



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

### PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 10.11.2021
Complaint No.	CR/1665/2021 Case titled as Anita Ahlawat V/S Vatika Limited
Complainant	Anita Ahlawat
Represented through	Shri Abhishek Rao Advocate
Respondent	Vatika Limited
Respondent Represented through	Ms. Ankur Berry Advocate
Last date of hearing	09.11.2021
Proceeding Recorded by	Naresh Kumari and HR Mehta

### Proceedings

The present complaint has been received on 30.03.2021 and the reply was received on 13.08.2021.

Succinct facts of the case are as under:

S.N.	Particulars	Details
1.	Name of the project	Vatika Trade Centre
2	Allotment letter	25.08.2011
2.	Unit no.	Unit no. 105, 1 <sup>st</sup> floor, tower A admeasuring 750 sq.ft. (page 22 of complait)
3.	Date of builder buyer agreement	07.09.2011 (page 24 of complaint)
4.	Possession clause	<b>Recital D</b>

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/1665/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

		The developer has represented that it will complete the construction of the said complex and make it ready of occupation and possession in all respects, on or before expiry of 3 years from the date of execution of this agreement unless the construction of the same is stopped or delayed on account of factors beyond its control as has been stipulated in the latter part of this agreement (emphasis supplied).
5.	Assured return clause	<p><b>Addendum to the agreement dated 25.08.2011</b></p> <p>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:</p> <p>This addendum forms an integral part of builder buyer agreement dated 25.08.2011</p> <p>A. Till completion of the building: Rs. 71.50/- per sq.ft.</p> <p>B. After completion of the building: Rs 65/- per sq.ft.</p> <p>You would be paid an assured return w.e.f. 25.08.2011 on a monthly basis before the 15<sup>th</sup> of each calender month.</p> <p>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</p>

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

		<p>higher or lower than Rs 65/- per sq.ft. the following would be applicable.</p> <ol style="list-style-type: none"> <li>1. If the rental is less then Rs 65/- per sq.ft. than you shall be refunded @ Rs 120/- per sq.ft. for every Rs 1/- by which achieved rental is less then Rs 65/- per sq.ft.</li> <li>2. If the achieved rental is higher then 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. (page 23 of complaint)</li> </ol>
6.	Due date of possession	07.09.2014
7.	Total sale consideration	Rs. 36,56,250/- as per clause 1 of builder buyer agreement (page 27 of complaint)
8.	Paid up amount	Rs. 37,50,398 /- as per receipts (page 49 of complaint)
9.	Offer of possession	Not offered
10.	Occupation certificate	Not obtained
11.	Whether any amount of assured return paid as per addendum to the agreement.	The respondent paid the assured return amount till October 2018.

The complainant has sought following relief:





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CA 1665/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

1. Direct the respondent to give the complete amount of assured return termed as committed liability since October 2018 till the date of application is decided.

### Findings

The complainant has sought assured return on monthly basis as per clause 16 of builder buyer agreement at the rate of 104.41/- per sq. ft. of super area per month till the construction of the said commercial unit is complete. The respondent has not complied with the terms and conditions of the agreement. Though for some time the amount of assured returns were paid but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act 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.

The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. 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. Therefore, different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral part of this agreement is the transaction of assured return inter-se parties. 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. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/1625/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

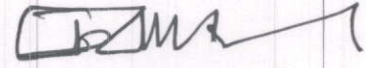
नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

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 returns. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.

Detailed order will follow. The complaint stands disposed of. File be consigned to registry.

V.I-3  
Vijay Kumar Goyal  
Member

  
Dr. KK Khandelwal  
Chairman  
10.11.2021