# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no.** | **:** | **3027 of 2025** |
| **Date of Filing:** | | **02.07.2025** |
| **Date of Decision:** | | **17.07.2026** |

**M/s IT Solutions India Pvt. Ltd.**
**Address at:** D-88/5, Okhla Industrial Area, Phase I, New Delhi - 110020 — **Complainant**

Versus

M/s Vatika Limited
**Office:** Unit No. A002, INXT City Centre, Ground Floor, Block A, Sector-83, Vatika India Next, Gurugram, Haryana – 122004 — **Respondent**

**CORAM:**
Shri Arun Kumar — **Chairman**

**APPEARANCE:**

Sh. Abhijeet Gupta — Advocate for the complainant
Sh. Anshul Sharma — Advocate for the respondent

## ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

| S.no. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | "Vatika Professional Point", Sector-66, Gurugram |
| 2. | Nature of the project | Commercial colony |
| 3. | License No. | 57 of 2008 dated 19.03.2008 |
| 4. | Registered or not registered | Not Registered |
| 5. | Unit no. | 1032, 10th Floor<br>(page 24 of complaint) |
| 6. | Unit area | 500 sq. ft.<br>(page 24 of complaint) |
| 7. | BBA b/w original allottee and respondent | 21.08.2010<br>(page no. 21 of complaint) |
| 8. | Agreement to sell b/w original allottee and complainant | 04.02.2011<br>(page no. 47 of complaint) |
| 9. | Provision regarding possession/assured return | 2. The Developer undertakes to complete the construction of the complex/building within **2 years from the date of execution of Agreement**. Since the Allottee has paid full sale consideration on signing of this agreement, **the** |

| | | |
|---|---|---|
| | | **Developer further undertakes to make payment of Rs. 70/- per sq. ft. super area per month by way of committed return** during construction period, which the Allottee duly accepts. In the event of a time over run, the Allottee shall continue to receive the same assured return as mentioned herein until the building is ready for possession. |
| 10. | Due date of possession | 21.08.2012<br>(as per possession clause) |
| 11. | Basic sale consideration | Rs.35,00,000/-<br>(Page no. 24 of complaint) |
| 12. | Amount paid | Rs.35,00,000/-<br>(page no. 25 of complaint) |
| 13. | Occupation certificate | 29.10.2013<br>(page no. 10 of reply) |
| 14. | Offer of possession | Not on Records |

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

I. That relying upon the respondent's representations and being assured that the respondent would abide by their commitments, the former allottee purchased a unit bearing no. 1032, admeasuring 500 sq. ft. located on 10th floor of the project.

II. That the unit bearing no. 1032, admeasuring 500 sq. ft. located on 10th floor in the project of the respondent was allocated to the former allottee vide allotment letter dated 21.08.2010.

III. That thereafter, the former allottee and the respondent executed a builder-buyer agreement dated 21.08.2010 wherein the rights and duties of both the parties were explicitly assigned. The total sale consideration of the unit was Rs. 35,00,000/-.

IV. That the former allottee paid the total amount of sale consideration vide two cheques amounting to Rs. 34,00,000/- dated 04.08.2010 and of Rs. 1,00,000/-.

V. That the former allottee also executed an agreement to sell in favor of the complainant dated 04.02.2011.

VI. That thereafter, upon the request from the former allottee, the respondent vide letter dated 16.02.2011, endorsed the builder-buyer agreement in favor of the complainant.

VII. That the respondent also sent a letter dated 10.10.2016 informing the complainant about the about completion of 36 months minimum commitment/assured return payout post building completion. It is pertinent to mention here that the respondent in the same letter also assured the complainant that the said unit will be leased out as soon as possible as the respondent is trying its level best to lease out the said unit but till date the respondent has failed to do so which reflects the deficiency of service on part of the respondent.

VIII. That the respondent in the builder-buyer agreement vide clause 2 on Page 5, undertakes to make a payment of Rs. 70.00/- per sq. ft. super area per month by way of committed return.

IX. That vide clause N(i) of the builder-buyer agreement, the respondent assured that on completion of the project, the space would be let-out at his own cost to a bona-fide Lessee.

X. That the respondent failed to complete the construction of the unit by 31.03.2011 as promised in the allotment letter.

**C. Relief sought by the complainant:**

4. The complainant in the present complaint has seeking the following relief(s).

(i) To handover the actual, physical, vacant possession of the commercial space above said project.

(ii) Direct the respondent to execute sale deed in favour of complainant of the office space in above said project.

(iii) Direct the respondent to pay the assured return/lease rental as per the BBA.

(iv) Direct the respondent to pay the delay penalty charges with interest as per RERA Act.

**D. Reply by the respondent.**

5. The respondent has contested the complaint on the following grounds.

I. That the present complaint is not maintainable either in law or on facts and is liable to be dismissed in limine. The complainant is seeking enforcement of an alleged "assured return", which is purely contractual and commercial in nature and does not fall within the statutory obligations of the respondent under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act").

II. That the unit booked by the complainant is a commercial unit and the complaint itself demonstrates that the purchase was made purely for investment purposes with expectation of fixed/assured returns. It is a settled position under HRERA Gurugram and HRERA Panchkula that disputes relating to assured return schemes are not enforceable under RERA, as RERA does not guarantee returns on investment.

III. That the RERA Act governs development, completion, delivery, and transfer of real estate projects. It does not recognize or mandate payment of assured returns, lease rentals, or profit guarantees. Therefore, the relief sought by the complainant is beyond the scope of Sections 12, 14, 18, or 19 of the Act.

IV. Without prejudice, any alleged assured return arrangement flows solely from private contractual understanding, which is time-bound and conditional and is subject to force majeure and market contingencies.

V. Further contractual obligation between the parties cannot be enforced under summary proceedings before HRERA.

VI. That the complainant has approached this Hon'ble Authority with unclean hands, having suppressed material facts. That the complaint is liable to be dismissed as the complainant has come before this Hon'ble Commission with unclean hands and has hidden facts with an attempt to mislead this Hon'ble Commission. The complainant has tried to mislead this Hon'ble Commission by false and frivolous averments.

VII. Complaint is not maintainable as occupation certificate on the project was obtained on 29.10.2013 prior to the enforcement of the Real Estate (Regulation and Development) Act. 2016.

VIII. At the outset, it is respectfully submitted that the present complaint is not maintainable, as the project in question stands completed much prior to the enforcement of the Real Estate (Regulation and Development) Act, 2016. The occupation certificate for the project was duly issued by the competent authority on 29.10.2013, i.e., well before the coming into force of the RERA Act.

IX. In view of the above, the project qualifies as a completed project and is therefore expressly excluded from the ambit and purview of the RERA Act, including the jurisdiction of this Hon'ble Authority.

X. HRERA does not have jurisdiction to entertain complaints in respect of projects where the occupation certificate was obtained prior to the commencement of RERA.

XI. It is a settled position of law, consistently followed by HRERA Gurugram, HRERA Panchkula, and the Haryana Real Estate Appellate Tribunal (HREAT), that disputes pertaining to projects completed prior to RERA cannot be adjudicated under the Act, and parties, if aggrieved, must seek remedy before the appropriate civil forum.

XII. That the complainant was very well aware of the entire scheme of the project as the said commercial project was launch and marketed with the so intention to give an opportunity to its customers to earn good rental income on their investments. The respondent adhered to the said promise that was made to its customers and gave a return of more than 200% than the investments made by respective investors in the present project namely "Professional Point". That in the present case the complainant has earned a total assured rental of more that Rs. 23,76,612/- lacs till Oct 2016 (including date of OC i.e. Oct 2013 + additional 36 months) for the said commercial space. However, relief sought by the complainant in the present complaint is non-maintainable as the physical possession was not to be given by the respondent to the complainant at the time of execution of the conveyance deed. However, in the event the complainant is desirous to get the physical possession of its area from the larger area the complainant has to follow a process that has been set out under the terms of BBA which was executed between the parties.

XIII. That the respondent is not in violation of any provisions of RERA Act and has duly completed all the duties and responsibilities under the terms and conditions of the BBA and subsequent conveyance deed. However, in defiance of the terms of the said documents it is the complainant who has not made the payment of the maintenance charges which as per the terms of the BBA and the Conveyance Deed is duly payable by the complainant.

XIV. That the respondent herein has not violate any provision of neither the builder buyer agreement however it is the complainant who is in default of making the payment to the maintenance agency against the common area maintenance charges. Therefore, the complaint is not maintainable of the said ground itself.

XV. That the respondent vide letter dated 10.10.2016 had informed the complainant that as per the terms of the said builder buyer agreement the respondent was entitled to make the payment of the assured rental only for the first 36 months after the date of completion of the project or till the date the said unit is put on lease whichever is earlier. Therefore, as the said unit was not getting leased out the respondent was liable to make the payment of the assured return only for the first three years and the said period ended on 29.10.2016 and therefore the respondent issued a formal letter to communicate to the complainant that the respondent shall not be liable to make payment of the assured return after the said date.

XVI. However, the present case therefore is liable to be dismissed on the said ground itself as the complainant has made prayers which are contrary to the facts and agreed terms and conditions of the agreement between the parties.

XVII. Further, it is the admitted position that the complainant has booked the said commercial space and on the other hand has earned a total assured rental of approx. Rs. 23,76,612/- till Oct 2016 (including date of OC i.e. Oct 2013 + additional 36 months) for the said area. Also, the complainant has not made payment of common area maintenance charges till date. Thus, the complainant has defaulted in making the payment of the dues as per the terms of the said BBA and therefore such frivolous complaint must be dismissed on the said ground itself.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

7. The respondent has raised an objection that Authority has no jurisdiction to deal with the said complaint. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

### F. Maintainability of present complaint:

11. In the present case, original allottee booked a unit bearing no. 1032 on the 10th floor, measuring 500 sq. ft. (super area), in the project "Vatika Professional Point", Sector-66, Gurugram, being developed by the respondent herein. On 21.08.2010, a buyer's agreement was executed between the original allottee and the respondent. Thereafter on 04.02.2011, the original allottee entered into an agreement to sell with the complainant, pursuant to which the respondent issued a letter endorsing the said unit in favour of the complainant.

12. As per clause 2 of the agreement, the possession of the unit was to be delivered within 2 years from the date of execution of agreement. The buyer's agreement was executed on 21.08.2010, therefore, the due date of possession comes to 21.08.2012. The complainant has paid an amount of Rs.35,00,000/- against the total sale consideration of Rs.35,00,000/- of the subject unit. However, it is an admitted fact that the respondent obtained the Occupation Certificate from the competent authority only on 29.10.2013 (at page 10 of reply).

13. At the very threshold, this Authority is required to examine whether the statutory conditions necessary for assumption of jurisdiction are satisfied. Jurisdiction under the Act is not automatic, nor does it arise merely from the filing of a complaint. The Authority is a creation of statute and derives its powers strictly from the legislative mandate. It is, therefore, incumbent upon this Authority to first ascertain the existence of jurisdictional facts, without which the exercise of adjudicatory power would be impermissible in law.

14. The Real Estate (Regulation and Development) Act, 2016 is a regulatory statute designed to govern a specific class of real estate projects identified by the legislature. The applicability of the Act is circumscribed by Section 3, which mandates compulsory registration of real estate projects with the Regulatory Authority. However, the legislature has, in its wisdom, expressly excluded certain categories of projects from the operation of the Act, 2016. Section 3(2)(b) categorically provides that no registration shall be required where the promoter has received a completion certificate for a real estate project prior to the commencement of the Act. The relevant portion of the Section is reproduced below: -

> *3. Prior registration of real estate project with Real Estate Regulatory Authority: -*
> *(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required*
> ***(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;***

15. Further Rule 2(1)(o)(ii) of the Rules, 2017, also defines the on-going project. The relevant portion of the section is reproduced below: -

> *(o) "on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and* ***where development works were yet to be completed on the said date, but does not include:***
> *(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and*
> ***(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.***

16. This exclusion is neither incidental nor ancillary; it is a substantive legislative determination forming an integral part of the statutory scheme. The statutory framework thus makes it abundantly clear that the Act is not intended to operate retrospectively so as to reopen completed transactions or subject concluded projects to a new regulatory regime. The jurisdiction of the Authority is, therefore, confined only to such projects as fall squarely within the definition and scope prescribed by Section 3 of the Act.

17. The constitutional validity of this legislative classification and the scope of the Act have been examined in depth by the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India.*** The Hon'ble Supreme Court has authoritatively held as under:

> *"The Real Estate (Regulation and Development) Act, 2016 is a prospective legislation and applies only to those real estate projects which are brought within its fold by the legislature."*

*"Parliament has consciously made a distinction between ongoing projects and completed projects, and has deliberately excluded the latter from the purview of the Act."*
*"Such exclusion is founded on an intelligible differentia and forms an integral part of the statutory scheme."*
*"The Act cannot be interpreted in a manner so as to retrospectively apply its provisions to projects which had already been completed in accordance with law prior to its commencement."*
*"Courts and authorities are bound to give effect to the legislative classification and cannot, by interpretative process, expand the scope of the Act beyond what the legislature has expressly provided."*

18. The above pronouncement lays down, in unequivocal terms, that the Act is prospective in nature and that completed projects constitute a distinct and excluded class. The exclusion is founded on intelligible differentia and bears a rational nexus with the object of the legislation. The Hon'ble Supreme Court has further cautioned that neither courts nor statutory authorities can, by interpretative ingenuity, enlarge the scope of the Act so as to bring within its fold projects which the legislature has consciously kept outside. This declaration of law binds this Authority and admits of no deviation.

19. The jurisdictional limits of the Authority have been further elucidated by the Hon'ble Supreme Court in ***Newtech Promoters and Developers Private Limited v.*** State ***of Uttar Pradesh and Others***. In the said judgment, the Hon'ble Supreme Court has delineated the contours of jurisdiction under the Act in the following terms:

*"The Real Estate Regulatory Authority is a creature of statute and can exercise only such powers as are expressly conferred upon it by the Act."*
*"The existence of an 'ongoing project' is a jurisdictional fact which must be established before the Authority can assume jurisdiction under the Act."*
*"If the project is not an ongoing project within the meaning of Section 3 of the Act, the Regulatory Authority would have no jurisdiction to entertain a complaint in respect thereof." "Jurisdiction cannot be conferred upon the Authority by consent of parties, nor can it be assumed on considerations of equity or hardship."*
*"When the statute clearly defines the limits of jurisdiction, neither the Authority nor the Courts can travel beyond the same by interpretative exercise."*

20. This judgment reinforces the principle that jurisdiction under the Act is conditional and not plenary. The existence of an "ongoing project" is not a mere procedural formality but a foundational jurisdictional fact. In the absence of such a fact, the Authority lacks competence to entertain, adjudicate, or grant relief. The Hon'ble Supreme Court has further clarified that jurisdiction cannot be assumed on sympathetic considerations, nor can it be conferred by consent, or waiver of parties. The limits of jurisdiction, once statutorily defined, are binding and inviolable.

21. When the aforesaid principles are applied to the facts of the present case, it becomes evident that the project in question had already attained completion to the extent certified prior to the commencement of the Act. The occupation certificate dated 29.10.2013, which predates the coming into force of the Act on 01.05.2017, conclusively demonstrates that the project, to that extent, stood completed in accordance with law. Such completion brings the project squarely within the exclusion contemplated under Section 3(2)(b) of the Act.

22. Once the statutory exclusion is attracted, the project ceases to be an "ongoing project" for the purposes of the Act. In such circumstances, this Authority cannot, by interpretative expansion or equitable reasoning, assume jurisdiction where none exists. To do so would amount to rewriting the statute and transgressing the limits of authority conferred by Parliament.

23. In view of the statutory scheme, and in light of the binding law declared by the Hon'ble Supreme Court, this Authority holds that the present project does not satisfy the jurisdictional pre-condition of being an "on-going project" within the meaning of Section 3 of the Act, 2016 as well

as Rule 2(1)(o) of the Rules, 2017. The absence of this foundational fact renders the present complaint outside the purview of the Act and beyond the jurisdiction of this Authority.

24. Accordingly, the complaint is held to be not maintainable under the Real Estate (Regulation and Development) Act, 2016, for want of jurisdiction, and is liable to be dismissed on this ground alone.

25. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed, being not maintainable. Pending applications, if any, also stand disposed of.

26. File be consigned to registry.

**(Arun Kumar)**
**Chairman**
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.07.2026