BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 18.09.2026

NAME OF THE BUILDER		M/S VATIKA LIMITED
PROJECT NAME		"INDIA NEXT CITY CENTRE" at Sector – 83, Gurugram, Haryana.
S. No.	Case No.	Case title
1.	CR/633/2022	Nita Chopra V/S M/s Vatika Limited
2.	CR/634/2022	Usha Sakhuja and Ashok Kumar Sakhuja V/S M/s Vatika Limited
3.	CR/636/2022	Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited
4.	CR/637/2022	Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited
5.	CR/638/2022	Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited
6.	CR/639/2022	Rohini Chaudhry and Vasudha Chaudhry V/S M/s Vatika Limited

CORAM:

Shri Arun Kumar — **Chairman**

APPEARANCE:

Shri Parvez Chugh, Advocate — **Complainants**

Ms. Ankur Berry and Ms. Sapna, Advocates — **Respondent**

ORDER

1. This order shall dispose of all the above complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana

Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "India Next City Centre" at Sector 83, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession, payment of pending assured returns, delayed possession charges and execute the conveyance deed and others.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location			"India Next City Centre" at Sector 83, Gurugram, Haryana.		
Project area			10.718 Acres		
Nature of the project			Commercial Complex		
DTCP license no. and other details			122 of 2008 dated 14.06.2008 Valid up to 13.06.2016		
Name of licensee			M/s Trishul Industries		
RERA Registered/ not registered			**Un-registered**		
Occupation Certificate			Not yet obtained		
Offer of possession			Not offered		
S. No.	**Complaint no., Case title, Date of filing of complaint and reply status**	**Unit no. and size**	**Allotment Letter and BBA**	**Due date of possession, Occupation certificate and Offer for possession**	**Total sale consideration and Total amount paid by the complainant in Rs.**

1.	CR/633/2022 Nita Chopra V/S M/s Vatika Limited **DOF:** 03.03.2022 **RR:** 04.08.2022	120, 1st Floor of Tower-D in **"India Next City Centre"** [As per the letter dated 04.10.2013 at page no. 45 of complaint] 500 sq. ft. (super area) [As mentioned in clause E of BBA at page no. 18 of complaint]	**AL:** Not provided **BBA:** **17.04.2012** [Page 16 – 44 of complaint] **Re-allocation of unit no. in "INXT City Centre":** **04.10.2013** (As per page no. 45 of complaint)	**Due date of possession:** **17.04.2016** (**Note:** The due date of possession is calculated 48 months from the date of execution of buyer's agreement, as per the clause 10 of buyer's agreement). **OC:** Not obtained **OFP:** Not offered	**TSC:** **Rs.24,37,500/-** [As mentioned in clause 1 of BBA at page no. 18 of complaint] **AP:** **Rs.25,00,266/-** [As mentioned in clause 1 of BBA at page no. 18 of complaint] **AR Paid:** **Rs.25,60,110/-** Paid up to September, 2018 [As per page no.39 of reply]
	Assured return clause as per buyer's agreement in **CR/633/2022**	**12. Assured Return and Leasing Arrangement:** *Since the buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said building is ready for occupation and use,* ***the developer has agreed to Rs.65/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer from the date of execution of this agreement till the completion of construction of the said building***... (As per page no. 30 of complaint)			
	Committed return clause as per buyer's agreement in **CR/633/2022**	**12. Assured Return and Leasing Arrangement:** ... (i) ***The developer will pay to the buyer Rs.65/- per sq. ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.*** (As per page no. 30 of complaint)			
2.	CR/634/2022 Usha Sakhuja and Ashok Kumar Sakhuja V/S M/s Vatika Limited **DOF:** 23.02.2022 **RR:** 27.05.2022	1426, 14th Floor, Tower-A in **"India Next City Centre"** 500 sq. ft. (super area) [As mentioned in clause 1 of BBA at page no. 21 of complaint]	**AL:** **25.03.2010** [Page 36 of complaint] **BBA:** **25.03.2010** [Page 18 – 34 of complaint] **Addendum to the buyer's agreement:** **25.03.2010** *(for assured return clause)* [As per page no. 35 of complaint]	**Due date of possession:** **25.03.2013** (**Note:** The due date of possession is calculated 3 years from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement). **OC:** Not obtained **OFP:** Not offered	**TSC:** **Rs.35,00,000/-** [As mentioned in clause 2 of BBA at page no. 21 of complaint] **AP:** **Rs.35,00,000/-** [As mentioned in clause 2 of BBA at page no. 21 of complaint] **AR Paid:** **Rs.33,24,082/-** Paid up to September, 2018 [As per page no.32 of reply]

			Addendum to the buyer's agreement: 11.08.2011 *(w.r.t Change in Clause A, B & C)* [As per page no. 37-39 of complaint]		
	Assured return clause as per the addendum to buyer's agreement in **CR/634/2022**	**Annexure A** **Addendum to the agreement dated 25.03.2010** The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.13/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder agreement dated 25.03.2010: - A. Till completion of building: Rs.78/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. You would be paid an assured return w.e.f. 25.03.2010 on a monthly basis before the 15th of each calendar month. The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be payable. 1. If the rental is less then Rs.65/- per sq. ft. then you shall be returned @Rs. 116.40/- per sq. ft. for every Rs.1/- by which achieved rental is less then Rs.65/- per sq. ft. 2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.116.40/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals. [As per page no. 35 of complaint]		
3.	CR/636/2022 Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited **DOF:** 24.02.2022 **RR:** 04.08.2022	**Old Unit No.:** 243, 2nd Floor, Tower-A in **"Vatika Trade Centre"** [As mentioned in clause 1 of BBA at page no. 24 of complaint] **Current Unit No.:** 515, 5th Floor, Block-F in **"India Next City Centre"** 500 sq. ft. (super area)	**AL:** **29.01.2011** [Page 41 of complaint] **BBA:** **29.01.2011** [Page 20 – 39 of complaint] **Addendum to the buyer's agreement:** **29.01.2011** *(for assured return clause)* [As per page no. 40 of complaint] **Addendum to the buyer's agreement:** **27.07.2011**	**Due date of possession:** **29.01.2014** (**Note:** The due date of possession is calculated 3 years from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement). **OC:** Not obtained **OFP:** Not offered	**TSC:** **Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AP:** **Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AR Paid:** **Rs.29,92,849/-** Paid up to September, 2018 [As per page no.42 of reply]

		[As per the letter for allocation dated 25.04.2013 of unit at page no. 45 of complaint]	*(w.r.t Change in Clause A, B & C)* [As per page no. 42 – 44 of complaint] **Allocation of unit no. in "INXT City Centre": 25.04.2013** [As per page no. 45 of complaint]		
	Assured return clause as per the addendum to buyer's agreement in **CR/636/2022**	**Annexure A** **Addendum to the agreement dated 29.01.2011** The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder agreement dated 29.01.2011: - A. Till offer of possession: Rs.71.50/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. You would be paid an assured return w.e.f. 29.01.2011 on a monthly basis before the 15th of each calendar month. The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be payable. 1. If the rental is less then Rs.65/- per sq. ft. then you shall be returned @Rs.120/- per sq. ft. for every Rs.1/- by which achieved rental is less then Rs.65/- per sq. ft. 2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals. (As per page no. 40 of complaint)		
4.	CR/637/2022 Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited **DOF:** 23.02.2022 **RR:** 27.05.2022	**Old Unit No.:** 242, 2nd Floor, Tower-A in **"Vatika Trade Centre"** [As mentioned in clause 1 of BBA at page no. 24 of complaint] **Current Unit No.:** 514, 5th Floor, Block-F in **"India Next City Centre"**	**AL: 14.01.2011** [Page 41 of complaint] **BBA: 14.01.2011** [Page 20 – 39 of complaint] **Addendum to the buyer's agreement: 14.01.2011** *(for assured return clause)* [As per page no. 40 of complaint]	**Due date of possession: 14.01.2014** (**Note:** The due date of possession is calculated 3 years from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement). **OC:** Not obtained **OFP:**	**TSC: Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AP: Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AR Paid: Rs.30,08,877/-** Paid up to September, 2018 [As per page no.33 of reply]

		500 sq. ft. (super area) [As per the letter for allocation dated 25.04.2013 of unit at page no. 45 of complaint]	**Addendum to the buyer's agreement: 27.07.2011** *(w.r.t Change in Clause A, B & C)* [As per page no. 42 – 44 of complaint] **Allocation of unit no. in "INXT City Centre": 25.04.2013** [As per page no. 45 of complaint]	Not offered	
	Assured return clause as per the addendum to buyer's agreement in **CR/637/2022**	**Annexure A** **Addendum to the agreement dated 14.01.2011** The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder agreement dated 14.01.2011: - A. Till offer of possession: Rs.71.50/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. You would be paid an assured return w.e.f. 14.01.2011 on a monthly basis before the 15th of each calendar month. The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be payable. 1. If the rental is less then Rs.65/- per sq. ft. then you shall be returned @Rs.120/- per sq. ft. for every Rs.1/- by which achieved rental is less then Rs.65/- per sq. ft. 2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals. (As per page no. 40 of complaint)			
5.	CR/638/2022 Rohini Chaudhry and Minoo Ashwani Kumar Chaudhry V/S M/s Vatika Limited **DOF:** 24.02.2022 **RR:** 04.08.2022	**Old Unit No.:** 807, 8th Floor, Tower-A in **"Vatika Trade Centre"** [As mentioned in clause 1 of BBA at page no. 21 of complaint] **Current Unit No.:** 322, 3rd Floor, Block-F in	**AL: Not provided** **BBA: 22.07.2008** [Page 19 – 33 of complaint] **Addendum to the buyer's agreement: 27.07.2011** *(w.r.t Change in Clause A, B & C)*	**Due date of possession: 30.09.2010** (**Note:** The due date of possession is calculated as mentioned in clause 17A of buyer's agreement) **OC:** Not obtained	**TSC: Rs.20,21,500/-** [As mentioned in clause 2 of BBA at page no. 21 of complaint] **AP: Rs.20,21,500/-** [As mentioned in clause 2 of BBA at page no. 21 of complaint] **AR Paid:**

		"India Next City Centre" 500 sq. ft. (super area) [As per the letter for allocation dated 31.07.2013 of unit at page no. 37 of complaint]	[As per page no. 34 – 36 of complaint] **Allocation of unit no. in "INXT City Centre": 31.07.2013** [As per page no. 37 of complaint]	**OFP:** Not offered	**Rs.37,72,997/-** Paid up to September, 2018 [As per page no.40 of reply]
	Assured return clause as mentioned in buyer's agreement in **CR/638/2022**	**2. Sale Consideration:** *... Since the unit would be completed and handed over by 1st October, 2010, and since the allottee has paid part/ full sale consideration on signing of this agreement, the developer hereby undertakes to make a payment by way of committed return during construction period, as under; which the allottee duly accepts;* *... It is hereby specifically clarified that the committed return would be paid by the developer up to 30.09.2010 or in the event of any delay in completion of the project, up to the date of offer for handing over of completed unit to the allottee.* (As per page no. 21-22 of complaint)			
	Committed return clause as mentioned in buyer's agreement in **CR/638/2022**	**17 N. Leasing Arrangement** **(i) Return on completion of the project and letting out of space:** *That on the completion of the project, the space would be let-out by the developer at his own cost to a Bonafide lessee at a minimum rental of Rs.62/- per sq. ft. per month less TDS at Sources. In the event of the developer being unable to finalize the leasing arrangements, it shall pay the minimum rent at Rs.62/- per sq. ft./ per month to the allottee as minimum guaranteed rent for the first 36 months after the date of completion of the project or till the date the said unit/ space is put on lease, whichever is earlier.* (As per page no. 29 of complaint)			
6.	CR/639/2022 Rohini Chaudhry and Vasudha Chaudhry V/S M/s Vatika Limited **DOF:** 23.02.2022 **RR:** 27.05.2022	**Old Unit No.:** 244, 2nd Floor, Tower-A in **"Vatika Trade Centre"** [As mentioned in clause 1 of BBA at page no. 24 of complaint] **Current Unit No.:** 516, 5th Floor, Block-F in **"India Next City Centre"** 500 sq. ft. (super area)	**AL:** **14.01.2011** [Page 41 of complaint] **BBA:** **14.01.2011** [Page 20 – 39 of complaint] **Addendum to the buyer's agreement:** **14.01.2011** *(for assured return clause)* [As per page no. 40 of complaint] **Addendum to the buyer's agreement:** **27.07.2011**	**Due date of possession:** **14.01.2014** (**Note:** The due date of possession is calculated 3 years from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement). **OC:** Not obtained **OFP:** Not offered	**TSC:** **Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AP:** **Rs.25,00,000/-** [As mentioned in clause 2 of BBA at page no. 24 of complaint] **AR Paid:** **Rs.30,08,877/-** Paid up to September, 2018 [As per page no.32 of reply]

		[As per the letter for allocation dated 25.04.2013 of unit at page no. 45 of complaint]	*(w.r.t Change in Clause A, B & C)* [As per page no. 42 – 44 of complaint] **Allocation of unit no. in "INXT City Centre": 25.04.2013** [As per page no. 45 of complaint]		
	Assured return clause as per the addendum to buyer's agreement in **CR/639/2022**	**Annexure A** **Addendum to the agreement dated 14.01.2011** The unit has been allotted to you with an assured monthly return of Rs.65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.6.50/- per sq. ft. Therefore, your return payable to you shall be as follows: This addendum forms an integral part of builder agreement dated 14.01.2011: - A. Till offer of possession: Rs.71.50/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. You would be paid an assured return w.e.f. 14.01.2011 on a monthly basis before the 15th of each calendar month. The obligation of the developer shall be to lease the premises of which your flat is part @Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq. ft. the following would be payable. 1. If the rental is less then Rs.65/- per sq. ft. then you shall be returned @Rs.120/- per sq. ft. for every Rs.1/- by which achieved rental is less then Rs.65/- per sq. ft. 2. If the achieved rental is higher than Rs.65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs.120/- per sq. ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals. (As per page no. 40 of complaint)		

Relief(s) sought by the complainant(s):

a. To handover the actual, physical, vacant possession of the unit;
b. To pay the assured rental of Rs.65/- per sq. ft. per month until possession/ leasing of the unit i.e., in terms of the agreement;
c. To pay interest on the delayed completion and handing over of possession from the assured date of completion and handing over of possession till the actual date of handing over of possession of the commercial unit to the complainant;
d. To direct the respondent to execute the sale deed of the above said unit in favour of the complainant;
e. To direct the respondent to pay the delay penalty charges with interest as per RERA Act;
f. To pass any other order, in favor of the complainants and against developer as specified under the RERA Act and HARERA Rules, in the interest of justice.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint

RR	Reply received by the respondent
AL	Allotment Letter
BBA	Buyer's Agreement
OC	Occupation certificate
OFP	Offer for Possession
TSC	Total sale consideration
AP	Amount paid by the allottee(s)
AR Paid	Assured return paid by the respondent/ promoter

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/633/2022*** titled as ***Nita Chopra VS. M/s Vatika Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details:

7. 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 tabular form:

CR/633/2022 titled as ***Nita Chopra VS. M/s Vatika Limited***

S. n.	Particulars	Details
1.	Name of the project	"India Next City Centre" at Sector 83, Gurugram, Haryana.

2.	Nature of project	Commercial Complex
3.	Project Area	10.718 Acres
4.	DTCP license	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	Name of the Licensee	M/s Trishul Industries
6.	RERA registered/ not registered & validity status	**Un-registered**
7.	Unit no.	120, 1st Floor of Tower-D in **"India Next City Centre"** (As per the letter dated 04.10.2013 at page no. 45 of complaint)
8.	Unit area	500 sq. ft. (super area) (As mentioned in clause E of BBA at page no. 18 of complaint)
9.	Re-allocation letter	04.10.2013 (As per page no. 45 of complaint)
10.	Date of execution of buyer's agreement	17.04.2012 (As per page no. 16 – 44 of complaint)
11.	Completion Clause	**10. Force Majeure** *"... 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 the construction of the said commercial unit within 48 months of execution of this agreement."*** **[Emphasis supplied]** (As per page no. 29-30 of complaint)
12.	Due date of Possession	**17.04.2016** (**Note:** The due date of possession is calculated 48 months from the date of execution of buyer's agreement, as per the clause 10 of buyer's agreement).
13.	Assured return clause	**12. Assured Return and Leasing Arrangement:** *Since the buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also*

		requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said building is ready for occupation and use, ***the developer has agreed to Rs.65/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer from the date of execution of this agreement till the completion of construction of the said building...*** **[Emphasis supplied]** (As per page no. 30 of complaint)
14.	Committed return clause	**12. Assured Return and Leasing Arrangement:** ... (i) ***The developer will pay to the buyer Rs.65/- per sq. ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.*** **[Emphasis supplied]** (As per page no. 30 of complaint)
15.	Total sale consideration	Rs.24,37,500/- (As mentioned in clause 1 of BBA at page no. 18 of complaint)
16.	Amount paid	Rs.25,00,266/- (As mentioned in clause 1 of BBA at page no. 18 of complaint)
17.	Assured return paid	Rs.25,60,110/- Paid up to September, 2018 (As per page no.39 of reply)
18.	Occupation certificate	Not yet obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainants have made the following submissions in the complaint: -

I. The complainant purchased a unit measuring 500 sq. ft. in the project being Unit No.120, 1st floor at Tower-D of Vatika INXT City Centre, Gurugram from the builder in July 2012. It was represented and assured by the respondent

builder company that the project including the unit of the complainant would be completed by end of 2015.

II. That, relying upon the respondent's representations and being assured that the respondent would abide by their commitments, the complainant in good faith purchased the said unit in the project Vatika INXT city centre from the builder company.

III. That the purchase of the said unit no.120, 1st floor at Tower-D in the "Vatika INXT City Centre Gurugram" project was confirmed to the complainant vide builder buyer's agreement dated 17.04.2012. The complainant was initially allotted the unit on 2nd Floor, Block A, however the Unit was later reallocated as unit no.120, 1st floor, Tower-D, in INXT City Centre.

IV. That the builder-buyer agreement dated 17.04.2012 was executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion etc. Under the said builder buyer agreement, the respondent promised, assured, represented and committed to the complainant that this commercial project would be completed and will be handed over to the buyer within 48 months of the date of the agreement i.e. by April 2016. Further, as per clause 10 of the builder buyer agreement, the respondent assured that the time is of essence and the respondent would complete construction of the said commercial unit within 48 months of execution of the agreement.

V. That as per the agreement (C-1) between the complainant and respondent wherein the respondent undertook to pay a monthly rent of Rs.65/- per sq. ft. per month to the complainant, which is equivalent to Rs.32,500/- per month for one unit. It is stated that the complainant were getting paid the promised monthly rentals till September 2018 however the respondent stopped paying the monthly rentals to the complainant from October 2018 without assigning any reasons whatsoever. The respondent in the meanwhile asked the

complainant to sign some addendum which was to amend the assured return clause. The complainant signed the same. On asking to provide the copy of the same, the respondent officials told the complainant that same will be supplied after the said addendum is signed by their authorized signatory as well. However, the respondent never supplied copy of the same. The complainant was also telephonically informed that the said addendum to amend the assured return clause has been scrapped and will not be given effect to.

VI. Thereafter, several efforts from the complainant were made to seek timely updates about the status of the construction work at the site, but due to the negligence of the respondent, there was no satisfactory response from their end. The agreement entered between the complainant and the respondent provided for full payment, the complainant had assumed the money collected by the respondent from the complainant would be utilized for construction purpose. Unfortunately, the respondent did not properly utilize the complainant's hard-earned money and even project is yet to be completed.

VII. After getting zero response from the respondent, the complainant visited the construction site but was shocked and appalled to see that construction that had not been completed. Despite respondent promising the complainant to provide him with world class project with impeccable facilities the complainant is shocked to see the construction site and the purpose of the complainant to book the unit is completely not fulfilled.

VIII. That the respondent at various instances violated the terms and condition of the builder buyer's agreement by:

i. Not paying the promised monthly rentals to the complainant at initially promised rates.
ii. Not completing the construction of the project or the commercial unit within the stipulated time period.
iii. Not handing over the peaceful and vacant possession of the above said allotted Unit.
iv. By not executing the conveyance deed of the above said unit.

IX. That at the time of execution of the builder-buyer agreement the respondent had represented to the complainant that they are in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the commercial project. However, till date construction is incomplete at the site.

X. That it is abundantly clear that the respondent has no intentions of completing the above said project and have not abided to the terms and conditions mentioned in the clauses of the builder buyer agreement.

XI. That, it is unambiguously lucid that no force majeure was involved and the project has been at a standstill since several years and it has been 10 years till the present date therefore the respondent cannot take a plea that the construction was halted due to covid-19 pandemic or any other force majeure reason. It is submitted that the complainant has already made the full payment to the respondent towards the commercial unit booked by her. That, despite paying such a huge sum towards the commercial unit, the respondent has failed to stand by the terms and condition of the builder-buyer agreement and the promises, assurances, representations etc, which they made to the complainant at the time of the booking the above said unit.

XII. That, the respondent is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainant by misguiding her, keeping her in dark and putting her future at risk by rendering her income less.

XIII. That the complainant herein is constrained and left with no option but to file this present complaint seeking the payment of assured rental @ Rs.65.00/- per sq. ft. per month until possession/leasing of the unit, registration of the sale deed of the allotted unit at Vatika INXT City i.e. in terms of clause 12 of the builder buyer agreement. Further, the complainant is seeking penalty to be levied upon the respondent for delay in handing over the possession of the

allotted Unit by way of awarding interest for every month of delay from the promised due date of completion i.e. April 2016 till actual date of handing over of the possession. The complainant further herein reserves her right(s) to add/ supplement/ amend/ change/ alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Tribunal.

XIV. That the complainant has not filed any similar complaint in any other Commission or any other Court, Tribunal or Forum and have approached this Authority to seek the redressal of their grievances as per the Real Estate (Regulation and Development) Act, 2016 read with the Haryana Real Estate (Regulation and Development) Rules 2017.

XV. That the present authority has the territorial jurisdiction to entertain the present case as the commercial unit in question are situated within the territorial jurisdiction of this Authority i.e. at Gurugram.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):

a. To handover the actual, physical, vacant possession of the unit no.120. 1st floor at Tower-D, in the "Vatika INXT City Centre, Gurugram;
b. To pay the assured rental of Rs.65/- per sq. ft. per month until possession/ leasing of the unit i.e., in terms of the agreement;
c. To pay interest on the delayed completion and handing over of possession from the assured date of completion and handing over of possession till the actual date of handing over of possession of the commercial unit to the complainant;
d. To direct the respondent to execute the sale deed of the above said unit in favour of the complainant;
e. To direct the respondent to pay the delay penalty charges with interest as per RERA Act;
f. To pass any other order, in favor of the complainants and against developer as specified under the RERA Act and HARERA Rules, in the interest of justice.

10. On the date of hearing, the Authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to a Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

11. The respondent is contesting the complaint on the following grounds:

i. That the respondent is a company, registered under the Companies Act, 1956 having its office at unit no A-002, INXT City Centre Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram – 122012, Haryana, India. That for the past two decades the respondent has been engaged in the business of Real Estate Sector.

ii. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 17.04.2012, as shall be evident from the submissions made in the following paras of the present reply.

iii. That the present complaint is not maintainable under the law, upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act). The Assured Return/Committed Returns on deposit schemes have been banned under the BUDS Act, making such schemes illegal. Therefore, the relief sought by the complainants falls outside the jurisdiction of the Authority.

iv. That Section 2(4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form by any deposit taker and the explanation to the Section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013. The companies Act, 2013 in Section 2(31) defines "Deposit" as "deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of

amount as may be prescribed in consultation with the Reserve Bank of Indi". The term prescribed so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Further, the explanation for the clause (s) of Section 2(1) states that any amount received by the company, whether in the form of any instalments or otherwise, form a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as deposit. Thus, the simultaneous reading of the BUDS Act read with Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

v. That Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme "as 'means a Scheme or on arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule." Thus the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law thus the relief prayed for the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs.25,60,110/- till September, 2018. The complainants have not come with clean hands before the authority and have suppressed these material facts.

vi. That as per Section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders cannot directly or, indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) collective investment Schemes as

defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

vii. That the complainant also enjoyed the monthly returns till September 2018. That the complaint has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. That for the fair adjudication of grievance as alleged by the complainant requires detailed deliberation by leading the evidence and cross-examination, thus only the Civil Court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.

viii. That the present complaint is not maintainable before the Authority as it is apparent from the prayers sought in the complaint. That further it is crystal clear from reading the complaint that the complainant is not an 'Allottee', but purely is an 'Investor', who is only seeking physical possession/ delay possession charges from the respondent, by way of present petition, which is not maintainable as the unit is not meant for personal use rather it is meant for earning rental income.

ix. 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 clause 12 of 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.

x. That in view of the judgment and order dated 16.10.2017 passed by the Maharashtra RERA Authority in the complaint titled *Mahesh Pariani* vs. *Monarch Solitaire* order, Complaint No: CC00600000000078 of 2017 wherein it has been observed that in case where the complainant has invested money

in the project with sole intention of gaining profits out of the project, then the Complainant is in the position of co-promoter and cannot be treated as 'Allottee'. Thus, in view of the aforesaid decision, the complainant herein could not and ought not have filed the present complaint being a co-promoter.

xi. That in the matter of *Brhimjeet & Ors* vs. *M/s Landmark Apartments Pvt. Ltd.* (complaint no.141 of 2018), this 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.

xii. That further in the matter of *Bharam Singh &Ors* vs. *Venetian LDF Projects LLP* (complaint no.175 of 2018), the Authority, Gurugram upheld its earlier decision of not entertaining any matter related to assured returns.

xiii. That further in the matter of *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (complaint no.58 of 2018), the Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.

xiv. That the complainant has come before this Authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent.

xv. That the complainant entered into an agreement i.e., builder buyer's agreement dated 17.04.2012 with respondent owing to the name, good will and reputation of the respondent. That due to external circumstance which

were not in control of the respondent, minor time line alterations occurred in completion of the project.

xvi. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

xvii. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.

xviii. That the respondent commitment towards the completion of the project is not to be disregarded. Thus, in this regard it is pertinent to mention that the respondent was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:

(a) Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of ***Sector roads*** 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely;

(b) ***Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water***,

(c) Total and Partial ***Ban on Construction*** due to the directives issued by the National Green Tribunal during various times since 2015.

(d) The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.

(e) ***Additionally,*** it imposed a set of ***partial restrictions***, some of which are
   i. No construction activities between 6 pm till 6 am (174 days)
   ii. Stop the usage of Diesel Generator Sets (128 days).
   iii. Stop entry of Truck Traffic into Delhi.
   iv. Close brick kilns, Hot Mix plants and Stone Crushers.
   v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
   vi. This year, partial restrictions continued to be in place in NCR region.

(f) The several stretches of total and partial construction ***restrictions*** have led to ***significant loss of productivity in construction*** of our projects. We have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.

(g) That the respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works & Infrastructure Development Works.

(h) That upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompletion of such Development Works resulted in minor alterations in timelines of the project, however the respondent yet managed to complete the project. It is pertinent to mention that in the matter titled, CREDAI-NCR vs. Department of Town and Country Planning, Government of Haryana & Anr. before the Competition Commission of India – Case No. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the respondent lacked any control in the subsequent deference of the project.

That since the hurdles faced by the respondent were beyond the control of the respondent, there was unintentional delay in completion of the project. It is further submitted that, it was never the intention of the respondent to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.

xix. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed.

xx. That it is brought to the knowledge of this Authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainant. That before buying the property from the erstwhile allottees, the complainant was aware of the status of the project and the fact that the commercial unit was only intended for lease and never for physical possession.

xxi. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.

xxii. That the various contentions raised by the complainant is fictitious, baseless, vague, wrong and created to misrepresent and mislead this Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

12. All other averments made in complaint are denied in toto.

13. Copies of all the relevant documents have been filed and placed on the 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:

14. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

15. As per notification no. ***1/92/2017-1TCP dated 14.12.2017*** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

16. 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.*

17. 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. Findings on objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being investor.

18. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress

upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

19. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay the assured rental of Rs.65/- per sq. ft. per month until possession/ leasing of the unit i.e., in terms of the agreement;

G.II Direct the respondent to pay interest on the delayed completion and handing over of possession from the assured date of completion and handing over of possession till the actual date of handing over of possession of the commercial unit to the complainant;

G.III Direct the respondent to direct the respondent to pay the delay penalty charges with interest as per RERA Act;

G.IV To pass any other order, in favor of the complainants and against developer as specified under the RERA Act and HARERA Rules, in the interest of justice.

20. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

- **Assured returns**

21. In the instant complaint, the complainant duly booked a commercial unit of admeasuring 500 sq. ft. (super area) within the respondent's project namely, "Vatika India Next City Centre" situated at Sector – 83, Gurugram. Therefore, a buyer's agreement was executed between the complainant and respondent herein on 17.04.2012 in respect of the said unit. Subsequently, the respondent re-allocated the complainant's allotted unit from 2nd floor in Tower - A to Unit No. 120 at 1st floor in Tower – D, within the same project vide re-allocation letter dated 04.10.2013.

22. The complainant in the present complaint seeking relief w.r.t payment of assured return as per the terms of the buyer's agreement dated 17.04.2012. The complainants have submitted that as per Clause 12 of the said buyer's agreement, it was agreed that the respondent would pay monthly assured return of Rs.65/- per sq. ft. from the date of execution of this agreement till the completion of construction of the said commercial unit. It is pleaded by the complainant that the respondents have not complied with the terms and conditions of the said allotment letter. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.*** wherein the authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was held that

when payment of assured returns is part and parcel of allotment letter/ builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

23. Further the respondent raised an objection that only allotment letter was executed but not agreement for sale has been executed. The Authority is of the view that buyer's agreement dated 17.04.2012 contains all the terms and conditions regarding the payment of assured return. Therefore, the promoter and allottee would be bound by the obligations contained in the buyer's agreement and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under Section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

24. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain

period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

25. The Authority has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016, then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon.

26. In the present complaint, the assured return was payable as per Clause 12 of buyer's agreement dated 17.04.2012, which is reproduced below for the ready reference:

> ***12. Assured Return and Leasing Arrangement:***
> *Since the buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said building is ready for occupation and use,* ***the developer has agreed to Rs.65/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer from the date of execution of this agreement till the completion of construction of the said building.*** *The buyer hereby gives full authority and powers to the developer to put the said commercial unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the buyer, as and when the said building/ said commercial unit is ready for fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the confirming party.* ***It is further agreed that:***

(i) The developer will pay to the buyer Rs.65/- per sq. ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.

[Emphasis Supplied]

27. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale.

28. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottees later. In view of the above, the respondent is liable to pay assured return to the complainant/ allottee in terms of the buyer's agreement dated 17.04.2012.

- **Delay possession charges.**

29. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which reads as under:

> ***"Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

30. A buyer's agreement was executed between the complainant and respondent herein on 17.04.2012. Subsequently, the allotted unit of the complainant was re-allocated from 2nd floor in Tower-A to Unit No. 120 at 1st floor in Tower-D vide re-allocation letter dated 04.10.2013. As per clause 10 of buyer's

agreement dated 17.04.2012, the respondent/ promoter assures to complete the construction of the said commercial unit within 48 months of execution of this agreement. The relevant part of the said clause is reproduced below for reference:

> *10. Force Majeure*
> *"...*
> *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 the construction of the said commercial unit within 48 months of execution of this agreement."***
> ***[Emphasis supplied]***

31. Accordingly, the due date of possession is calculated as 48 months from the date of execution of buyer's agreement i.e., 17.04.2012. Therefore, the due date of possession comes out to be 17.04.2016.

32. Further, as per terms and conditions mentioned in the buyer's agreement dated 17.04.2012, the respondent/ promoter is under an obligation to further lease out the subject units of the complainant's post completion.

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. ibid. Rule 15 has been reproduced 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."*

34. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

35. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

36. The definition of term 'interest' as defined under Section 2(za) of the Act provides that 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. The relevant section is reproduced below:

> ***"(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;"*

37. On consideration of documents available on record and submissions made by the complainant and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 17.04.2016.

38. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

39. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the allotment letter. The assured return in this case is payable as per "allotment". The rate at which assured return has been committed by the promoter is Rs.65/- per sq. ft. of the super area per month from the date of execution of buyer's agreement dated 17.04.2012 till the completion of construction of the said building which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.32,500/- per month till completion of building whereas the delayed possession charges are payable approximately Rs.22,502/- per month. By way of assured return, the promoter has assured the allottee(s) that they would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottee(s) is protected even after the completion of the building, as the assured returns are payable even after completion of the building. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession, as the same is to safeguard the interest of the allottee(s) as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher.

40. The table hereinbelow demonstrates the comparison between the delay possession charges and the assured returns payable:

Sr. No.	Case No.	Unit No.	Unit area	Delayed payment charges @ per month	Assured return @ per month	Committed return @ per month
1.	CR/633/2022	120, 1st Floor, Tower - D	500 sq. ft. (super area)	Rs.22,502.39/-	**Rs.32,500/-** payable till completion of building	**Rs.32,500/-** payable up to three years from the date of completion of construction of the

						said building or till the said commercial unit is put on lease, whichever is earlier.
2.	CR/634/2022	1426, 14th Floor, Tower - A	500 sq. ft. (super area)	Rs.31,500/-	**Rs.39,000/-** payable till completion of building	**Rs.32,500/-** payable after the completion of construction of the said building.
3.	CR/636/2022	515, 5th Floor, Block - F	500 sq. ft. (super area)	Rs.22,500/-	**Rs.35,750/-** payable till offer of possession	**Rs.32,500/-** payable after the completion of construction of the said building.
4.	CR/637/2022	514, 5th Floor, Block - F	500 sq. ft. (super area)	Rs.22,500/-	**Rs.35,750/-** payable till offer of possession	**Rs.32,500/-** payable after the completion of construction of the said building.
5.	CR/638/2022	322, 3rd Floor, Block - F	500 sq. ft. (super area)	Rs.18,193.5/-	**Rs.31,000/-** payable till offer of possession	**Rs.31,000/-** payable up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.
6.	CR/639/2022	516, 5th Floor, Block - F	500 sq. ft. (super area)	Rs.22,500/-	**Rs.35,750/-** payable till offer of possession	**Rs.32,500/-** payable after the completion of construction of the said building.

41. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

42. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return, as per the buyer's agreement dated 17.04.2012. As per the buyer's agreement dated 17.04.2012, the promoter had agreed to pay to the

complainants/ allottees Rs.65/- per sq. ft. on monthly basis from the date of execution of buyer's agreement till completion of the said building. The said clause further provides that it is the obligation of the respondent/ promoter to lease the premises. It is matter of record that the assured return was paid by the respondent/ promoter till September 2018 at the rate of Rs.65/- per sq. ft., but later on after September 2018, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per Section 2(4)(iii) of the above-mentioned Act.

43. In the present complaint, the OC/CC for the block in which unit of complainant is situated has not been received by the promoter. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the pending amount of assured return at the agreed rate i.e., Rs.65/- per sq. ft. per month from the date the payment of assured return has not been made i.e. from October 2018 till the date of completion of construction of the project, and thereafter, Rs.65/- per sq. ft. per month as committed return up to 3 years from the date of completion of construction of the said building or till the date the said unit is put on lease, whichever is earlier. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of buyer's agreement dated 17.04.2012. Further, the Authority declines to order payment of any amount on account of delayed possession charges as their interest has been protected by granting assured returns till completion of construction of the unit and

thereafter also up to 3 years at different rate from date of completion of the said building or the said unit is put on lease, whichever is earlier.

44. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

G.V Direct the respondents to handover to handover the actual, physical, vacant possession of the unit no.120, 1st floor at Tower-D, in the "Vatika INXT City Centre, Gurugram;

45. The complainant has sought the relief of physical possession of the unit. The buyer's agreement was executed between parties on 17.04.2012. The occupation certificate for the block in unit of the complainant is situated is not yet granted by the competent authority.

46. The respondent, in its reply, submits that the said unit is exclusively meant for leasing purposes and that only constructive possession can be handed over; physical possession cannot be delivered.

47. The Authority after considering all the documents on record observes that as per Clause 12 of the buyer's agreement, the said unit is not intended for self-occupation. There is no doubt that the unit has to be put on lease by the promoter and this fact is also admitted by the respondent in its reply. The relevant Clause 12 of buyer's agreement dated 17.04.2012 is reproduced below for reference:

> ***12. Assured Return and Leasing Arrangement:***
> *Since the buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said building is ready for occupation and use, the developer has agreed to Rs.65/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer from the date of execution of this agreement till the completion of construction of the said building.* ***The buyer hereby gives full authority and powers to the developer to put the said commercial unit in combination with other***

adjoining commercial units of other owners, on lease, for and on behalf of the buyer, as and when the said building/ said commercial unit is ready for fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the confirming party...

[Emphasis Supplied]

48. Therefore, the complainant herein is not entitled to seek physical possession of the said unit, as the same is intended for leasing purposes, either individually or in combination with other adjoining units.

G.VI Direct the respondent to execute the sale deed of the above said unit in favor of the complainant;

49. The complainant is seeking the relief for execution of registered of conveyance deed in accordance with Section 17 of the Act of 2016 and also as per Clause (6) of buyer's agreement, the relevant clause of the buyer's agreement is reproduced for ready reference: -

6. Conveyance Deed

"Subject to the approval/ no objection of the appropriate authority, as may be required in terms of statutory laws/ rules and upon completion of construction of the said commercial unit/ said building block/ said commercial complex, the developer will execute and get registered the conveyance deed in respect to the said commercial unit, after all dues of the developer and other statutory dues have been paid in full by the buyer to confer upon the buyer/ his nominee, registered title of the said commercial unit free from all encumbrances in due course of time. The conveyance deed shall be in the form and content as approved by the developer's legal personnel. The buyer undertakes to execute conveyance deed within the time stipulated by the developer in its written notice. The buyer will be solely responsible and liable for compliance of the provisions of Indian Stamp Act, 1899 including any action taken or deficiencies. Penalties imposed by the competent authority(ies). The buyer, subject to the income tax and other clearances, permissions, sanctions and NOC's as may be required, will get the conveyance deed executed and registered in his own name or in the name of his nominee."

50. It is to be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed

done after obtaining of OC. However, there is nothing on the record to show that the respondent has applied for occupation certificate of the said project.

51. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as Section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of complainant/allottee within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

> ***"Section 17: Transfer of title.***
> *17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

52. The Authority hereby directs the respondent to execute the conveyance deed in favor of the complainant within 3 months after obtaining the occupation certificate from the competent authorities.

H. Directions of the Authority:

53. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.65/- per sq. ft. per month from the date the payment of assured returns has not been made i.e., October, 2018 till completion of construction of commercial unit and thereafter, Rs.65/- per sq. ft. per

month after the completion of the building till three years or till the date the said unit is put on lease, whichever is earlier.

ii. The respondent is directed to pay the above outstanding accrued assured return amount till date within a period of 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would become payable with interest @ 8.80% per annum till the date of actual realization.

iii. The respondent is further directed to execute conveyance deed in favour of the complainant(s) in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

iv. The respondent/ promoter shall not charge anything from the complainant which is not the part of buyer's agreement.

54. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, total sale consideration, amount paid against the allotted unit and assured return paid by the respondent/ promoter is mentioned in each of the complaints.

55. Complaints as well as applications, if any, stand disposed of, accordingly.

56. True certified copy of this order shall be placed in the case file of each matter.

57. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2026