.2026 ld. counsel appearing on behalf of the respondent submitted that an application under Sections 38 and 39 of the Act has been filed seeking setting aside of the show-cause notice and recalling of the

notice. However, the respondent has submitted its willingness to execute conveyance deed against the said unit. Therefore, in order to provide another opportunity, at this stage penalty u/s 63 is not being levied. However, this is without prejudice to the right and competence of this Authority to initiate and levy penalty under the Act, including that u/s 63 in case of default by the respondent.

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

99. 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.

100. It is pertinent to note that the respondent in its builder buyer agreement has not specified any provision for delay interest. however, instead have offered assured returns. The object of assured returns is similar to that of delay interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016, as both provide interest on the amount paid by

the allottee under certain circumstances. Therefore, the relief sought by the allottee is in substance, a claim for interest on account of the delay caused by the respondent. It is an admitted position that the Builder Buyer Agreement was executed between the parties in the year 2013 and that the entire consideration was paid by the Complainant to the Respondent. Despite the lapse of more than a decade, the complainant has neither been handed over possession of the unit nor has the conveyance deed been executed in its favour, and the assured returns contemplated between the parties have also not been duly paid. The allottee has been made to run from pillar to post despite the fact that entire payment was made by him. Thus, the Respondent has retained the consideration paid by the Complainant without fully discharging its corresponding obligations.

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

102. Moreover, the concept of awarding interest, in both the cases-be it possession or refund essentially remains same. The builder is burdened with direction to pay interest on the paid amount because he has ultimately failed to deliver the possession of booked unit within stipulated time. At this stage, the option of refund or possession are exercisable by the allottee.

Fundamental logic behind awarding of interest in both the cases depicts that respondent had kept/utilised the money of allottee since booking and could not deliver as per the agreed terms. Hence, the interest on paid amount is ordered for that unauthorised/wrongful retain of paid amount. In a way, assured returns are also awarding of interest to the allottee on his paid amount on monthly basis. In support of this reliance is place upon order dated 03.02.2022 passed by this Authority in complaint no. 343/2021 namely "*Tanya Mahajan vs Vatika Limited*"

Relevant part of order is reproduced below for reference:-

> *"Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, complainants chose to make down payments and in return claim monthly assured returns.* ***As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, complainant allottees would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.***
>
> *Till such time as a lawful offer of possession is made, complainants are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft.* ***Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e. MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case."***

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

104. In the present case, the Respondent has admittedly not made any valid offer of possession to the Complainant till date. Accordingly, the Authority concludes that the Complainant is entitled to delay interest from the deemed date of possession, i.e.05.02.2017, till the date on which a legally valid offer of possession is made to the Complainant, subject to adjustment of the assured returns already paid, as observed hereinabove.

105. 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. 08.10.2026 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"

Sr. No.	Principal Amount	Deemed date of possession (05.02.2017) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075	05.02.2017	₹18,85,945/-
	Total=**₹18,04,075/-**		**Total=₹18,85,945/--**
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹16,38,839/-			

106. Accordingly, the respondent is liable to pay the upfront delay interest of ₹18,85,945/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹18,04,075/- monthly interest of ₹16,014/-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, ₹16,38,839/-

107. The complainant in relief (a), (b), (c), (d) has sought reliefs relating to payment of lease rentals in accordance with the leasing arrangement contained in the Builder Buyer Agreement. However, it is pertinent to note that the jurisdiction of this Authority extends only to adjudicating violations of the provisions of the Act, the Rules and the Regulations framed thereunder.

108. The reliefs sought by the complainant regarding enforcement of the leasing arrangement or payment of lease rentals arise out of contractual obligations between the parties and do not constitute matters falling within the regulatory jurisdiction of this Authority under the Act. Adjudication of such disputes would necessarily require examination of contractual rights and obligations relating to lease management, occupation by third parties, rental accounting and allied issues, which lie beyond the scope of proceedings under the Real Estate (Regulation and Development) Act,

2016. Accordingly, reliefs (a), (b) ,(c) and (d) sought by the complainant cannot be granted in the present proceedings.

109. Further, the complainant has sought compensation. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the compensation.

I. DIRECTIONS OF THE AUTHORITY:

110. 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 complainant. Respondent is further directed to get

conveyance deed executed in favor of complainant within 90 days of valid offer of possession being made to complainant.

ii. Respondent is directed to pay the upfront delay interest to the complainants towards delay already caused in handing over the possession as calculated/mentioned in table mentioned in para 104 to 106 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.

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

.....
CHANDER SHEKHAR
[MEMBER]

.....
DR .GEETA RATHEE SINGH
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]