HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**665 of 2024**
Date of filing:	**15.05.2024**
Date of first hearing:	**01.08.2024**
Date of decision:	**08.10.2026**

Radhika Khanna,
W/o Prof. Sri Ram Khanna,
R/o 108, Golf Link,
New Delhi – 110003.

....COMPLAINANT

VERSUS

1.**Vatika Limited.**
Regd office at: Flat no.621-A, 6th Floor,
Devika Towers, 6, Nehru Place,
New Delhi-110019.
Corporate office at: A002, INXT City Centre, Ground Floor,
Block- A, Sector-83, Vatika India Next,
Gurgaon- Haryana- 122012.

2. Vatika IT Parks Pvt Ltd,
Formerly "Hind Enterprises Limited"
Regd office at: Flat no.621-A, 6th Floor,
Devika Towers, 6, Nehru Place,
New Delhi-110019.

3. Gautam Bhalla,
Director/ Authorised Signatory,
M/s Vatika Limited
M/s Vatika IT Parks Pvt Ltd.
Regd office at: Flat no.621-A, 6th Floor,

Devika Towers, 6, Nehru Place,
New Delhi-110019.
Corporate office at: A002, INXT City Centre, Ground Floor,
Block- A, Sector-83, Vatika India Next,
Gurgaon- Haryana- 122012.
Resident of: Farm no. 4, Hyde Park,
Sultanpur Farm, Mehrauli,
Delhi-110030.

....RESPONDENTS

Complaint no.:	**666 of 2024**
Date of filing:	**15.05.2024**
Date of first hearing:	**06.07.2023**
Date of decision:	**08.10.2026**

Sri Ram Khanna,
S/o Suraj Prakash Khanna,
R/o 108, Golf Link,
New Delhi – 110003.

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1. Sri Ram Khanna and Anr
S/o Suraj Prakash Khanna,
R/o 108, Golf Link,
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2. S.R. Khanna & Sons,
R/o 108, Golf Link,
New Delhi – 110003.

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1. Sri Ram Khanna and Anr
S/o Suraj Prakash Khanna,
R/o 108, Golf Link,
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Resident of: Farm no. 4, Hyde Park,
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Delhi-110030. ....RESPONDENTS

Complaint no.:	**677 of 2024**
Date of filing:	**15.05.2024**
Date of first hearing:	**06.07.2023**
Date of decision:	**08.10.2026**

Raj Kumar Khanna,
Through POA holder Shri Ram Khanna,
R/o 108, Golf Link,
New Delhi – 110003. ....COMPLAINANT

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Resident of: Farm no. 4, Hyde Park,
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Delhi-110030. ....RESPONDENTS

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

Present: - Mr. Ambanshu Sahni, Counsel for the complainant, in person
Ms. Vertika H. Singh, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as they involve similar issues and are related to same project of the respondent. This final order is being passed by taking complaint No. 665 of 2025 titled as "Radhika Khanna vs Vatika Limited & Ors" as the lead case.

2. Present lead complaint was filed on 15.05.2024 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

Name of the Project- Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad

Possession Clause in Builder Buyer Agreement:

"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 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.

Sr. no.	Complaint no./Title	Unit no.	Date of allotment letter	Date of execution of BBA	Deemed Date of posession	Total sale consideration (TSC) and amount paid by the complainant (Paid amount)	Offer of possession
1.	665 of 2024 Radhika Khanna, Vs. Vatika Limited & Ors	329, 3rd Floor Tower-B,	03.08.2012	23.08.2012	23.08.2016	TSC: ₹17,50,000/- Paid amount: ₹18,04,075/-	No
2.	666 of 2024 Sri Ram Khanna, Vs. Vatika Limited & Ors	328, 3rd Floor Tower-B,	03.08.2012	23.08.2012	23.08.2016	TSC: ₹17,50,000/- Paid amount: ₹18,04,075/-	No
3.	667 of 2024 Sri Ram Khanna and Anr, Vs. Vatika Limited & Ors	327, 3rd Floor Tower-B,	03.08.2012	23.08.2012	23.08.2016	TSC: ₹17,50,000/- Paid amount: ₹18,04,075/-	No
4.	675 of 2024 Sri Ram Khanna and Anr, Vs. Vatika Limited & Ors	326, 3rd Floor Tower-B,	03.08.2012	23.08.2012	23.08.2016	TSC: ₹17,50,000/- Paid amount: ₹18,04,075/-	No
5.	677 of 2024 Raj Kumar Khanna through POA holder Sri Ram Khanna Vs. Vatika Limited & Ors	259, 2nd Floor Tower-B,	31.08.2012	23.08.2012	23.08.2016	TSC: ₹17,50,000/- Paid amount: ₹18,04,075	No

B. FACTS OF THE LEAD 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, Faridabad, Haryana, being developed by the respondents.

4. It is averred that respondent no. 1, Vatika Limited, is the developer/promoter of the project, whereas respondent no. 2 is stated to be the owner of the land admeasuring 8.793 acres situated in the revenue estate of Village Sarai Khawaja, Tehsil and District Faridabad, Haryana, on which the project has been developed. Respondent no. 3 is stated to be a Director of respondent nos. 1 and 2. The complainant has submitted that all the respondents fall within the definition of "promoter" under Section 2(zk) of the RERD Act, 2016.

5. It is the case of the complainant that the representatives of respondent no. 1 introduced the complainant to the commercial project "Vatika Mindscapes" and represented that commercial units therein were being offered under an assured return/minimum guaranteed rental scheme. The complainant has submitted that she was informed that the respondent would lease out the commercial unit to a tenant on behalf of the allottee and collect the monthly rentals.

6. That relying upon the representations and assurances made by the marketing representatives of respondent no. 1, she booked a commercial

unit bearing no. 329, admeasuring 500 sq. ft., situated on the 3rd Floor in Tower-B of the Project.

7. The complainant has further submitted that the unit was offered under a down-payment plan at the rate of ₹7,500/- per sq. ft. and that a discount of 2.5% was offered, resulting in a price of ₹7,312.50/- per sq. ft. It is alleged that the complainant was informed about the breakup of the consideration through a handwritten note dated 05.05.2012.

8. It is averred that the complainant made a payment of ₹1,00,000/- vide cheque dated 09.05.2012 and a further payment of ₹17,04,075/- vide cheque dated 27.07.2012. The complainant has further alleged that an amount of ₹19,06,250/- was paid towards the consideration of the Unit for which no formal receipt was issued by the respondents.

9. Thereafter, an allotment letter dated 03.08.2012 was issued by respondent no. 1 in favour of the complainant in respect of the Unit. It is averred that the said allotment letter was accompanied by a cheque towards assured/committed returns at the rate of ₹68.75/- per sq. ft. per month for the period from 03.08.2012 to 31.10.2012.

10. The complainant has submitted that the allotment letter stipulated that the Unit would be completed and ready for lease by 30.12.2012. It is further submitted that as per the terms of the allotment, maintenance charges were not to be charged from the allottee during the period for which the property

was leased out and the maintenance security deposit was to be payable by the tenant.

11. Thereafter, a Builder Buyer Agreement was executed between the complainant and the respondents on 23.08.2012 in respect of commercial Unit no. 329, admeasuring 500 sq. ft., situated on the 3rd Floor of Tower-B in the Project. Copy of the Builder Buyer Agreement has been annexed with the complaint as Annexure C-5.

12. It is the case of the complainant that in terms of the BBA, the respondents agreed to pay assured/committed returns at the rate of ₹68.75/- per sq. ft. per month during the construction period till completion of the building. It is further submitted that the BBA also provided for payment of committed returns at the rate of ₹62.50/- per sq. ft. per month for a specified period after completion or till the Unit was put on lease, whichever was earlier.

13. The complainant has submitted that she received committed returns at the rate of ₹34,375/- per month till 31.03.2015. Thereafter, vide letter dated 31.03.2015, the respondents informed the complainant that the building was complete and ready to be leased. However, it is alleged that no occupation certificate or other document evidencing completion of the concerned Tower was provided to the complainant.

14. It is further averred that the respondents subsequently reduced the committed returns to ₹62.50/- per sq. ft. per month. Thereafter, vide

communication dated 01.03.2018, the respondents informed the complainant that the stipulated period of committed returns had expired and that no further assured returns would be paid from 25.03.2018. It is the case of the complainant that no amount towards assured/committed returns has been paid to her since March, 2018.

15. The complainant has alleged that the Unit has neither been leased out nor has physical possession thereof been handed over to her. It is further averred that the construction and finishing work in the area where the Unit is situated remained incomplete and that parts of the concerned floor remained vacant and unfit for occupation.

16. It is further the case of the complainant that despite the respondents having stopped payment of assured returns, they have raised demands towards maintenance charges and interest thereon. The complainant has contended that in the absence of leasing of the Unit or handing over of possession thereof, the respondents are not entitled to levy maintenance charges upon her.

17. The complainant has submitted that she repeatedly approached the respondents from the year 2018 onwards seeking payment of assured returns and handing over of possession of the Unit but it was of no avail.

18. It is further averred that the complainant came to know that certain portions of the 3rd Floor of Tower-B had been leased out to third parties. Upon

making enquiries, the complainant was allegedly informed that the area comprising her Unit had not been leased and that the same would be leased out subsequently.

19. The complainant has further submitted that upon visiting the Project site in March, 2024, her family members found that the area comprising Unit nos. 326 to 329, including the Unit in question, appeared to be occupied and functioning as an office. It is alleged that the name of "Growworld Investment Solutions Pvt. Ltd." was displayed as an occupant on the 3rd Floor of Tower-B.

20. That despite the respondents maintaining that the Unit had not been leased and had not been handed over to the complainant, the area comprising the Unit was in the occupation of a third party. The complainant has alleged that the respondents have neither informed her regarding the alleged leasing of the Unit nor paid any rental or other amount received from such occupation.

21. The complainant has further alleged that the respondents have failed to obtain the requisite occupation/completion certificate in respect of the concerned portion of the Project and have neither handed over possession of the Unit to the complainant nor leased the same in accordance with the assurances and commitments made under the BBA.

22. That the respondents have failed to fulfil their obligations under the allotment letter and the BBA by neither paying the assured/committed returns after March, 2018 nor handing over possession of the Unit.

23. Aggrieved by the aforesaid acts and omissions on the part of the respondents, the complainant has approached this Authority by way of the present complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, seeking payment of assured/committed returns, possession of the Unit and other appropriate reliefs.

C. RELIEFS SOUGHT

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

a) admit this Complaint of the Complainant;

b) issue the summons/notices to the Respondents to appear, produce and file all ORIGINAL Papers/ documents /floor plans /site plan of impugned unit /lease deed etc concerning in the VATIKA Limited Project namely Mindscapes Commercial Apartment/unit no 329 admeasuring to 500 sq. ft. located at 3rd floor of the building (Area 500 Sq. Ft.), in Tower B, for the perusal of this Hon'ble Authority;

c) issue direction/s, order/s to Respondents to honour the builder buyer's agreement of the allotted Unit/Commercial Apartment and make the payment of assured return @68.75/- per sq.ft from 01.04 2015 till the completion of the unit/ Commercial Apartment allotted

and eventual handing over of the possession of the allotted unit along with 18% interest per annum from the date of deposit of the amount till its actual realisation.

d) Issue directions to the Respondents to handover the peaceful possession of the unit/Commercial Apartment allotted to a tenant as per the Agreement or if the lease to a tenant is admitted then pay the rent collected till date to the complainant. If the area of the impugned unit is claimed to be vacant then hand it over to the Petitioner after completion of the construction of the building after making the interiors of the unit fit for occupation by a tenant after obtaining requisite occupation/ completion certificate(s) and pay compensation for the delay in handing over possession of the unit for each month of delay wef August 2015 / 36 months after 23.8 12 being date of builder buyer agreement).

e) Set aside the demand for maintenance charges and interest @ 18% made on the Allotee in respect of the impugned unit and direct the Respondents to recover the maintenance charges from the tenant as per allotment letter.

f) To complete the unit and handover the possession to any tenant as per BBA or the allottee and direct the Respondent to release the property from any subsisting mortgage and after release from any subsisting mortgage take steps to register the sale deed in respect of

the impugned unit as per clause 9 of the Builder Buyer agreement including providing a copy of the sale deed for concurrence of the allotee to its clauses, form and content being in conformity with Builder Buyer agreement and provisions of law and directing the Respondent to take steps for registration of sale deed for the impugned it in terms of clause 9 of the Builder Buyer agreement within a reasonable period.

g) Direct the Respondent no 1 to issue a no objection certificate for the allottee to sell / transfer its rights and title in the impugned unit to a third party at any time and to direct the Respondent to record such transfer in its records including endorsing the same at provided place in BBA and not to take any steps that may impede the transferee in enjoying the rights and title acquired in the impugned unit.

h) To give a declaration that the Respondent no 1 is bound to give effect to the clause 16.5 of the Builder Buyer agreement Re refund of capital cost in accordance with formula specified in It. If on account of any reason, lease rent achieved in respect of the first term of lease is less than the aforesaid Rs 62.50 /- sq ft super area per month. The developer shall pay to the buyer a one-time compensation calculated at the rate of Rs 120 per sq ft super area for every one rupee drop in lease rental below Rs 62.50/- per sq ft super area per month.

i) Grant any other relief/s to which the Complainant is found entitled under the facts and circumstances of the case in the interest of justice, fair play and equity, and for upholding rule of law.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 20.11.2024 pleading therein:

25. 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 Complainant. The Complainant is guilty of suppressio veri and suggestio falsi and has deliberately concealed and suppressed material facts within her knowledge, which, if disclosed, would demonstrate that no cause of action subsists in their favour against the answering respondents. The Complainant has not approached this Ld. Authority with clean hands and on this ground alone the present complaint is liable to be dismissed.

26. 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 completed in March 2015 and its Occupation Certificate was issued on 14.10.2016, prior to the commencement of the RERA Act.

27. That the respondent has further alleged that the claim for compensation is not maintainable before this Ld. Authority, as the power to adjudicate compensation vests with the Ld. Adjudicating Officer.

28. That the respondent has further relied upon the judgment of the Hon'ble Punjab & Haryana High Court in Smt. Swarnpreet Kaur & Ors. v. State of Haryana & Ors., CWP No. 6558 of 2021, and has contended that, in view of the Occupation Certificate issued in respect of Block 'B', the allegations regarding completion of Unit are untenable.

29. That respondent no.3 is not the director of the company Vatika Limited. The complainant had not dealt with respondent no.3 and has rather dealt with the company Vatika Limited. The complainant had executed Builder Buyer Agreement with Vatika Limited and had made payment of sale consideration to the company which was duly deposited in the account of the company.

30. That the complainant has not impleaded Enviro Integrated Facility Services Pvt Ltd. which has charged complainant for the maintenance and is a necessary party.

31. 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.

32. 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 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 Complainant cannot survive. It is further submitted that the Respondents had already paid Rs. 22,15,725/- towards assured returns. Copy of assured returns computation sheet is annexed as Annexure R-2 with the reply.

33. 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.

34. 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.

35. 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.

36. 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.).

37. 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).

38. 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 complainant 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 complainant much before the due date of possession which clearly shows

the complainant 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.

39. 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.

40. 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.

41. 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 complainant is

praying for the relief of 'Assured return' which is beyond the jurisdiction hat this Ld. Authority has been dressed with.

42. 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."

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. That the terms of agreement cannot be challenged by the complainant because it had willingly signed the same without any coercion or undue influence and acted according to it.

49. That the Complainant had invested his money in an Assured Return Scheme of the Respondent Company and as per Clause 15 of the Builder Buyer Agreement dated 23.08.2012(Annexure C-5), 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.

50. 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.

51. 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. The Complainant had invested his money in an Assured Return Scheme of the Respondent Company and in compliance of the said arrangement between parties, the Respondent-Company had already made the payment of assured return till March 2018. Accordingly, the respondents have paid a sum of Rs. 22,15,725.80/- till the completion of construction work of the Tower. The complainant has been duly paid the entire assured returns as per the terms and conditions of the Buyer Agreement.

52. It is contended by the respondent that intimation regarding the completion of construction work was sent to the complainant vide letter dated 31.03.2015, (Annexure C-6).

53. 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.

54. That it is submitted that the Complainant 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.

55. That the Complainant 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.

56. 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.

57. 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;

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

59. 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 to Block 'A' and Block 'B' is attached with reply as Annexure R-8..

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. 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'.

66. 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.

67. It is denied by the respondent that the company had quoted the sale consideration as ₹7500/- per sq ft for each unit of 500 sq ft. super area. The basic sale consideration of the said commercial unit was ₹3500/- per sq ft super area and accordingly the basic sale consideration of the said unit was ₹17,50,000/- only and complainant had made payment of ₹18,04,075/-.

68. It was clearly stipulated in the allotment letter dated 03.08.2012 that if any lessee terminated the lease and vacated the premises, in that case the maintenance charges would be recovered from the allottee. Hence, the intent and purpose qua the allotment letter was to recover the maintenance charges for the vacant period whenever the said unit is not on lease.

Further, the complainant was well aware regarding the payment of maintenance charges. Vide Clause 5.1 the complainant has duly agreed that all costs, expenses pertaining to the upkeep, maintenance and management of the said building shall be borne and paid by the buyer to the extent of her share in the said building block / commercial complex. Vide Clause 5.2, the complainant has agreed to pay Interest Free Maintenance Security Deposit (IFMSD) to the developer or the maintenance agency as the case may be.

69. Vide Clause 5.3, the complainant has further agreed that the maintenance and other charges shall be billed by the developer or maintenance company / agency every calendar month to the buyer and the same shall become payable within 7 days of its intimation. It is pertinent to mention that it is Enviro Integrated Facilities Services Pvt. Ltd., which is a necessary party, who had been taking care of the facility management services at the site i.e. Vatika Mindscapes with effect from 25.03.2018. It is further stated that Enviro is registered under the Micro Small Medium Enterprises vide Udyam Registration Number UDYAM-DL-08-0021411 and is governed by the provisions of Micro Small Medium Enterprises Development Act, 2006. The complainant cannot shirk away from making the due payment of maintenance charges which became due towards Enviro Integrated Facilities Services Pvt. Ltd, which is a necessary party but has not been impleaded as party in the present complaint.

70. That it is denied that vide allotment letter dated 03.08.2012, the flat was to be completed by 30.12.2012. It was mentioned vide Clause IV of the allotment letter that the complainant would be paid the lease rentals @ Rs.62.50 per sq. ft. of space w.e.f. 01.01.2013 or from the date the building was ready, whichever was later. It was also mentioned that in the event the premises were leased anytime after 01.01.2013, the developer shall be paying the rentals as per Clause 16.1 of the Builder Buyer Agreement. Vide Clause 13 of the Builder Buyer Agreement, it was agreed upon between the parties that the probable time to complete the construction of said commercial unit was 48 months from the date of execution of the agreement dated 23.08.2012 i.e. by 22.08.2016. Hence, apparently the time period mentioned in the allotment letter was only a tentative time period.

71. That vide letters dated 31.03.2015 and 01.03.2018 the company was in active discussions with the prospective tenants for the property and expected to lease out the entire area of the building in due course. Further, the unit of the complainant has not been leased out. The units leased out to "Growworld Investment Solutions Pvt Ltd" are unit nos 318, 319 and 320.

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

E. ADDITIONAL DOCUMENTS PLACED ON RECORD BY PARTIES

Ld. counsel for the complainant has further submitted rejoinder dated 22.01.2025, wherein the preliminary objections and averments made in the

reply have been denied and the contents of the complaint have been reiterated.

73. That the present complaint is maintainable before this Authority and the cause of action is continuing, as the Complainant seeks possession of the Unit, interest for delayed possession and execution of conveyance deed. Reliance has also been placed upon Sections 17, 18, 79 and 89 of the Act and the judgment of the Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Anr. in support of the jurisdiction of this Authority.

74. That the issuance of an occupation/completion certificate in respect of a particular block does not by itself establish completion of the entire Project or dispense with the obligation to hand over possession. The Complainant has further disputed the applicability of the judgments relied upon by the Respondent on the ground that the factual matrix therein is distinguishable from the present case. That the defence taken by the Respondent under the BUDS Act, 2019, in relation to the assured-return arrangement, is misconceived.

75. It is submitted that the payments made under the BBA were towards purchase of the Unit and not a deposit, and that the assured returns had already been discontinued prior to the enactment/notification of the BUDS Act. The Complainant has also relied upon the exemptions contained in

Sections 4 and 41 of the said Act and disputed the applicability of the authorities/judgments relied upon by the Respondent.

76. That the Complainant disputes the Respondent's contention that the Unit was intended only for leasing and that physical possession could not be sought. It is submitted that the Respondent was required to arrange leasing of the Unit and hand over possession to the tenant on behalf of the allottee, and that, in the event of failure to lease the Unit, the contractual provisions also contemplated an option of physical possession. The Complainant has further alleged that the Unit/portion in question remains disputed and that the Respondent has failed to produce the relevant demarcated floor plan.

77. That the Complainant has disputed the levy of CAM/maintenance charges in the absence of handover of possession and has submitted that, under the allotment/BBA terms relied upon by him, such charges were payable by the tenant. It is further contended that there is no separate agreement between the Complainant and the entity stated to be raising such charges. That the Complainant has disputed the Respondent's assertions regarding the completion date and submitted that the completion certificate relied upon by the Respondent bears a date subsequent to the completion date communicated by the Respondent. On this basis, the Complainant has claimed that the assured-return amount was also short-paid and that the issue is liable to be considered while settling the accounts under the BBA.

78. That the Complainant has alleged that the BBA was a standard-form agreement containing one-sided and restrictive clauses, particularly with respect to physical possession, and has relied upon the law laid down by the Hon'ble Supreme Court concerning unfair/one-sided contractual terms. The allegation of novation of the original contractual arrangement has also been specifically denied.

79. That the Complainant has disputed the Respondent's allegations regarding suppression of facts, speculative investment and want of clean hands, and has submitted that the material facts and supporting documents have been disclosed in the complaint. The Complainant has also disputed the competence of the deponent of the Respondent's reply to deny certain facts allegedly based on personal interactions with the Respondent's representatives.

80. That the Complainant has further relied upon the correspondence, floor plans and other documents placed on record to dispute the Respondent's version regarding the status, demarcation and leasing of the Unit, and has submitted that the Respondent has neither fulfilled its contractual obligations nor executed the conveyance deed.

81. That the Complainant has accordingly reiterated that the reliefs sought in the complaint, including possession, interest for delayed possession and execution of conveyance deed, are within the jurisdiction and powers of

this Authority under the Act, and that the complaint is maintainable as the alleged breaches and corresponding cause of action continue to subsist.

Ld. counsel for the Respondent has placed on record application dated 09.07.2025 to place on record status of unit allotted.

82. That vide order dated 06.03.2025 this Hon'ble Authority had issued directions to the respondent to provide status of unit in order to ascertain the fact that whether conveyance deed of unit can be executed or not. The respondent was further directed to file plan of the whole floor on which complainant's unit is located and out of that which space is earmarked for complainant's unit. That the occupation certificate pertaining to Tower- B had already been issued received on 14.10.2016.

83. That since the said unit is part of open common platform and has no boundaries, the complainant can be handed over only the virtual possession of the said unit as and when the complainant approaches the respondent company. The location of the unit is clearly demarcated in floor plan annexed as Annexure R-11.

The Respondent filed an application seeking recall/reconsideration of the directions issued vide order dated 10.07.2025 and dismissal of the proceedings initiated for alleged non-compliance submitting as under:

84. That the Respondent has been continuously requesting the Complainant to execute the conveyance deed and there is no wilful or deliberate non-compliance on its part.

85. That the Respondent has consistently pleaded that physical possession of the Unit was never contemplated under the Builder Buyer Agreement, as the Complainant had opted for the leasing arrangement. In support thereof, reliance has been placed upon the judgment of HRERA, Gurugram in Kapil Dev Khullar & Anr. v. Advance India Projects Ltd., Complaint No. 1910 of 2023, decided on 10.12.2024.

86. That the directions for delivery of physical possession and execution of conveyance deed amount to modification/re-writing of the contractual terms agreed between the parties, which is impermissible in law.

87. That the substantive relief of possession and execution of conveyance deed could not have been granted at an interlocutory stage, particularly when the reliefs sought in the complaint were yet to be finally adjudicated.

88. That the alleged non-compliance is neither wilful nor deliberate. The Respondent has submitted that it has acted in accordance with the terms of the Agreement and the applicable law.

89. That continuation of the penalty proceedings would cause prejudice to the Respondent, and accordingly, the Respondent has prayed for dropping the proceedings initiated pursuant to the show-cause notice and for

recall/reconsideration of the directions contained in the order dated 10.07.2025.

The Complainant filed final written submissions dated 31.08.2026 wherein the objections raised by the Respondent were controverted and it was submitted that:

90. The Complainant relied upon the registered Deed of Declaration dated 11.01.2017 and the certified space allocation plan forming part thereof, submitting that the same is relevant for determining the location/demarcation of the subject Unit. It was further submitted that the Respondent had failed to produce the said document despite being called upon to do so.

91. The Complainant disputed the Respondent's assertion regarding the identity of the units occupied by Growworld and alleged that the Respondent had taken inconsistent stands regarding the location of the subject Unit.

92. The Complainant relied upon Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd., IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna and Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor in support of her submissions concerning one-sided contractual terms and the reliefs claimed.

93. It was further submitted that non-response to the communication dated 01.03.2018 did not amount to waiver or novation of the contractual rights, and that the Respondent's continued raising of CAM/maintenance demands despite the order dated 10.07.2025 in the connected complaints was also brought on record.

94. The Complainant further prayed for production of the original space allocation and leasing documents and for grant of the reliefs sought in the complaint.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

G. ISSUES FOR ADJUDICATION:

Whether complainant is entitled to the reliefs so sought.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

96. 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 complainant executing the agreement out of free will and therefore terms of the agreement become binding on the complainant.**

The 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 clauses of builder buyer agreement 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 23.08.2012. 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 03.08.2012 contemplated that the flat would be completed and ready for lease by 30.12.2012. 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.

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.

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 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 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 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 returns till March, 2018. 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.329 admeasuring 500sq ft situated on the 3rd 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 fall within the definition of an "allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 and 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 rejected.

ii. Nature Of Builder Buyer Agreement-

Further, for adjudication of present complaint Authority would like to refer to nature of the agreement dated 23.08.2012 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 E clearly stipulates that Complainant /buyer has approached the developer for purchase of unit of approximately 500 sq. ft. super area on 3rd 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 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 329, admeasuring 500 sq ft. situated on the 3rd floor of Block B of said commercial complex. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, Complainant herein chose the option of down payments. An option of deferred payment was also available but Complainant did not opt for the same.

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

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

Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for

monthly upfront payment. In this case, Complainant chose to make down payment and in return claim monthly assured returns. As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, Complainant allottee would be entitled to return on their up-front payments made which in this case has been named assured monthly returns. 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 Complainant because Complainant had booked the unit for its physical delivery to her. Before completion of the project assured payment @ ₹68.75/- per sq. ft. per month was agreed and after completion it was to be @ ₹62.50/- per sq. ft. per month for upto 3 years from the date of completion of construction of the said unit or till the same is put on lease, whichever is earlier. Further, it is mentioned that after the said commercial unit is put on lease, then payment of aforesaid committed return will come to an end and the buyer will start receiving lease rental in respect of the said commercial unit. In view of above discussion, it again reinforces the aspect of unconscionable contracts and it is stated that the Complainant is very much entitled to possession of the booked unit. Complainant

therefore is entitled to relief sought i.e., possession of the unit with payment of interest as well as execution of conveyance deed as per provisions of the agreement.

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

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

Authority observes that the complainant 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 Complainant 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-

97. 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 dated 03.08.2012 and BBA dated 23.08.2012 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 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 03.08.2012 it is specifically mentioned that the flat would be completed and ready for lease by 30.12.2012. Accordingly, allottee would be paid lease rentals at Rs. 62.50/- per sq.ft. of space w.e.f 01.01.2013 or from the building is ready, whichever is later. In the event the premises is leased any time after 01.01.2013 the Developer shall be paying to rentals as per Clause no. (16.1).

98. Further, Authority observes that the builder buyer agreement dated 23.08.2012 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.

99. In present complaint, the builder buyer agreement was executed on **23.08.2012**. Accordingly, taking a period of 48 months from the date of agreement, i.e, 23.08.2012 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to **23.08.2016**. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of the unit till date. Complainant has duly accepted such type of buyer agreement for the reason that complainant has invested her money for monetary gains which in this case is assured returns. Said returns were duly paid to complainant till March, 2018 and was stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainant is 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 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, she 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.

100. In this scenario, RERA Act, 2016 plays an effective role in safeguarding the interest of allottee. 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.

101. 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.

102. Vide order dated 10.07.2025, this Authority directed the respondent to hand over actual physical possession of the units in the captioned complaints to the complainants with proper earmarking of space and to ensure execution of the conveyance deed by 10.09.2025. 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?

103. 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., 02.04.2026 no such directions were complied with. On 20.08.2026 ld. counsel appearing on behalf of the respondent submitted that applications dated 18.08.2026 under Sections 38 and 39 of the Act has been filed seeking setting aside of the show-cause notices and recalling of the notices issued in all the captioned complaints. 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.

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

105. 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.

106. 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 2012 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 her favour, and the assured returns contemplated between the parties have also not been duly paid. The allottee 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 Complainant without fully discharging its corresponding obligations.

107. 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.

108. 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 is 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 her 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."***

109. 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.

110. 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. 23.08.2016, till the date on which a legally valid offer of possession is made to the Complainant, subject to adjustment of the assured returns already paid, as observed hereinabove.

111. 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"*

Complaint no. 665 of 2024

Sr. No.	Principal Amount	Deemed date of possession (23.08.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075/-	23.08.2016	₹19,74,558/-
	Total=**₹18,04,075/-**		Total= ₹19,74,558/-
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹22,15,725.80/-			

Complaint no. 666 of 2024

Sr. No.	Principal Amount	Deemed date of possession (23.08.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075/-	23.08.2016	₹19,74,558/-
	Total=₹18,04,075/-		Total= ₹19,74,558/-
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹22,15,725.80/-			

Complaint no. 667 of 2024

Sr. No.	Principal Amount	Deemed date of possession (23.08.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075/-	23.08.2016	₹19,74,558/-
	Total=₹18,04,075/-		Total = ₹19,74,558/-
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹22,15,725.80/-			

Complaint no. 675 of 2024

Sr. No.	Principal Amount	Deemed date of possession (23.08.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075/-	23.08.2016	₹19,74,558/-
	Total=₹18,04,075/-		Total= ₹19,74,558/-
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹22,15,725.80/-			

Complaint no. 677 of 2024

Sr. No.	Principal Amount	Deemed date of possession (23.08.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.10.2026
1.	₹18,04,075/-	23.08.2016	₹19,74,558/-
	Total=₹18,04,075/-		Total= ₹19,74,558/-
2.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹21,84,677.4/-			

112. Accordingly, in complaint nos. 665, 666, 667, 675 and 677 of 2024, respondent no. 1 is liable to pay upfront delay interest of ₹19,74,558/- to the respective complainants towards the delay already caused in handing over possession. Further, monthly interest of ₹16,014/- on the entire amount of ₹18,04,075/- shall be payable until the actual handing over of possession after obtaining the occupation certificate. The upfront delay interest payable, if any, shall be calculated after deducting the assured returns already paid, amounting to ₹22,15,725.80/- in complaint nos. 665, 666, 667 and 675 of 2024, and ₹21,84,677.40/- in complaint no. 677 of 2024.

113. Under Relief Nos. (b) and (g), the complainant has sought directions to issue summons/notices to the respondents to appear and produce the

original papers/documents, floor plans, site plan of the subject unit, lease deed, etc. Further, the complainant has sought a direction to Respondent No. 1 to issue a No Objection Certificate (NOC) permitting the allottee to sell/transfer its rights and title in the subject unit to a third party at any time, record such transfer in its records including by endorsing the same at the appropriate place in the BBA, and refrain from taking any steps that may impede the transferee from enjoying the rights and title acquired in the subject unit. However, the aforesaid reliefs have neither been pressed nor argued by the complainant.

114. In view of the relief sought regarding assured returns, detailed observations in this regard have been recorded in paragraphs 104 to 107 and are not repeated here for sake of brevity.

115. Additionally, complainant has also sought relief for setting aside the 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."

116. 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. Complainant herein is 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. Complainant who has already paid whole of total sale consideration in the year 2012 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 complainant even got worsened by the fact that respondent was in receipt of occupation certificate in year 2016, 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-complainant, 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.

117. 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.

118. 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 complainant 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 allotee is 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 complainant for maintenance charges is arbitrary/unjustified and is therefore quashed.

119. 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:

120. 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 No.1 is directed to hand over the legal and valid possession of the units to the respective complainants. Respondent No.1 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 No.1 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 110 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.

121. 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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CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]