HARERA
GURUGRAM

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**660 of 2021**
Date of filing complaint:		**10.12.2020**
First date of hearing	:	**11.02.2021**
Date of decision	:	**10.11.2021**
Rectified on	:	**04.02.2022**

Prateek Srivastava & Namita Mehta R/o: B-191, The Lion, DLF Phase- 5, Sector 43, Gurugram-122009.	**Complainants**
Versus	
M/s Vatika Limited R/o 4th Floor, Vatika Triangle, Block-A, Sushant Lok, Phase I, Gurgaon 1220022.	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainants
Sh. Dhruv Dutt Sharma (Advocate)	Respondent

ORDER

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

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	High Street (Phase 1)
2.	Nature of the project	Plotted colony
3.	Area of the project	14918.258 acres
4.	DTCP license	113 of 2008 dated 01.06.2008
	License validity/ renewal period	31.05.2008
5.	RERA registered/not registered	263 of 2017 dated 03.10.2017
	HRERA registration valid up to	02.10.2022
6.	Unit no.	A-30, tower A (Page no 40 of complaint),
7.	Unit measuring	1640 sq. ft.
8.	Allotment letter	26.10.2016 (Page 46 annexure P-3)
9.	Date of execution of apartment buyer's agreement	Not executed
10.	Payment plan	Possession linked payment plan (Page no 46 annexure P-3)
11.	Total consideration	Rs 1,47,60,000/- as alleged by complainant (page 30 of complaint)

12.	Total amount paid by the complainants	Rs 91,00,278/- as alleged by complainants (page 30 of complaint)
13.	Due date of delivery of possession	Can't be ascertain
14.	Provision regarding assured return clause 3 of allotment letter	The developer shall remit an assured return of Rs 131.04 per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said commercial unit soon. (Page 47 of complaint)
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That in the first week of September 2016 the complainants/petitioners/allottees, Prateek Srivastava & Namita Mehta received a marketing call from the office of the respondent, who represent himself as its sales manager and marketed commercial project namely "INXT High Street" situated at Sector – 83, Gurugram. The respondent asked to book a commercial unit in the project "INXT High Street" situated at Sector-83, Gurugram. The respondent allured the complainants with proposed specifications and assured that committed assured return will be paid by it to them at Rs. 131.04/- per sq. ft. on the super area from the date of payment of 59% of booking amount till the completion of construction and thereafter Rs.140/- sq. ft. per month for a

minimum guaranteed period of 3 years. This was the promise on which the booking was made by the complainants.

4. That, believing on the representations and assurances of respondent, the complainants booked a commercial unit/shop bearing No. 030 on ground Floor having a super area of 1640 sq. Ft. in the project "INXT High Street", Sector -83, Gurugram on 29.09.2016 and issued a cheque No 000252 dated 29/09/2016 for Rs. 5,00,000/- drawn on standard chartered bank as booking amount and further issued four cheques. A cheque no 414402 dated 03/10/2016 for Rs.20,00,000/- drawn on Syndicate Bank, cheque No 000051 dated 03/10/2016 for Rs. 50,00,000/- drawn on standard chartered bank, cheque No 000251 dated 03/10/2016 for Rs. 15,13,194/-. In addition to these cheques TDS amounting to Rs 87,084/- was also deposited by the buyers.

5. That on 26.10.2016, the respondent issued a letter of allotment in name of the complainants, conforming to the allotment of commercial unit No. 030 on the ground floor for size admeasuring 1640 sq. ft. The commercial unit was booked for a total sale consideration of Rs. 1,47,60,000/- under a special payment plan (5% at the time of booking, 54% within 60 days of booking & 41% on completion of building). The said price included basic price, government or municipal charges, EDC and IDC, etc. As per clause No. 3 of the allotment letter, the builder has to give a monthly assured return at the rate of Rs. 131.04 per sq. ft. till completion of the building and thereafter will pay the minimum return of Rs. 140/- per sq. ft. for a minimum period of 3 years. The relevant part of the clauses is produced below for reference:

"3. The developer shall remit an assured monthly return of Rs. 131.04 per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said commercial unit soon."

"4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the Premises @ Rs. 140/- per sq. ft. However, in eventuality, the achieved lease return being higher or lower than Rs. 140/- per sq. ft. the following would be applicable. (a) If the achieved rental is less then Rs. 140/- per sq. ft. then you shall be refunded @ Rs. 133.34/- per sq. ft (Rs. One Hundred Thirty-Three & Thirty Four Only) for every Rs. 1/- by which achieved rental is less than Rs. 140/- per sq. ft. (b) If the achieved rental is more than 140/- per sq. ft. shall be liable to pay additional sales consideration @ 66.67/- per sq. ft. for every rupee of additional rental achieved.".

6. That on 13.02.2018, a pre-printed, unilateral, arbitrary builder buyer agreement/buyer's agreement was sent by the respondent. But the complainants found many major discrepancies regarding the clauses of the builder buyer agreement. The complainants sent back the unsigned BBA to the respondent for correction and asked to send a corrected BBA immediately so that it can be executed between the parties. It is pertinent to mention here that the project got the HARERA registration on 03.10.2017 vide registration No. 263 of 2017.

7. That on 04.04.2018, the complainants sent an email and stated that there are number of discrepancies in the clauses of the builder buyer agreement. On 19.08.2020, the respondent sent a letter for cancellation of builder buyer agreement cum refund Letter and cancelled the unit, the contents are produced here for reference "Please refer to your e-mail dated 1st July 2019 sent by you as well and after several meetings and discussions between us pursuant to

the same, explaining the compelling reasons for us to discontinue committed returns of any kind in compliance of change in law forbidding such returns. As a resolution to the difficulties caused to u due to the resultant situation, we had provided you various options for swapping the investment to your best advantage under the circumstances. Due to your unwillingness to accept the options given to you, it renders the agreement between us impossible to perform. Under such circumstances, we are cancelling your captioned booking with us, and the refund of the amount deposited by you shall be processed in 6 months. Please note that with the cancellation of the builder buyer agreement, you are left with no right, title, interest, charge, or lien over the unit and its allotment to you stands cancelled as of date. The company is released and discharged of all its liabilities and obligations in respect of allotment of the unit to you and its free to make fresh sale of the unit to any third party, you are, therefore requested to return, to the company, all the original documents including but not limited to builder buyer agreement, booking application form, allotment letter, all the receipts, etc at the earliest".

8. However, on 27.08.2020, the complainants replied to the letter of the respondent dated 19.08.2020, regarding the cancellation of the builder buyer agreement cum refund letter by denying its averments and reiterating the pleas taken is the mail of 04.04.2018. It is further submitted that as per the construction update available on the website of the respondent the project is under construction and block A has been constructed up to the 2nd floor.

9. That, since October 2018 the complainants are regularly requesting the respondent to pay the committed assured return and also to provide a copy of the builder buyer's agreement. Despite several visits and requests by the complainants, the respondent did not pay the committed assured returns from October 2018 and did not provide the copy of BBA.

10. That it is highly germane to mention here that the respondent has assured to give committed assured returns to the complainants, but it has paid assured returns to the complainants only till October 2018 and thereafter the respondent has stopped paying assured returns. The respondent has made misuse of his highly dominant position to harass the complainants and has sent a unit cancellation letter and asked to hand over all the original documents to the respondent. Despite paying more than 59% of the consideration amount i.e., 91,00,278/- as per allotment letter of 26.10.2016, the respondent has failed to execute a BBA and to pay assured returns.

11. That the main grievance of the complainants in the present complaint is that despite they have paid more than 59% of the actual cost of the unit and are ready and willing to pay the remaining amount (justified) (if any), the respondent has failed to execute a BBA and to pay assured returns.

12. That the cause of action for the present complaint arose in November 2018, when the respondent stopped paying committed assured returns to the complainants as per the buyer's agreement. The cause of action again arose on various occasions, including on a) November 2018; b) December 2018; c) January 2019, d) May 2019; e) April 2020, f) December 2020, and on many time till date,

when the protests were lodged with the respondent about its failure to pay committed assured returns and to execute of BBA. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s):

i. Direct the respondent party to refrain from cancellation of the unit of the complainants,

ii. Direct the respondent party to pay the committed assured returns as per clause 3 and 4 of the allotment letter from October 2018 to till the completion of the project.

iii. Direct the respondent to execute a buyer's agreement as per model draft of agreement to sell of HARERA.

D. Reply by the respondents

14. That the complaint filed by the complainants before the learned authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this learned authority as the relief being claimed by them, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this learned authority.

15. It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '**2016 Act**') and the Haryana Real Estate

(Regulation and Development) Rules, 2017 (hereinafter referred to as '**2017 Haryana Rules**'), made by the Government of Haryana in exercise of powers conferred by sub-section 1 read with Sub-section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this learned authority or the adjudicating officer. Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 Haryana Rules provides for filing of complaint with this learned authority, in reference to section 31 of 2016 Act. Sub-clause (1) *inter alia*, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of 2016 Act or the rules and regulations made thereunder, *save as those provided to be adjudicated by the Adjudicating Officer*, in form 'CRA'. Significantly, reference to the "Authority", which is this learned authority in the present case and to the "Adjudicating Officer", is separate and distinct. "Adjudicating Officer" has been defined under section 2(a) to mean the Adjudicating Officer appointed under sub-section (1) of section 71, whereas the "Authority" has been defined under section 2(i) to mean the Real Estate Regulatory Authority, established under Sub-Section (1) of Section 20.

16. Apparently, under Section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate government

for the purpose of adjudging compensation under Sections 12, 14, 18 and 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under Section 71 of 2016 Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under Sections 12, 14, 18 and 19 of the 2016 Act. The inquiry, as regards the compliance with the provisions of Sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from reading of Section 71(3) which inter alia, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1) he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the Sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19.

17. Apparently, in the present case, the complainants are seeking reliefs which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication, if at all, by the adjudicating officer and not this learned authority. Thus, on this ground alone the complaint is liable to be rejected.

18. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

19. That from perusal of the provisions of 2016 Act and/or the 2017 Haryana rules and conjoint reading of the same, it is evident that the 'agreement for sale' that has been referred to under the provisions of 2016 Act and 2017 Haryana rules, is the 'agreement for sale', as prescribed in annexure 'A' of 2017 Haryana Rules. Apparently, in terms of section 4(1), a promoter is required to file an application to the 'Authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term 'prescribed' has been defined under Section 2(z)(i) to mean prescribed by rules made under the Act. Further, section 4(2)(g) of 2016 Act provides that a promoter shall enclose, alongwith the application referred to in sub-section 1 of section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act inter alia, provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. Sub-section 2 of section 13, inter alia, provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in

the said sub-section. Rule 8 of 2017 Haryana rules categorically lays down that the agreement for sale shall be as per annexure 'A'. Suffice it is to mention that annexure 'A' forms part of the 2017 Haryana rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

20. Besides the aforementioned sections, a reference may be made to rule 5 of 2017 Haryana rules, which inter alia, provides that the authority shall issue a registration certificate with a registration number in form 'REP-III' to the promoter. Clause 2(i) of form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.

21. From the conjoint reading of the aforementioned sections/ rules, form and annexure 'A', it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana rules, is the one as laid down in annexure 'A', which is required to be executed inter se the promoter and the allottee.

22. It is a matter of record and rather a conceded position that no agreement much less as referred to under the provisions of 2016 Act and 2017 Haryana rules, has been executed between respondent and the complainants. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainants. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this learned authority.

23. That the project "High Street (Phase-1)" has been registered with the authority vide registration no. 263 of 2017. It is submitted that

after the halt in work due to various reasons and not limited to delay on the part of the allottees, NGT notifications, covid-19 pandemic, etc., recently the work had re-started and is going on in full swing and would be completed well within the timeline committed before RERA Gurugram.

24. That the complainants by way of present complaint are seeking the relief of recovery of alleged pending assured return amount. However, it is submitted that the learned authority does not have jurisdiction to decide upon the amount of assured return which the learned authority has already held in its various judgments.

25. It is crystal clear that complainants are not " allottees but are investors" who are only seeking assured return from the Respondent, by way of present complaint, which is not maintainable under RERA. The complainants after its own independent judgment have booked the said unit. The complainants have agreed for leasing arrangement wherein complainants have booked the said commercial unit for earning profit and is meant for leasing only and not for personal occupation.

26. That due to the evolving policies, regulations and legal framework governing real estate investments, the company also informed the clients of commercial units that as per the guidelines newly promulgated Ordinance i.e. "Banning of Unregulated Deposit Scheme Ordinance 2018" and further "Banning of Unregulated Deposit Scheme Act 2019" ,the government banned such assured / committed returns and schemes of such returns completely. It is submitted that the respondent duly paid the assured return till September 2018 amounting to Rs. 52,50,870/- and it was only due

to the above-mentioned Ordinance and Act, the responded suspended all return-based sales and stopped making payments towards the assured returns. Thus, in view of the above-mentioned Ordinance and Act, the assured return is not payable.

27. That the respondent had already cancelled the unit of the complainants vide Letter dated 19.08.2020. It is submitted that before cancellation the respondent offered various options to the complainants for swapping their investment, but the complainants did not accept the alternate options and thus the respondent was constrained to cancel the unit of the complainants. It is pertinent to mention here that the respondent informed the complainants that the refund shall be processed within 6 months and further requested the complainants to return all the original documents at the earliest. However, it was the complainants who did not return the original documents and the refund could not be processed.

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

E. Jurisdiction of the authority

31. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

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

E. II Subject-matter jurisdiction

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)(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;*
>
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

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.*

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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

F.I. Assured returns

32. While filing the claim petition besides delayed possession charges of the allotted unit, the claimant has also sought assured returns on monthly basis as per clause 3 of allotment letter dated 26.10.2016 at the rate of Rs 131.04/- per sq. ft. of super area per month till the construction of the said commercial unit is complete. It is pleaded by the claimant that the respondents have not complied with the terms and conditions of the agreement. Though for some time the amount of assured returns was paid but later on, the respondents refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019 (herein after referred to as the Act of 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. However, the plea of respondents is otherwise and who took a stand that though they paid the amount of assured return upto the year 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

33. The allotment letter dated 26.10.2016 is a document which was issued by the respondent and can be termed as agreement. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. 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 parts 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 the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees. Now, two issues arise for consideration as to:

i. Whether authority is within the jurisdiction to vary its earlier stand regarding assured return due to changed facts and circumstances.

ii. Whether the authority is competent to allow assured returns to the allottees in pre-RERA cases, after the Act of 2016 came into operation,

iii. Whether the Act of 2019 bars payment of assured returns to the allottees in pre-RERA cases

34. While taking up the cases of ***Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018)***, and ***Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP"*** (complaint no 175 of 2018) decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of ***"prospective overruling"*** and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of ***Sarwan Kumar & Anr Vs. Madan Lal Aggarwal*** Appeal (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now a plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority in not tenable. 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. It is now well settled preposition of law that when payment of assured returns is part and parcel of 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 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 allotee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with assured returns cases as the contractual relationship arise out of the agreement for sale only and between the parties. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. In cases of ***Anil Mahindroo & Anr. v/s Earth Iconic Infrastructure Pvt. Ltd.*** (Company Appeal (AT) (Insolvency) No. 74 of 2017) and ***Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd.*** (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017) decided on 02.08.2017 and 29.09.2018 respectively, it was held that the allottees are investors and have chosen committed return plans. The builder in turn agreed to pay monthly committed return to the investors. Thus, the amount due to the allottee comes within the meaning of 'debt' defined in Section 3(11) of the I&B Code. Then in case of ***Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors.*** (Writ Petition (Civil) No. 43 of 2019)

decided on 09.08.2019, it was observed by the Hon'ble Apex Court of the land that "*...allottees who had entered into "assured return/committed returns' agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees*". It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code." including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in case ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of ***Pioneer Urban Land Infrastructure Ld & Anr.*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private***

Limited and Anr. v/s Union of India & Ors., as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

35. It is pleaded on behalf of respondent/builder that after the Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period* or otherwise, either in cash or in kind or in the form of a specified service, *with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

    i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
    ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

36. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it

under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt 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 India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

i. *as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property*
ii. *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government.*

So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

37. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.

It is evident from the perusal of section 2(4)(l)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are

adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.

38. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honor their commitments, a number of cases were filed by the creditors at different forums such *as* ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited*** (*RERA-PKL-2068-2019*) where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainant till possession of respective apartments stands handed over and there is no illegality in this regard.

39. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e, explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the

Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First

schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under: -

> *(2) The following shall also be treated as Regulated Deposit Schemes under this Act namely:-*
>
> *(a) deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and*
>
> *(b) any other scheme as may be notified by the Central Government under this Act.*

39. The money was taken by the builder as 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.

40. 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 complainants to the builder is a regulated deposit accepted by the later 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 complainants besides initiating penal proceedings.

F II Cancellation of the unit

41. A perusal of application for allotment of the allotted unit at page 39 of paper book shows that the complainants applied for allotment of that unit wait the respondent/builder for a total sale consideration of Rs. 1,47,60,000/- on 03.10.2016. While applying for that unit in the project of respondent known as high street to be developer and constructed by it, the complainants also paid a sum of RS 5 lakhs vide dated 9.09.2016. In pursuant to their application moved with the respondent/builder a letter of allotment of unit no 030, in High Street at INXT Gurgaon dated 26.10.2016 was issued detailing the terms and condition of allotment of the unit it area basic sale Price and location etc. It was also provided in that letter at page 46 of the paper book. That the rate of allotted unit per sq. ft. would be Rs 9,000/- the booking amount of the unit was to be 5% of the total sale consideration. Secondly 54% the TSC was to be deposit within 60 days from the date of booking. Thirdly, 41% of the total consideration was to be paid by the allottee on completion of the building. There is also a clause in that letter of allotment which for a ready reference may be reproduced as under:

> *In the event the allottees does not ay the instalment amount within seven (7) days of the stipulated time mentioned in this letter of allotment/payable as per payment plan/Schedule of payments/terms and conditions mentioned below then penal interest @18% per annum shall be payable along with the amount due. If the default continues beyond 90 days from the stipulated time then developr/vatika limited, shall have the right to cancel/withdraw this letter of allotment and refund the amount paid by the allattee, till date, after deducting 10% of the total sales consideration as earnest money along with other*

42. It is not disputed that after allotment the allottees paid a sum of Rs. 91,00,278/- 31.10.2016 (page 30 of the paper book) out of total sale consideration of Rs. 1,47,60,000/- i.e. more than 54% of the total sale consideration within 60 days of the booking of the unit as

per the payment plan. So, in such a situation whether the respondent/builder could have cancelled the unit and order a refund of the amount deposited with it vide letter dated 19.08.2020. The answer is in the negative. There are only two situations an envisaging cancellation of allotted unit as per the condition detailed above and embodied in the letter of allotment dated 26.10.2016. Neither the allottees defaulted in payment of amount as agreed upon as per the letter of the allotment nor failed to pay the same beyond 90 days. So, the cancellation of the allotted unit alleged made by the respondent/builder is not as per terms and conditions of the allotment. Secondly, there was correspondence exchanged between the parties through email and which was not replied satisfactorily by the respondent/builder. Thirdly, the letter of cancellation of the allotted unit was issued by the respondent/builder on 19.08.2020 i.e. after coming into force the Act of 2016 and the same is violated of the provisions of regulation framed by the authority on 05.12.2018 which provides that only a reasonable amount can be deducted from the deposited amount and the remaining amount has to be sent to the allottee a cancellation. So, taking into consideration all these facts the respondent/builder was not justified in cancelling the allotted unit of the complainants on their refusal to accept any of the options given to them by the builder and ordering process of refund of the deposited amount within a period of 6 months vide letter dated 19.08.2020.

G. **Directions of the authority:** (Rectified vide order dated 04.02.2022)

43. 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.131.04/- per sq. ft. to the complainants from the date the payment of assured return has not been paid i.e. November 2018 till the date of completion of the building.

ii. 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 complainants and failing which that amount would be payable with interest @ 7.30% p.a. till the date of actual realization.

iii. The respondent shall not charge anything from the complainants which is not part of the agreement of sale.

44. It is clarified that the period of appeal and period of payments of decretal amount shall be counted from the date this amended/rectified order is uploaded on the website of the Authority.

45. Complaint stands disposed of.

46. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2021

Rectified vide order dated 04.02.2022

Corrected order uploaded on 16.03.2022.

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**660 of 2021**
Date of filing complaint:		**10.12.2020**
First date of hearing	:	**11.02.2021**
Date of decision	:	**10.11.2021**

Prateek Srivastava & Namita Mehta R/o: B-191, The Lion, DLF Phase- 5, Sector 43, Gurugram-122009.	**Complainants**
Versus	
M/s Vatika Limited R/o 4th Floor, Vatika Triangle, Block-A, Sushant Lok, Phase I, Gurgaon 1220022.	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainants
Sh. Dhruv Dutt Sharma (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter-alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	High Street (Phase 1)
2.	Nature of the project	Plotted colony
3.	Area of the project	14918.258 acres
4.	DTCP license	113 of 2008 dated 01.06.2008
	License validity/ renewal period	31.05.2008
5.	RERA registered/not registered	263 of 2017 dated 03.10.2017
	HRERA registration valid up to	02.10.2022
6.	Unit no.	A-30, tower A (Page no 40 of complaint),
7.	Unit measuring	1640 sq. ft.
8.	Allotment letter	26.10.2016 (Page 46 annexure P-3)
9.	Date of execution of apartment buyer's agreement	Not executed
10.	Payment plan	Possession linked payment plan (Page no 46 annexure P-3)
11.	Total consideration	Rs 1,47,60,000/- as alleged by complainant (page 30 of complaint)
12.	Total amount paid by the complainant	Rs 91,00,278/- as alleged by complainant (page 30 of complaint)

13.	Due date of delivery of possession	Can't be ascertain
14.	Provision regarding assured return clause 3 of allotment letter	The developer shall remit an assured return of Rs 131.04 per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said commercial unit soon. (Page 47 of complaint)
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That in the first week of September 2016 the complainants/petitioners/allottees, Prateek Srivastava & Namita Mehta received a marketing call from the office of the respondent, who represent himself as its sales manager and marketed commercial project namely "INXT High Street" situated at Sector – 83, Gurugram. The respondent asked to book a commercial unit in the project "INXT High Street" situated at Sector-83, Gurugram. The respondent allured the complainants with proposed specifications and assured that committed assured return will be paid by it to them at Rs. 131.04/- per sq. ft. on the super area from the date of payment of 59% of booking amount till the completion of construction and thereafter Rs.140/- sq. ft. per month for a minimum guaranteed period of 3 years. This was the promise on which the booking was made by the complainants.

4. That, believing on the representations and assurances of respondent, the complainants booked a commercial unit/shop bearing No. 030 on ground Floor having a super area of 1640 sq. Ft. in the project "INXT High Street", Sector -83, Gurugram on 29.09.2016 and issued a cheque No 000252 dated 29/09/2016 for Rs. 5,00,000/- drawn on standard chartered bank as booking amount and further issued four cheques. A cheque no 414402 dated 03/10/2016 for Rs.20,00,000/- drawn on Syndicate Bank, cheque No 000051 dated 03/10/2016 for Rs. 50,00,000/- drawn on standard chartered bank, cheque No 000251 dated 03/10/2016 for Rs. 15,13,194/-. In addition to these cheques TDS amounting to Rs 87,084/- was also deposited by the buyers.

5. That on 26.10.2016, the respondent issued a letter of allotment in name of the complainants, conforming to the allotment of commercial unit No. 030 on the ground floor for size admeasuring 1640 sq. ft. The commercial unit was booked for a total sale consideration of Rs. 1,47,60,000/- under a special payment plan (5% at the time of booking, 54% within 60 days of booking & 41% on completion of building). The said price included basic price, government or municipal charges, EDC and IDC, etc. As per clause No. 3 of the allotment letter, the builder has to give a monthly assured return at the rate of Rs. 131.04 per sq. ft. till completion of the building and thereafter will pay the minimum return of Rs. 140/- per sq. ft. for a minimum period of 3 years. The relevant part of the clauses is produced below for reference:

> *"3. The developer shall remit an assured monthly return of Rs. 131.04 per sq. ft. till completion of the building. It is stated that the project is in advance stages of construction and the developer based on its*

present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said commercial unit soon."

"4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the commercial complex. The developer shall lease the unit along with the Premises @ Rs. 140/- per sq. ft. However, in eventuality, the achieved lease return being higher or lower than Rs. 140/- per sq. ft. the following would be applicable. (a) If the achieved rental is less then Rs. 140/- per sq. ft. then you shall be refunded @ Rs. 133.34/- per sq. ft (Rs. One Hundred Thirty-Three & Thirty Four Only) for every Rs. 1/- by which achieved rental is less than Rs. 140/- per sq. ft. (b) If the achieved rental is more than 140/- per sq. ft. shall be liable to pay additional sales consideration @ 66.67/- per sq. ft. for every rupee of additional rental achieved.".

6. That on 13.02.2018, a pre-printed, unilateral, arbitrary builder buyer agreement/buyer's agreement was sent by the respondent. But the complainants found many major discrepancies regarding the clauses of the builder buyer agreement. The complainants sent back the unsigned BBA to the respondent for correction and asked to send a corrected BBA immediately so that it can be executed between the parties. It is pertinent to mention here that the project got the HARERA registration on 03.10.2017 vide registration No. 263 of 2017.

7. That on 04.04.2018, the complainant sent an email and stated that there are number of discrepancies in the clauses of the builder buyer agreement. On 19.08.2020, the respondent sent a letter for cancellation of builder buyer agreement cum refund Letter and cancelled the unit, the contents are produced here for reference "Please refer to your e-mail dated 1st July 2019 sent by you as well and after several meetings and discussions between us pursuant to the same, explaining the compelling reasons for us to discontinue committed returns of any kind in compliance of change in law

forbidding such returns. As a resolution to the difficulties caused to u due to the resultant situation, we had provided you various options for swapping the investment to your best advantage under the circumstances. Due to your unwillingness to accept the options given to you, it renders the agreement between us impossible to perform. Under such circumstances, we are cancelling your captioned booking with us, and the refund of the amount deposited by you shall be processed in 6 months. Please note that with the cancellation of the builder buyer agreement, you are left with no right, title, interest, charge, or lien over the unit and its allotment to you stands cancelled as of date. The company is released and discharged of all its liabilities and obligations in respect of allotment of the unit to you and its free to make fresh sale of the unit to any third party, you are, therefore requested to return, to the company, all the original documents including but not limited to builder buyer agreement, booking application form, allotment letter, all the receipts, etc at the earliest".

8. However, on 27.08.2020, the complainants replied to the letter of the respondent dated 19.08.2020, regarding the cancellation of the builder buyer agreement cum refund letter by denying its averments and reiterating the pleas taken is the mail of 04.04.2018. It is further submitted that as per the construction update available on the website of the respondent the project is under construction and block A has been constructed up to the 2nd floor.

9. That, since October 2018 the complainants are regularly requesting the respondent to pay the committed assured return and also to provide a copy of the builder buyer's agreement. Despite several

visits and requests by the complainants, the respondent did not pay the committed assured returns from October 2018 and did not provide the copy of BBA.

10. That it is highly germane to mention here that the respondent has assured to give committed assured returns to the complainants, but it has paid assured returns to the complainants only till October 2018 and thereafter the respondent has stopped paying assured returns. The respondent has made misuse of his highly dominant position to harass the complainants and has sent a unit cancellation letter and asked to hand over all the original documents to the respondent. Despite paying more than 59% of the consideration amount i.e., 91,00,278/- as per allotment letter of 26.10.2016, the respondent has failed to execute a BBA and to pay assured returns.

11. That the main grievance of the complainants in the present complaint is that despite they have paid more than 59% of the actual cost of the unit and are ready and willing to pay the remaining amount (justified) (if any), the respondent has failed to execute a BBA and to pay assured returns.

12. That the cause of action for the present complaint arose in November 2018, when the respondent stopped paying committed assured returns to the complainants as per the buyer's agreement. The cause of action again arose on various occasions, including on a) November 2018; b) December 2018; c) January 2019, d) May 2019; e) April 2020, f) December 2020, and on many time till date, when the protests were lodged with the respondent about its failure to pay committed assured returns and to execute of BBA. The cause of action is alive and continuing and will continue to

subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s):

i. Direct the respondent party to refrain from cancellation of the unit of the complainants,

ii. Direct the respondent party to pay the committed assured returns as per clause 3 and 4 of the allotment letter from October 2018 to till the completion of the project.

iii. Direct the respondent to execute a buyer's agreement as per model draft of agreement to sell of HARERA.

D. Reply by the respondents

14. That the complaint filed by the complainants before the learned authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this learned authority as the relief being claimed by them, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this learned authority.

15. It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '**2016 Act**') and the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as '**2017 Haryana Rules**'), made by the Government of Haryana in exercise of powers conferred by sub-section 1 read with Sub-

section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this learned authority or the adjudicating officer. Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 Haryana Rules provides for filing of complaint with this learned authority, in reference to section 31 of 2016 Act. Sub-clause (1) *inter alia*, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of 2016 Act or the rules and regulations made thereunder, *save as those provided to be adjudicated by the Adjudicating Officer*, in form 'CRA'. Significantly, reference to the "Authority", which is this learned authority in the present case and to the "Adjudicating Officer", is separate and distinct. "Adjudicating Officer" has been defined under section 2(a) to mean the Adjudicating Officer appointed under sub-section (1) of section 71, whereas the "Authority" has been defined under section 2(i) to mean the Real Estate Regulatory Authority, established under Sub-Section (1) of Section 20.

16. Apparently, under Section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under Sections 12, 14, 18 and 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72,

which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under Section 71 of 2016 Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under Sections 12, 14, 18 and 19 of the 2016 Act. The inquiry, as regards the compliance with the provisions of Sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from reading of Section 71(3) which inter alia, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1) he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the Sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19.

17. Apparently, in the present case, the complainants are seeking reliefs which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication, if at all, by the adjudicating officer and not this learned authority. Thus, on this ground alone the complaint is liable to be rejected.

18. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised

cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

19. That from perusal of the provisions of 2016 Act and/or the 2017 Haryana rules and conjoint reading of the same, it is evident that the 'agreement for sale' that has been referred to under the provisions of 2016 Act and 2017 Haryana rules, is the 'agreement for sale', as prescribed in annexure 'A' of 2017 Haryana Rules. Apparently, in terms of section 4(1), a promoter is required to file an application to the 'Authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term 'prescribed' has been defined under Section 2(z)(i) to mean prescribed by rules made under the Act. Further, section 4(2)(g) of 2016 Act provides that a promoter shall enclose, alongwith the application referred to in sub-section 1 of section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act inter alia, provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. Sub-section 2 of section 13, inter alia, provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of 2017 Haryana rules categorically lays down that the agreement for sale shall be as per annexure 'A'. Suffice it is to mention that annexure 'A' forms part of the 2017

Haryana rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

20. Besides the aforementioned sections, a reference may be made to rule 5 of 2017 Haryana rules, which inter alia, provides that the authority shall issue a registration certificate with a registration number in form 'REP-III' to the promoter. Clause 2(i) of form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.

21. From the conjoint reading of the aforementioned sections/ rules, form and annexure 'A', it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana rules, is the one as laid down in annexure 'A', which is required to be executed inter se the promoter and the allottee.

22. It is a matter of record and rather a conceded position that no agreement much less as referred to under the provisions of 2016 Act and 2017 Haryana rules, has been executed between respondent and the complainants. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainants. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this learned authority.

23. That the project "High Street (Phase-1)" has been registered with the authority vide registration no. 263 of 2017. It is submitted that after the halt in work due to various reasons and not limited to delay on the part of the allottees, NGT notifications, covid-19 pandemic, etc., recently the work had re-started and is going on in

full swing and would be completed well within the timeline committed before RERA Gurugram.

24. That the complainants by way of present complaint are seeking the relief of recovery of alleged pending assured return amount. However, it is submitted that the learned authority does not have jurisdiction to decide upon the amount of assured return which the learned authority has already held in its various judgments.

25. It is crystal clear that complainants are not " allottees but are investors" who are only seeking assured return from the Respondent, by way of present complaint, which is not maintainable under RERA. The complainants after its own independent judgment have booked the said unit. The complainants have agreed for leasing arrangement wherein complainants have booked the said commercial unit for earning profit and is meant for leasing only and not for personal occupation.

26. That due to the evolving policies, regulations and legal framework governing real estate investments, the company also informed the clients of commercial units that as per the guidelines newly promulgated Ordinance i.e. "Banning of Unregulated Deposit Scheme Ordinance 2018" and further "Banning of Unregulated Deposit Scheme Act 2019" ,the government banned such assured / committed returns and schemes of such returns completely. It is submitted that the respondent duly paid the assured return till September 2018 amounting to Rs. 52,50,870/- and it was only due to the above-mentioned Ordinance and Act, the responded suspended all return-based sales and stopped making payments

towards the assured returns. Thus, in view of the above-mentioned Ordinance and Act, the assured return is not payable.

27. That the respondent had already cancelled the unit of the complainants vide Letter dated 19.08.2020. It is submitted that before cancellation the respondent offered various options to the complainants for swapping their investment, but the complainants did not accept the alternate options and thus the respondent was constrained to cancel the unit of the complainants. It is pertinent to mention here that the respondent informed the complainants that the refund shall be processed within 6 months and further requested the complainants to return all the original documents at the earliest. However, it was the complainants who did not return the original documents and the refund could not be processed.

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

E. Jurisdiction of the authority

31. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority,

Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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)(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;*
>
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

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.*

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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

F.I. Assured returns

32. While filing the claim petition besides delayed possession charges of the allotted unit, the claimant has also sought assured returns on monthly basis as per clause 3 of allotment letter dated 26.10.2016 at the rate of Rs 131.04/- per sq. ft. of super area per month till the construction of the said commercial unit is complete. It is pleaded by the claimant that the respondents have not complied with the terms and conditions of the agreement. Though for some time the amount of assured returns was paid but later on, the respondents refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019 (herein after referred to as the Act of 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. However, the plea of respondents is otherwise and who took a stand that though they paid the amount of assured return upto the year 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

33. The allotment letter dated 26.10.2016 is a document which was issued by the respondent and can be termed as agreement. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. 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 parts 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 the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees. Now, two issues arise for consideration as to:

i. Whether authority is within the jurisdiction to vary its earlier stand regarding assured return due to changed facts and circumstances.

ii. Whether the authority is competent to allow assured returns to the allottees in pre-RERA cases, after the Act of 2016 came into operation,

iii. Whether the Act of 2019 bars payment of assured returns to the allottees in pre-RERA cases

34. While taking up the cases of ***Brihimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018)***, and ***Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP"*** (complaint no 175 of 2018) decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of ***"prospective overruling"*** and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of ***Sarwan Kumar & Anr Vs. Madan Lal Aggarwal*** Appeal (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now a plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority in not tenable. 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. It is now well settled preposition of law that when payment of assured

returns is part and parcel of 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 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 allotee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with assured returns cases as the contractual relationship arise out of the agreement for sale only and between the parties. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. In cases of ***Anil Mahindroo & Anr. v/s Earth Iconic Infrastructure Pvt. Ltd.*** (Company Appeal (AT) (Insolvency) No. 74 of 2017) and ***Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd.*** (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017) decided on 02.08.2017 and 29.09.2018 respectively, it was held that the allottees are investors and have chosen committed return plans. The builder in turn agreed to pay monthly committed return to the investors. Thus, the amount due to the allottee comes within the meaning of 'debt' defined in Section 3(11) of the I&B Code. Then in case of ***Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors.*** (Writ Petition (Civil) No. 43 of 2019) decided on 09.08.2019, it was observed by the Hon'ble Apex Court of the land that *"...allottees who had entered into "assured return/committed returns' agreements with these developers,*

whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees". It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code." including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in case ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of ***Pioneer Urban Land Infrastructure Ld & Anr.*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the

allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

35. It is pleaded on behalf of respondent/builder that after the Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period* or otherwise, either in cash or in kind or in the form of a specified service, *with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

   i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
   ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

36. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt 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 India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

i. as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property
ii. as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government.

So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

37. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.

It is evident from the perusal of section 2(4)(l)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.

38. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honor their commitments, a number of cases were filed by the creditors at different forums such *as* ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited*** (*RERA-PKL-2068-2019*) where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainant till possession of respective apartments stands handed over and there is no illegality in this regard.

39. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e, explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has

been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under: -

(2) The following shall also be treated as Regulated Deposit Schemes under this Act namely:-

(a) deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(b) any other scheme as may be notified by the Central Government under this Act.

39. The money was taken by the builder as 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.

40. 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 complainants to the builder is a regulated deposit accepted by the later 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 complainants besides initiating penal proceedings.

F II Cancellation of the unit

41. A perusal of application for allotment of the allotted unit at page 39 of paper book shows that the complainants applied for allotment of that unit wait the respondent/builder for a total sale consideration

of Rs. 1,47,60,000/- on 03.10.2016. While applying for that unit in the project of respondent known as high street to be developer and constructed by it, the complainants also paid a sum of RS 5 lakhs vide dated 9.09.2016. In pursuant to their application moved with the respondent/builder a letter of allotment of unit no 030, in High Street at INXT Gurgaon dated 26.10.2016 was issued detailing the terms and condition of allotment of the unit it area basic sale Price and location etc. It was also provided in that letter at page 46 of the paper book. That the rate of allotted unit per sq. ft. would be Rs 9,000/- the booking amount of the unit was to be 5% of the total sale consideration. Secondly 54% the TSC was to be deposite within 60 days from the date of booking. Thirdly, 41% of the total consideration was to be paid by the allottee on completion of the building. There is also a clause n that letter of allotment which for a ready reference may be reproduced as under:

> *In the event the allottees does not ay the instalment amount within seven (7) days of the stipulated time mentioned in this letter of allotment/payable as per payment plan/Schedule of payments/terms and conditions mentioned below then penal interest @18% per annum shall be payable along with the amount due. If the default continues beyond 90 days from the stipulated time then developr/vatika limited, shall have the right to cancel/withdraw this letter of allotment and refund the amount paid by the allottee, till date, after deducting 10% of the total sales consideration as earnest money along with other*

42. It is not disputed that after allotment the allottees paid a sum of Rs. 91,00,278/- 31.10.2016 (page 30 of the paper book) out of total sale consideration of Rs. 1,47,60,000/- i.e. more than 54% of the total sale consideration within 60 days of the booking of the unit as per the payment plan. So, in such a situation whether the respondent/builder could have cancelled the unit and order a refund of the amount deposited with it vide letter dated

19.08.2020. The answer is in the negative. There are only two situations an envisaging cancellation of allotted unit as per the condition detailed above and embodied in the letter of allotment dated 26.10.2016. Neither the allottees defaulted in payment of amount as agreed upon as per the letter of the allotment nor failed to pay the same beyond 90 days. So, the cancellation of the allotted unit alleged made by the respondent/builder is not as per terms and conditions of the allotment. Secondly, there was correspondence exchanged between the parties through email and which was not replied satisfactorily by the respondent/builder. Thirdly, the letter of cancellation of the allotted unit was issued by the respondent/builder on 19.08.2020 i.e. after coming into force the Act of 2016 and the same is violated of the provisions of regulation framed by the authority on 05.12.2018 which provides that only a reasonable amount can be deducted from the deposited amount and the remaining amount has to be sent to the allottee a cancellation. So, taking into consideration all these facts the respondent/builder was not justified in cancelling the allotted unit of the complainants on their refusal to accept any of the options given to them by the builder and ordering process of refund of the deposited amount within a period of 6 months vide letter dated 19.08.2020.

G. Directions of the authority:

43. 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 respondents are directed to pay the amount of assured return as agreed upon with the complainants from November 2018 till the date of handing over possession.

ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the amount of assured returns.

iii. Interest on the delayed payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

iv. The respondents shall not charge anything from the complainants which is not part of the agreement of sale.

44. Complaint stands disposed of.

45. File be consigned to registry.

(Dr. K.K. Khandelwal)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2021