



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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Complaint no.:	177 of 2024
Date of filing:	12.02.2024
Date of first hearing:	29.07.2024
Date of decision:	17.09.2026

Siddhant Malik,
Son of Late Mr. Vimal Malik,
R/o A 11/16, DLF Phase 1,
Gurgaon, Haryana-122002.

....COMPLAINANT

VERSUS

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

....RESPONDENT

Complaint no.:	178 of 2024
Date of filing:	12.02.2024
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Ranjana Malik,
Wife of Late Mr. Vimal Malik,
R/o A 11/16, DLF Phase 1,
Gurgaon, Haryana-122002.

....COMPLAINANT

VERSUS

Vatika Limited.

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

....RESPONDENT

CORAM:

Parneet Singh Sachdev
Nadim Akhtar
Chander Shekhar

Chairman
Member
Member

Present: -Ms. Urvi Kuthiala, Counsel for both the complainants, through VC.
Ms. Vertika H. Singh, Counsel for the respondent, through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as they involve similar issues and are related to same project of the respondent. This final order is being passed by taking complaint No. 177 of 2024 titled as "Siddhant Malik vs Vatika Limited" as the lead case.
2. Present lead complaint was filed on 12.02.2024 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details in complaint no 177 of 2024	Details in complaint no. 178 of 2024
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.	1133 of 2006.
	Licensed Area	8.79 acres	8.79 acres
4.	Unit no.	248, 2 nd Floor Tower-B,	249, 2nd Floor Tower-B
5	Unit area	500 sq. ft.	500 sq.ft.
	Date of Allotment letter	10.10.2012	10.10.2012



6.	Date of builder buyer agreement	10.10.2012	23.08.2012
7.	Due date of offer of possession	10.10.2016 (As per BBA dated 10.10.2012)	23.08.2016 (As per BBA dated 23.08.2012)
8.	Possession clause	<i>Clause 13- the completion of the said Commercial Unit/ Building Block/ Commercial Complex is delayed by reason of inability to procure or general shortage of steel and/or cement and/or other building materials or water supply or electric power or labour, equipment, facilities, materials or supplies or failure of transportation of building materials or due to slow down; strike or lockout or due to disputes between the Developer and its collaborators or with the construction agency(ies) engaged by the Developer and/or because of any civil commotion, or by reason of war, or enemy action, or earthquake, or terrorist action, or any Act of God, or it non-delivery of possession</i>	<i>Clause 13- the completion of the said Commercial Unit/ Building Block/ Commercial Complex is delayed by reason of inability to procure or general shortage of steel and/or cement and/or other building materials or water supply or electric power or labour, equipment, facilities, materials or supplies or failure of transportation of building materials or due to slow down; strike or lockout or due to disputes between the Developer and its collaborators or with the construction agency(ies) engaged by the Developer and/or because of any civil commotion, or by reason of war, or enemy action, or earthquake, or terrorist action, or any Act of God, or it non-delivery of possession</i>

	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	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
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		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	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
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		<i>commercial unit within 48 months of execution of this Agreement.</i>	<i>complete construction of the said commercial unit within 48 months of execution of this Agreement.</i>
9.	Basic sale consideration	₹ 17,50,000/-	₹ 17,50,000/-
10.	Amount paid by complainant	₹ 18,04,075/-	₹ 18,04,075/-
11.	Offer of possession	Not given.	Not given.
12.	Occupation certificate	14.10.2016	14.10.2016

B. FACTS OF THE LEAD COMPLAINT

3. Facts of the present complaint is that the respondent is a builder, promoter and colonizer engaged in construction activities.
4. It is averred that M/s Vatika IT Park Private Limited acquired land admeasuring approximately 8.793 acres, situated at Village Sarai Khawaja, Tehsil and District Faridabad, Haryana, and obtained Licence No. 1133 of 2006 dated 22.09.2006 from the competent authority for the development of an I.T. Park on the said land. Subsequently, the Urban Local Bodies Department, Haryana, vide Notification No. MCF/CTP/2010 dated 15.11.2010, converted the land use of Sectors 27-A, 27-B, 27-C and 27-D, Faridabad, from Industrial to Commercial. Pursuant thereto, the respondent

applied before the Department of Town and Country Planning (DTCP), Haryana, seeking permission for conversion of the approved IT Park into a commercial project. Upon the requisite approvals being granted, the project was developed under the name and style of "Vatika Mindscapes."

5. It is the case of the complainant that he booked a commercial unit bearing Unit No. 248, admeasuring 500 sq. ft., situated on the 2nd Floor, Block-B, in the commercial project "Vatika Mindscapes", located at Sector-27-B, Faridabad, being developed and promoted by the respondent, for a total basic sale consideration of ₹17,50,000/-.
6. That the complainant initially made a payment of ₹1,00,000/- in favour of the respondent vide cheque no. 160793 dated 26.09.2012 and another sum of ₹17,04,075/- in favour of the respondent vide cheque no. 766385 dated 29.09.2012. Thereafter, an allotment letter dated 10.10.2012 was issued in his favour. Copy of the Allotment letter is annexed with the complaint as Annexure-4.
7. It is further averred that the complainant paid more than the basic sale consideration amounting to ₹18,04,075/- which payments were duly acknowledged by the respondent in the Builder Buyer Agreement executed between the parties.

2

8. That on the same day, i.e., 10.10.2012, a BBA with respect to the said unit was executed between the complainant and the respondent. Copy of the Builder Buyer Agreement is attached as Annexure -5 with the complaint.
9. The complainant has alleged that as per the terms of the allotment letter dated 10.10.2012, the respondent had made promise to complete the construction of the said unit and assurance that it will be ready for lease by 31.07.2013 and it was also clarified vide clause 9 of the said agreement that conveyance deed will be executed in favour of the complainant.
10. That vide clause 15 and 16.1 of the BBA dated 10.10.2012 the respondent was to pay the assured return committed at the rate of ₹68.75 per sq. ft per month, i.e., ₹34,375/- per month till the construction of the allotted unit is complete and further return at the rate of ₹62.50 per sq ft per month, i.e., ₹31,250/- for upto 3 years from the date of completion of construction of the unit or till the same is put on lease.
11. That the respondent paid the agreed assured return as per clause 15 of BBA as sum of ₹34,375/- per month less TDS as assured return @68.75/- ft till March, 2015. However, on 31.05.2015, complainant received a letter from the respondent informing him that the construction work of Block B has been completed and assured return would now be revised to ₹62.5/- per sq. ft. per month from 01.04.2015. However, OC for the said tower was



received on 14.10.2016. A copy of letter dated 31.05.2015 is annexed as Annexure- 6.

12.However, from 01.04.2015 till 31.03.2018 respondent out of its own fancies without completing the construction of the said unit, started making payment of the assured return @62.5/- per sq. ft. per month for 500 sq. ft from April 2015 till March.2018. Copy of ledger account of the complainant is attached with the complaint as Annexure-7.

13.It is further alleged that the respondent had promised to complete the project by 31.07.2013. However, due to unnecessary delays on the part of the respondent they breached the deadline.

14.It is also stated by the complainant that the respondent company had time and again mortgaged entire Towers A AND B of the project to various banks and financial institutions and several mortgages were created.

15.That the complainant kept on approaching the respondent for handover of possession of the commercial unit. However, it was of no avail. Further, the respondents have failed to execute the conveyance deed as is required of from them under BBA.

16.Aggrieved from the same, the complainant has been left with no alternative but to approach this Authority by filing the present complaint. That the facts and circumstances of the present complaints are squarely covered by

the judgment in "*Veena Sukhrani and Another vs. Vatika Limited*" and accordingly, prayed that the present complaints be decided in terms thereof.

C. RELIEFS SOUGHT

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

- a) Direct the Respondent to immediately hand over possession and execute the conveyance deed of Unit no 248, Tower B, admeasuring 500 sq ft on 2nd Floor of Vatika Mindscapes in favour of the Complainant;
- b) Direct the Respondent to pay a sum of Rs. 24,05,967/- (Rs. 21,48,185/- + Rs. 2,57,782/-) which is the assured return for the period of April 2018 till December 2023 along with interest calculated @ 12% p.a.;
- c) Direct the Respondent to pay monthly assured return @ 31,250/- (500 sq ft @ 62.50 per sq ft) from January 2024 till the execution of conveyance deed in favour of the complainant;
- d) Direct the Respondent to pay interest @ 12% p.a on monthly assured return 31,250/- (500 sq ft @ 62.50 per sq ft) from January 2024 till the execution of conveyance deed in favour of the complainant as per Rule 15 of the HRERA rules, 2017.
- e) Grant Cost of litigation to the Complainant;

- f) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 01.08.2024 pleading therein:

18. 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 his knowledge, which, if disclosed, would demonstrate that no cause of action subsists in his favour against the answering respondents. The Complainant has not approached this I.d. Authority with clean hands and on this ground alone the present complaint is liable to be dismissed.

19. 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.



20. 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.

21. 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.

22. 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 (BUIDS Act), assured/committed returns on deposit schemes have been prohibited. The Respondent Company, having not obtained registration from SEBI, cannot run or continue an assured return scheme. It is further contended that, read with the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, such assured/committed return and similar schemes fall within the definition of "Deposit" and have consequently become illegal and infructuous by operation of law. Accordingly, the relief claimed by the Complainant cannot survive. It is further submitted that the Respondents had already paid Rs. 21,39,213.6/- towards assured returns till March 2018 (Annexure R-2).



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

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

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

26. That since the Hon'ble High Court has taken cognizance and the State of Haryana has notified the appointment of a competent authority under the



BUDS Act to decide whether such deposits are covered under the said Act, this Hon'ble Authority lacks jurisdiction to adjudicate matters falling within the purview of the special enactment, i.e. the BUDS Act, 2019. Copy of the order dated 22.11.2022 in CWP No. 26740 of 2022 and Notification dated 31.12.2021 are annexed with the written statement as Annexure R-3 (Colly.).

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

28. That the Hon'ble UPREAT, in Appeal No. 21 of 2022 titled "Meena Gupta Vs. One Place Infrastructures Pvt. Ltd.", held that the 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-5.

29. That the I.d. 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-6.

30. 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 allottee much before the due date of possession which clearly shows the complainant has 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-8.

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

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

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

33. That the Rajya Sabha Parliamentary Committee on Subordinate Legislation, in its Report No. 246 presented on 24.03.2021, considered the objectives of the BUDS Act, 2019, particularly the need for a special and comprehensive law to curb illicit deposit schemes. The Committee also emphasized the need to clarify which deposits constitute legitimate business transactions falling within the "normal course of business". The Committee further expressed concern over the lax implementation of the



Act by several States/UTs, particularly their failure to notify the Designated Courts and their respective jurisdictions.

34. That the commercial unit of the 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.

35. That in Brihmjeet & Ors vs. Ms/ Landmark Apartments Pvt. Ltd. (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani (supra). Thus, the RERA Act, 2016 cannot deal with issues of Assured Return and hence the present complaint deserves to be dismissed at the very outset.

36. Further, in the matter of Bharam Singh & Ors. vs. Venetian Projects I.P (Complaint No. 175 of 2018), the Hon'ble HRERA Gurugram upheld its earlier decision of not entertaining matters relating to assured returns.

37. Further, in Jasjit Kaur Grewal vs. M/s MVL Ltd. (Complaint No. 58 of 2018), Hon'ble HRERA Gurugram took a similar view and declined to entertain matters relating to a 'collective investment scheme' without the approval of SEBI.

38. That the issues raised relate to the contractual matter arising out of the terms and conditions of the Expression of Interest/ Agreement and



interpretation thereof, which can only be adjudicated in civil proceedings. Further, the issues raised in complaint require elaborate evidence to be led by the parties and cannot be decided in summary proceedings. Hence, the present complaint deserves to be dismissed being not maintainable.

39. That it is submitted that the Complainant herein has failed to make out any case whatsoever either of deficiency in service or even otherwise as provided for under the Act to warrant any consideration from this Hon'ble Authority. The averments/contentions made in the present complaint are false, misleading and deserve to be dismissed with exemplary costs.

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

41. That this Hon'ble Authority cannot adjudicate upon the matter where the prima facie prayers are in the shape of modification or rewriting of the clauses of the agreement. In the instant complaint, the complainant is seeking additional benefits beyond the agreement. The complainant is virtually inviting this Hon'ble Authority to assume the power conferred on the Fora under the Criminal Court/ or under the Civil Court as the pleas, regarding fraud have been raised. Therefore, ex- facie, this Hon'ble Authority does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.

42. That the terms of the agreement are binding between the respective parties:

It is a settled law that the parties are bound by the terms of the contract.

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

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

44. That the 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 10.10.2012 (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.

45. 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. It was further

agreed between the parties that if there is any rent-free period on account of fit out or otherwise then the complainant shall not be entitled for rent during rent free period.

46. 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. 21,39,213.6/- till the completion of the tenure of three years from the date of 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.

47. It is contended by the respondent that the payment of assured returns had been stopped only after conclusion of 36 months tenure of assured return payment post construction completion of Block 'B' on 24.03.2018. The intimation regarding the completion of construction work was sent to the complainant vide letter dated 31.03.2015, (Annexure C-6). Vide letter dated 01.03.2018 the respondent had intimated the complainant that the assured returns shall not be paid from 25.03.2018 as per the terms and conditions of Builder Buyer Agreement and rental payout against the said unit shall be resumed as per the leased terms of any lease executed in

future. The respondent-company accordingly paid the committed assured return till March, 2018 which is an admitted fact by the complainant. Copy of letter dated 25.03.2018 is annexed as ANNEXURE P-10.

48. 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.

49. That the complaint has been filed primarily on the ground that the Respondents have not paid the commitment charges nor the possession of the unit has been delivered. so far as payment of commitment charges are concerned, the respondents are not liable to pay any assured or committed return of the complainant after the enacting of BUDS Act 2019, as the same



is not permissible, and accordingly, the same cannot be allowed as that shall adversely affect the Project as well as the Developer.

50. 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.

51. 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'.

52. 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.

53. It is contended that non-adherence to the completion schedule cannot be termed as a violation of the Act, Rules and Regulations. The Act, Rules and Regulations nowhere provide for completion schedule of a project except for where the declaration has been made to this effect by the Promoters. The said declaration can at the most be read as violation of the



agreement for sale but certainly not of the Act, Rules and Regulations. As regards completion schedule given under Section 4 of RERA, the provisions of the Act, Rules or Regulations are put into action to ensure the Promoters adhere to that completion schedule. It is relevant to mention here that there is no provision in the Act, Rules or the Regulations that enables a Regulator Authority to initiate penal proceedings for non-adherence to the completion schedule given by the Promoters and also of the fact that the which in any case, is permissible in case of violation of the Act, Rules and Regulations. Such action by a Regulatory Authority is not permissible in case of violation of the terms and conditions of the agreements for sale and in this regard, reliance is placed in Section 7 of RERA that enumerates factors that could lead to suspension or revocation of registration. However, the consequences of such penal action by the Authority could lead to frustration of contracts between the Promoters and its Allottees. It is, therefore, contended by respondent that the remedy available to the allottee arises out of the alleged frustration of contract and not from any violation of the Act, Rules or Regulations.

54. It is further submitted that after the coming into force of the RERA Act, 2016, the prescribed rate of interest is being read into the existing Buyers Agreements but the nature of the interest remains compensatory in nature especially, where the Allottee gets possession of unit albeit with delay. In this regard, be it prescribed rate of interest or interest simpliciter, Clause



7.6 of the Model Agreement of Sale has placed the same under the heading 'Compensation' only.

55. That the respondent has cited that the award of Interest for delay caused due to delay in completion of the project is a situation covered by Section 73 and 74 of the Indian Contract Act, 1872. Further, mentioning of prescribed rate of interest in a Buyers' Agreement or rate of Compensation is at the most an amount in lieu of compensation or penalty stipulated therein. That Compensation can only be given for damage or loss suffered and if damage or loss is not suffered, the law does not provide for a windfall as has been held by the Supreme Court in the case of M/s. Kailash Nath Associates V. Delhi Development Authority (Para 33, 42-44) 2015(4) SCC 136.

56. That the award of statutory rate of interest is completely misconceived, in as much as, it would have the effect of novation of contract already executed between the parties. It is stated that a validly executed contract cannot be novated or changed in any manner save with the mutual consent of the parties cannot be changed on basis of erroneous assumption of unilateral terms.

57. 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.

58. 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.

59. It is averred by the respondent that the quantum on interest and the compensation as being claimed by the complainant, is bereft of any evidence much less than any averment that there has been any disproportionate gain or unfair advantage as a result of the alleged default.

60. That possession was never a part of agreement between the parties. Additionally, the complainant had invested in the said unit keeping in view the profitability of the scheme under which the said unit was bought by the complainant. The respondents had only given the detail of the project and the scheme in the brochure. No representation or assurance whatsoever was given by the respondent.

61. That the time period till 31.07.2013 was a tentative time period and as per the commitment made in the allotment letter, the complainant was duly paid regular assured returns till March, 2018. It was mutually agreed between the parties that the complainant had purchased the said unit with

the intention of putting the said unit on lease and accordingly the complainant had authorized the respondent-company to put the said unit on lease for and on behalf of the complainant as and when the unit was ready and fit for occupation.

62. That as per clause 13 of BBA dated 10.10.2012 subject to force majeure circumstances and timely payment by the developer the developer contemplated to complete construction of the said unit within 48 months of the execution of the said Agreement. Hence, the probable date for completion of the said unit was 09.10.2016 and 31.07.2013.

63. Respondent has contended that the complainant who had to come forward for getting the sale deed registered. The complainant had to deposit the stamp duty for execution of conveyance deed as per clause 9 of the BBA. However, the complainant never approached the respondent for execution of sale deed despite intimation of completion of construction work vide letter dated 31.03.2015.

64. That as per clause 16.1 of BBA, the complainant has received entire assured return till March 2018 for 3 years. Thereafter, the respondent has duly paid entire committed returns till the expiry of tenure of 3 years from date of completion of construction of the said unit.

65. That the construction of the tower is complete and even occupation certificate has been granted on 14.10.2016 whereas as per clause 13 of the BBA, the timeframe for completion of the construction work was 48



months from date of execution of BBA. Hence, on no account the respondent was to complete the construction of the said unit by 31.07.2013.

66. That the complainant is bound to pay the maintenance charge to the maintenance agency as per the terms and conditions of the Buyer agreement. Further that the maintenance is being charged by a separate company and not the respondent company.

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

E. ADDITIONAL DOCUMENTS PLACED ON RECORD BY PARTIES

Ld. counsel for the complainant has further submitted rejoinder dated 12.09.2024 wherein the Complainant has primarily denied the averments made by the Respondent and reiterated the contents of the complaint.

68. The Complainant has submitted that although the Occupation Certificate was granted on 14.10.2016, the Respondent has still failed to discharge its contractual obligations, particularly execution of the conveyance deed and handing over possession. Additionally, as per clause 9 of the Builder Buyer Agreement, under the Respondent was obligated to execute the conveyance deed in his favour.



69. That the grant of the OC by itself does not establish that possession was validly offered or that the Respondent had completed all obligations towards the allottee.

70. Complainant has relied on case of Ajay Dhingra vs. Vatika Limited, wherein, the Authority held that where the agreement contains a clause for execution of conveyance deed, the promoter cannot avoid its obligation to hand over possession merely by contending that there is no specific possession clause.

71. That despite obtaining the OC, the promoter remained liable to hand over possession and execute the conveyance deed in accordance with the agreement and Section 17(1) of the RERA Act.

72. Complainant has claimed that he does not intend to withdraw from the project, he relies upon Section 18(1) of RERA to claim assured returns/interest for the period of delay until actual handing over of possession.

73. That the Complainant has submitted that the Allotment Letter dated 10.10.2012 stipulated completion of the unit by 31.07.2013. He has disputed the Respondent's contention that the construction period was 48 months from the date of the BBA or that the relevant completion date was 09.10.2016.

74. Further, the Complainant has disputed the Respondent's assertion that construction was completed in March 2015, since the OC was granted only on 14.10.2016, the construction could not be treated as legally complete prior thereto.
75. That as per Section 11(4)(b) read with Section 19(10) of RERA, the promoter is required to obtain the requisite completion/occupation certificate before handing over possession.
76. The Complainant has disputed that the assured returns were paid for the entire contractual tenure. He asserted that the assured return was stopped on 31.03.2018, despite his contention that the contractual obligations had not been fulfilled.
77. He has further relied upon the Respondent's own correspondence, including the letter dated 31.03.2015 and the subsequent letter dated 31.05.2015, to contend that the Respondent claimed construction to be complete even though the OC had not yet been obtained.
78. The Complainant has disputed the Respondent's interpretation regarding revision of the assured-return rate from ₹68.75 to ₹62.50 per sq. ft. He has submitted that such revision could only be linked to completion/obtaining of the OC, which, according to him, occurred on 14.10.2016.

79. Reliance has been placed on Tanya Mahajan v. Vatika Limited to contend that the issue concerning assured returns and the BUDS Act has already been considered and rejected by the Authority.
80. That the obligation as to assured returns cannot be treated as extinguished merely on completion of the alleged three-year period when possession/conveyance deed had not been duly completed.
81. That the Complainant has submitted that he approached the Respondent on several occasions for execution of the conveyance deed, but the same was not executed.
82. Additionally, that as per Clause 9 Respondent was required to issue the requisite written notice and proceed with execution of the conveyance deed, rather than shifting the responsibility onto the Complainant.
83. The Complainant has paid entire down payment/sale consideration and therefore claims entitlement to a valid offer of possession and execution of the conveyance deed.
84. That the allottee's statutory right under Section 18 is not dependent upon contingencies or stipulations beyond the statutory framework. Since the Complainant does not seek withdrawal from the project, he claims entitlement to interest/assured returns for the period of delay until actual possession.



85. The Complainant has reiterated that Unit No. 248 was allotted to him and therefore he falls within the definition of "allottee" under Section 2(d) of RERA.

86. The Complainant has specifically submitted that he is not seeking modification or rewriting of the Builder Buyer Agreement, nor any benefit beyond the contractual/statutory framework. According to him, the reliefs sought arise from the Respondent's alleged failure to perform obligations already contained in the agreement.

87. The Complainant has relied upon *Ajay Dhingra v. Vatika Limited* on the basis that it concerns the same project, same tower and substantially similar facts, and therefore submits that the principles laid down therein apply to the present matter.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

G. ISSUES FOR ADJUDICATION:

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

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

89. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows;

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

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

In this regard, the Authority is of the considered view that the RERA Act neither expressly provides nor can it be construed to imply that all pre-existing agreements are to be re-written upon the coming into force of the Act. Rather, the provisions of the Act, the Rules framed thereunder, and the terms of the agreement are required to be interpreted harmoniously. However, in situations where the Act or the Rules specifically provide for regulating a particular aspect, such matters shall be governed in accordance with the provisions of the Act and the Rules from the date of their enforcement. The said contention has been upheld in the landmark judgement of *Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and others (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for



*sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. **The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.***

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

Thus, while agreements between the parties are sacrosanct, they remain subject to the provisions of the Act to the extent the same have been modified or overridden by statute; Additionally, in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors., Civil Appeal No(s). 6745-6749 of 2021* the Hon'ble Supreme Court held (particularly in paras 41 and 54) that the provisions of the Act are retroactive in character. The Court clarified that though the statute is not retrospective in the strict sense, it operates upon pre-existing contractual relationships in future and, therefore, the mere fact that an agreement for sale was executed prior to the Act does not exclude the applicability of the provisions of the Act and the Rules thereunder.

In the present case, the complainant is primarily seeking possession of the allotted unit, execution of conveyance deed and delay interest along with



other reliefs. Section 18 of the RERA Act, 2016 clearly provides that where the allottee does not intend to withdraw from the project, the promoter is liable to pay interest for every month of delay till the handing over of possession. Accordingly, the objection raised by the respondent is devoid of merit and does not sustain.

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

The next objection taken by the respondent is that the complainant is bound by the terms of the agreement, as the same was executed by the complainant out of free will. The primary contention of the respondent is that since the complainant had agreed to the said clause voluntarily, the same is binding upon the complainant and cannot now be challenged. Further, that this Authority has no power or jurisdiction under the act to direct modification of any Article of the agreement. An article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope.

In order to adjudicate upon the aforesaid objection, it is apposite to examine the relevant terms of the Builder Buyer Agreement dated 10.10.2012. 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 10.10.2012 contemplated that the flat would be completed and ready for lease by 31.07.2013. However, the Builder Buyer Agreement, being the subsequent and governing contractual document setting out the detailed rights and obligations of the parties contains the specific stipulation of 48 months for completion of construction. Accordingly, for the purpose of determining the contractual timeline, the period stipulated under Clause 13 of the Builder Buyer Agreement is required to be taken into consideration.

Further, Clause 16.12 provides that the scheme under which the commercial units were offered was conceived as a leasing arrangement, specifically designed to enable the buyers to earn rental income from their respective units and not for their personal physical occupation or use. The contractual framework therefore indicates that the promoter did not contemplate delivery of physical possession to the allottees in the ordinary course.

This contractual position stands further reinforced by the respondent's own submissions, wherein it has been categorically stated that the commercial unit was never intended to be handed over in physical possession to the complainant. Such an admission lends further credence to the conclusion that the agreement consciously omits any obligation on the part of the promoter to deliver physical possession of the unit thereby underscoring the inherently one-sided nature of the contractual arrangement.

At the heart of Indian contract jurisprudence lies the doctrine that consent must not only be free, but also fair in substance when examined against the realities of bargaining power. The *doctrine of unconscionable contracts*, though not expressly codified, has been firmly embedded within Sections 16 and 23 of the Indian Contract Act, 1872. It postulates that where a term is so one-sided that it shocks the conscience of the Court, and is imposed by a party wielding overwhelming bargaining power, such a term cannot be permitted to masquerade as a valid contractual stipulation. In such situations, Courts typically look for procedural unconscionability, i.e. inequality of bargaining power lack of choice and substantive unconscionability. Further, the 199th Law Commission Report also explained procedural and substantive unfairness in Proposed Bill and laid down guidelines to find if a contract is procedurally or substantially unfair.

In India, The Hon'ble Supreme Court, in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* (1986) 3 SCC 156, authoritatively held that a clause which is "unfair and unreasonable, and unconscionable, having been entered into between parties who are not equal in bargaining power," is opposed to public policy and therefore void under Section 23 of the Indian Contract Act, 1872. Although, this judgment is on the issue an unconscionable employment contract, however, the principle elucidated by the Hon'ble Apex Court applies across the domain of contract law.

When the present clause is tested on that anvil, its infirmities become manifest. It declares that any act or omission subjectively determined by the developer shall constitute a default, with the developer's decision being "final and binding." It further confers upon the developer an unbridled right to cancel the agreement, forfeit substantial sums including earnest money and other payments, and thereafter resell the property without any obligation to account for the proceeds to the allottee. Such a clause not only lacks reciprocity but extinguishes, in one stroke, all substantive rights of the allottee while insulating the developer from any corresponding liability.

The Hon'ble Supreme Court has in its subsequent decisions, consistently frowned upon such one-sided builder-buyer stipulations. In *Pioneer*

Urban Land and Infrastructure Ltd. v. Govindan Raghavan (2019) 5 SCC 725, the Court struck down similar clauses in a builder-buyer agreement, holding that terms which are “wholly one-sided, unfair and unreasonable” cannot bind the allottee, particularly where the agreement is a standard-form contract drafted by the developer. The Court emphasised that a homebuyer, faced with a take-it-or-leave-it contract, cannot be said to have exercised real freedom of choice. The apex court observed that clauses in builder-buyer agreements which are wholly one-sided and disproportionately favour the developer constitute an unfair trade practice and cannot be enforced against the allottee. Given that the definition of “unfair trade practice” under the RERA Act is *pari materia*, the same principle is equally applicable in the present context.

Earlier, in *LIC of India v. Consumer Education and Research Centre* (1995) 5 SCC 482, it was reiterated that contractual clauses which are arbitrary, unfair, and unreasonable are violative of public policy and cannot be enforced.

In that view of the matter, a clause such as the present one cannot be accorded judicial imprimatur. Such a stipulation is hit by the *doctrine of unconscionability*. The law does not countenance a contract where one party is clothed with absolute dominion and the other reduced to a position of complete subservience.

Additionally, to adjudicate this issue, reference is made to para 122 of judgement of *Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and others (W.P 2737 of 2017)*. In light of the said judgment, it is well settled that a law can be enacted to affect subsisting or existing contractual rights between parties in the larger public interest. The Real Estate (Regulation and Development) Act, 2016 provides specific statutory remedies, particularly under Section 18, in cases where the promoter fails to hand over possession within the stipulated time. Such statutory provisions override the contractual terms to the extent of inconsistency. Thus, while agreements are generally sacrosanct, they remain subject to statutory intervention where the Act expressly provides otherwise.

Further, it is observed that builder-buyer agreements are typically drafted in a manner that leaves little or no scope for negotiation by the allottee. The allottee is in most cases compelled to sign on pre-drafted, standard-form agreements without any meaningful opportunity to alter or negotiate the terms. Therefore, such agreements cannot be said to be executed on an equal footing or as a result of true free consent in the strict sense. It is evident that the present case involves a misuse of dominant position by the developer, who occupies a controlling and commanding position. The Hon'ble Apex Court in its various judgments has categorically concluded that when the terms of the agreement authored by the developer don't

maintain a level platform between the developer and the allottee and the stringent terms imposed on the allottee are not in consonance with the obligation of the developer to meet the timelines for construction and handing over the possession, the same does not constitute a fair bargain.

As already observed while deciding Preliminary Objection No. I, the statutory obligations imposed under the Act operate upon the contractual relationship between the parties and prevail to the extent of any inconsistency. Consequently, the respondent cannot rely upon the leasing nature of the arrangement, the absence of a stipulation regarding physical possession to defeat the complainant's statutory entitlement under the Act. Accordingly, the objection raised by the respondent that the complainant is irrevocably bound by every term of the Builder Buyer Agreement merely because it was voluntarily executed is without merit and is hereby rejected.

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

The respondent has further contended that the complainant is merely a speculative investor who invested in the project with the sole objective of earning assured returns and lease rentals and, therefore, cannot claim the status of an "allottee" under the provisions of the RERA Act, 2016. It has further been submitted that the Builder Buyer Agreement was executed



under an assured return and leasing arrangement, under which the respondent had paid assured returns till March, 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. 248 situated on the 2nd Floor of Tower 'B' in the project Vatika Mindscapes, to the complainant for a total basic sale consideration of



₹17,50,000/-. The Builder Buyer Agreement records the description of the allotted unit, the sale consideration, the rights and obligations of the parties, and contemplates execution of a conveyance deed in favour of the complainant upon completion of the transaction. These are the essential attributes of a promoter-allottee relationship recognised under the Act.

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

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

substantive nature of the transaction. Further, detailed observation on nature of BBA is explained in proceeding paragraphs.

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

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

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



a consequence wholly inconsistent with the object and purpose of the legislation.

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

ii. Nature Of Builder Buyer Agreement-

Further, for adjudication of present complaint Authority would like to refer to nature of the agreement dated 10.10.2012 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. i.e. respondent no.2 had obtained licence No. 1133 of 2006 from Director, Town & Country Planning Department, Haryana, for constructing upon the said land an IT park. Clause-C of the opening recital states that Director, Town & Country Planning Department, has already approved demarcation/ zoning plans and building plans of the said IT park vide their memo No. 16150 and

1315 dated 20.06.2007 and dated 08.04.2008. It further states that said IT park has been named as "Vatika Mindscapes".

Clause F, G and H repeatedly refers to Complainant as buyer and to respondent as developers. Clause F clearly stipulates that Complainant /buyer have approached the developer for purchase of unit of approximately 500 sq. ft. super area on 2nd floor of the building Block-B of the project.

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

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

Further, In Clause-1 (a) of the agreement, unit allotted to the Complainant is properly identified as Unit no 248, situated on the 2nd 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

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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, does fall within the prohibitions provided in the BUDS Act.

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

Respondent has denied legitimate rights of the Complainant as are admissible to him in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016. However, it is also to be considered that the Respondent in its reply has referred to Civil Writ Petition no. 26740 of 2022 titled as *Vatika Ltd vs Union of India & Anr*, which is pending before Hon'ble High Court of Punjab and Haryana, Chandigarh. Vide order dated 22.11.2023 passed



in aforesaid *Writ Petition*, Hon'ble High Court has observed that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them.

Findings of this Authority on merits-

90. Examining the complaint on merits, complainant in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide Allotment letter and BBA on 10.10.2012 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 him. It is again reiterated that no clause has been incorporated by respondent in said agreement towards timeline for handing over of possession of allotted unit. However, in allotment letter dated 10.10.2012 it is specifically mentioned that "iv), the flat would be completed and ready for lease by 31.07.2013. Accordingly, allottee would be paid lease rentals at Rs. 62.50/- per sq.ft. of space w.e.f 31st July, 2013 or from the building is ready, whichever is later. In the event the premises is leased any time after 31st July, 2013, the Developer shall be paying to you rentals as per Clause no. (16.1).

91. Further, Authority observes that the builder buyer agreement dated 10.10.2012 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



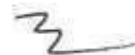
other charges due and payable according to the payment plan applicable to him or as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of execution of the Agreement. Therefore, terms of BBA executed between the parties will prevail over the allotment letter.

92. In present complaint, the builder buyer agreement was executed on 10.10.2012. Accordingly, taking a period of 48 months from the date of agreement, i.e. 10.10.2016 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 10.10.2016. 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 his 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 of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-commercial unit and definitely commercial spaces are never being



purchased for residential purpose. Complainant herein is aggrieved due to non-hand over of the possession. Complainant who has already paid total sale consideration got stuck with respondent. If we look at the intent of allottee-complainant, he has chosen to invest in a tangible property, i.e., showroom space not any open share market where there is no definite/precise mode of transaction to be carried out. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under ambit of RERA Act, 2016. Investment in commercial property does not imply that complainant-allottee never ever wanted to own that property by perfecting the title in his name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit.

93. In this scenario, RERA Act, 2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take the benefit of his wrong (by non-delivery of possession of unit till date). By virtue of Section 18 of RERA Act, 2016, the respondent is obligated to either refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement/any other date specified therein and in case, where 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.

94. At this juncture, it is also pertinent to note that the respondent obtained the Occupation Certificate in respect of 'Lower '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.

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

96. 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.

97. It is pertinent to note that the respondent in its builder buyer agreement has not specified any provision for delay interest, however, instead have



offered assured returns. The object of assured returns is similar to that of delay interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016, as both provide interest on the amount paid by the allottee under certain circumstances. Therefore, the relief sought by the allottee is in substance, a claim for interest on account of the delay caused by the respondent. It is an admitted position that the Builder Buyer Agreement was executed between the parties in the year 2013 and that the entire consideration was paid by the Complainant to the Respondent. Despite the lapse of more than a decade, the complainant has neither been handed over possession of the unit nor has the conveyance deed been executed in its favour, and the assured returns contemplated between the parties have also not been duly paid. The allottee has been made to run from pillar to post despite the fact that entire payment was made by him. Thus, the Respondent has retained the consideration paid by the Complainant without fully discharging its corresponding obligations.

98. 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.

99. Moreover, the concept of awarding interest, in both the cases-be it possession or refund essentially remains same. The builder is burdened

with direction to pay interest on the paid amount because he has ultimately failed to deliver the possession of booked unit within stipulated time. At this stage, the option of refund or possession are exercisable by the allottee. Fundamental logic behind awarding of interest in both the cases depicts that respondent had kept/utilised the money of allottee since booking and could not deliver as per the agreed terms. Hence, the interest on paid amount is ordered for that unauthorised/wrongful retain of paid amount. In a way, assured returns are also awarding of interest to the allottee on his paid amount on monthly basis. In support of this reliance is place upon order dated 03.02.2022 passed by this Authority in complaint no. 343/2021 namely "*Tanya Mahajan vs Vatika Limited*"

Relevant part of order is reproduced below for reference:-

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

Till such time as a lawful offer of possession is made, complainants are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft. Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided

for in Rule 15 of the Rules i.e. MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case."

100. 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.
101. 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. 10.10.2016, 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.
102. 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. 17.09.2026 is 8.80 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

Rule 15 of HIRERA 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. 177 of 2024

Sr. No.	Principal Amount	Deemed date of possession (10.10.2016) or date of payment whichever is later	Interest Accrued till the date of order i.e., 17.09.2026
1.	₹1,00,000/-	10.10.2016	1,07,408/-
2.	₹17,04,075/-	10.10.2016	18,30,317/-
	Total= ₹18,04,075/-		Total= ₹19,37,725/-
3.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹21,39,213.6/-			

Complaint no. 178 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., 17.09.2026
1.	₹2,00,000/-	23.08.2016	2,17,657/-
2.	₹16,04,075/-	23.08.2016	17,45,691/-
	Total= ₹18,04,075/-		Total= ₹19,63,348/-
4.	Monthly interest		₹16,014/-
Respondent shall make the payment of delay interest after deduction of paid amount of assured returns, i.e, ₹21,99,092/-			

103. Accordingly, in complaint no. 177 of 2024, the respondent is liable to pay the upfront delay interest of ₹19,37,725/- to the complainant towards

delay already caused in handing over the possession. Further, on the entire amount of ₹18,04,075/- monthly interest of ₹16,014/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The respondent shall make the payment of upfront delay interest, if any, after deduction of paid amount of assured returns, i.e. ₹21,39,213.6/-

104. In complaint no. 178 of 2024, the respondent is liable to pay the upfront delay interest of ₹19,63,348/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹18,04,075/- monthly interest of ₹16,014/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The respondent shall make the payment of upfront delay interest, if any, after deduction of paid amount of assured returns, i.e. ₹21,99,092/-

105. In view of the relief sought regarding assured returns, detailed observations in this regard have been recorded in paragraphs 97 to 100 and are not repeated here for sake of brevity.

106. Further, the complainant has sought cost of litigation. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and

Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the litigation charges.

I. DIRECTIONS OF THE AUTHORITY:

107. 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(1) of the Act of 2016:

- i. Respondent is directed to hand over the legal and valid possession of the units to the respective complainants. Respondent is further directed to get conveyance deed executed in favor of complainants within 90 days of valid offer of possession being made to complainants.
- ii. Respondent is directed to pay the upfront delay interest to the respective complainants towards delay already caused in handing over the possession as calculated/mentioned in tables mentioned in para 103 and 104 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.

108. Accordingly, Complaints are **Disposed of.** Files be consigned to the record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET SINGH SACHDEV
[CHAIRMAN]