

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Date of decision : 14.08.2024

NAME OF THE BUILDER		M/S Neo Developers Private Limited	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1661/2023	Mrs. Tulsi Malhotra V/S M/s Neo Developers Private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
2.	CR/1562/2023	Shri. Pulkit Malhotra V/S M/s Neo Developers Private Limited	Shri. Rajinder Singh Advocate and Shri Venket Rao Advocate

CORAM:

Shri Ashok Sangwan

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Neo Square**" being developed by the same respondent/promoter i.e., M/s Neo developers Private Limited. The terms and conditions of the Memorandum of Understanding, Buyer's Agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of assured return till the execution of first lease and certain other issues.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Neo Developers Private limited at "Neo Square", Sectors 109, Gurugram.
Occupation Certificate: - Not obtained	
Possession Clause: -	
Clause-3 of MOU	
<i>"The company shall complete the construction of the said building/complex, within the said space is located within 36 months from date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. "</i>	
Assured Return Clause: -	
Clause 4 of MOU	
<i>"That against the total basic sale consideration of Rs.10,00,000/- (Rupees ten lacs Only) determined as per clause 3 above, the Allottee(s) has, paid unto Company upon/or prior to the execution of this MOU, an amount of</i>	

Rs.10,45,000/- (Rupees Ten lacs Forty Five Thousand Only) (includes BSP & Service Tax), towards advance/part consideration of the unit, the receipt whereof, Company hereby admits and acknowledges.

The Company has paid assured return for two years in advance totalling amount **Rs.4,62,427.80/-** (Rupees Four Lacs Sixty Two Thousand Four Hundred Twenty Seven and Eighty paise Only) before deduction of Tax at Source and shall pay a monthly assured return of **Rs.22,500/-** (Rupees Twenty Two Thousand Five Hundred Only) on the total amount received with effect from **13-December-2018** before deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company. The balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-!. The monthly assured return shall be paid to the Allottee(s) **until the commencement of the first lease on the said unit.** This shall be paid from the effective date.

Sr. No	Complain t No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of M.O.U	Due date of possession	Basic sale Consideration /Total Amount paid by the complainants in Rs.
1.	CR/1661/2023 Tulsi Malhotra V/S M/s Neo Developers Private Limited Date of Filing of complaint 28.04.2023	Reply received on 04.10.2023	54-A, Floor-3rd Area admeasuring 250 sq. ft. (super area)	13.12.2016 [As per page no. 15 of complaint]	13.12.2019 (Note: - calculated 36 months from the 13.12.2016)	TSC: - 10,00,000/- AP: - 10,45,000/- (As per M.O.U dated 13.12.2016)

2.	CR/1562/ 2023 Pulkit Malhotra V/S M/s Neo Developers Private Limited. Date of Filing of complaint 28.04.2023	Reply received on 04.10.2023	54, Floor-3rd Area admeasuring 250 sq. ft. (super area)	27.10.2016 [As per page no. 15 of complaint]	27.10.2019 (Note: - calculated 36 months from 27.10.2016)	TSC: - 10,00,000/- AP: - 10,45,000/- (As per M.O.U dated 27.10.2016)
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The complainant in the above complaints have sought the following reliefs:

1. Direct the respondent to pay assured return to the complainant @ Rs.22,500/- till the execution of first lease deed
2. Direct the respondent to offer of possession after completion of construction and duly demarcate the unit.
3. Direct the respondent to execute registered conveyance deed after obtaining occupation certificate.
4. Set aside the illegal demand letter dated 30.10.2020 and 07.06.2021

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

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the Memorandum of Understanding, Buyer's Agreement against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of assured return till execution of first lease, to complete the unit.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1661/2023 titled as Tulsi Malhotra V/S M/s Neo Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua assured return till execution of first lease deed, to complete the unit, offer possession after obtaining the occupation certificate and execute the conveyance deed.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Neo Square", Sector-109, Gurugram, Haryana.
2.	Nature of the project	Commercial
3.	HRERA registered	Registered 109 of 2017 Dated - 24.08.2017

4.	DTCP licence	License no. 102 of 2008 Dated- 15.05.2008
5.	Unit no.	54-A, Floor-3 rd (As on page no. 38 of complaint)
6.	Unit area	250sq.ft. (As on page no. 38 of complaint)
7.	Buyer's Agreement executed	13.12.2016 (As on page no. 35 of complaint)
8.	M.O.U	13.12.2016 (As on page no. 15 of complaint)
9.	Possession clause	<p>Clause 3 of the MOU</p> <p><i>The company shall complete the construction of the said Building/Complex, within which the said space is locate within 36 months from the date of execution this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. The Company on grant of Occupancy Certificate shall issue final letters to the Allottees) who shall within 30 days, thereof remit all dues.</i></p> <p>[Emphasis supplied]</p>
10.	Due date of possession	13.12.2019

		[Calculated 36 months from the date of execution of the agreement]
11.	Assured return	<p>Clause 4</p> <p><i>The Company shall shall pay a monthly assured return of Rs.22,500/- (Rupees Twenty Two Thousand Five Hundred Only) on the total amount received with effect from 13-December-2018 before deduction of Tax at Source and service tax, cess or any orther levy which is due and payable by the Allottee(s) to the Company. The balance sale consideration shall be payable by the Allottee(s)to the Company in accordance with the Payment Schedule annexed as Annexure-!. The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.</i></p> <p>(Emphasis supplied)</p>
12.	Basic sale consideration	Rs. 10,00,000/- (As per M.O.U dated 13.12.2016)
13.	Total amount paid by the complainant	Rs.10,45,000/- (As per M.O.U dated 13.12.2016)
14.	First lease deed and addendum	24.07.2020 (As on page no. 88 of complaint)
15.	Lease assignment request	01.10.2020 (As on page no. 105 of reply)
16.	Reminders sent by the	07.12.2021

	respondent for signing the lease assignment form	(As on page no. 106 of reply)
17.	Final Notice	07.06.2021 (As on page no. 77 of complaint)
18.	Demand letter for payment of installment	22.02.2024 (As per additional documents filed by the complainant on 03.05.2024)
19.	Occupation certificate	Not obtained
20.	Offer of Possession	Not offered

B. Facts of the complaint

8. The complainants have made the following submissions: -

- I. That the respondent i.e., M/S Neo Developers Private Limited is engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
- II. That the complainants have purchased unit no. 54 on 27.10.2016 in the name of Pulkit Malhotra in the project namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram. The representatives of the respondent represented that the project consists of multiple towers having space for retail, food court, service apartment, hyper-mart, restaurants, cinema, and offices etc.
- III. The directors of the company assured the complainants that they have already obtained all the mandatory permissions/clearances to

construct the project and further assured that the construction of the project will be completed within 36 months of purchasing the unit. It is submitted that the unit has been sold by informing a bundle of lies wherein a bloomy picture of the project was shown to the complainants.

- IV. That the representatives of the respondent induced the complainants to purchase the unit in under the "Assured Return Plan" wherein the respondent undertook to make the payment at the rate of Rs.90 per sq. ft. per month for the area purchased i.e. 250 sq. ft (23.22576 sq. mtr.) It was agreed under the MOU that a monthly return of **Rs.22,500/-** shall be payable as Assured Return from **13.12.2018**, if full payments towards the unit are made by the complainants at the time of booking or at the time of execution of Memorandum of Understanding.
- V. That based on the above inducement and assurances Mrs. Tulsi Malhotra purchased a restaurant unit on Food Court situated at third floor at having area admeasuring 250 sq. ft. (23.22576 sq. mtr.) super built up area. However, later on the said unit was endorsed in the name of Mr. Tanush Malhotra on 19.11.2018 and the Memorandum of Understanding and Buyer's Agreement both were executed on 13.12.2016, wherein Priority No. 54-A was assigned for the restaurant unit in the food court. The rate of Rs.4,000/- per square feet was arrived and agreed on the condition that the respondent would be adjusting the assured return of 2 years amounting to Rs.4,16,185/- towards the sale price of the unit purchased. The complainants paid a sum of Rs.6,28,815/- vide cheque no. 383337 of Rs.1,00,000 dated 22.10.2016 drawn on Syndicate Bank and cheque no. 383341 of

Rs.5,28,815 dated 06.12.2016 drawn on Syndicate Bank and Rs.4,16,185/- was adjusted as assured return paid in advance for two years. In this way a sum of Rs.10,45,000/- was duly received by the respondent dated 30.11.2018. It was agreed under the MOU that a monthly return of Rs.22,500/- shall be payable as Assured Return from 13.12.2018.

- VI. That the respondent demanded Rs. 50,000/- on account of VAT from the complainants, several times despite the fact that the same was paid at the time of very first demand only on 17.05.2017 by way of cheque no. 383348.
- VII. The wrongful acts of the respondent are not only limited to this, the respondent have deducted TDS on the Assured Return paid from April to June, 2019 but till date has neither issued TDS certificate for the same nor deposited the deducted tax to the authorities due to which the tax liabilities of the complainants have increased.
- VIII. That the payments of assured return were completely stopped and are due since July, 2019. That the mala fide intentions of the respondent became conspicuous when the respondent communicated its unilateral decision of not paying any assured return till the completion of the project.
- IX. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of almost 6 years. The structure of only office building is constructed but which is also nowhere near to completion. The building wherein food court and restaurants were promised at the

time of entering into MOU, has been constructed up to 2nd floor only and there is no sign of construction of the tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment zone were shown in the brochure.

- X. That the respondent has sent a letter dated 09.04.2020 to the complainants proposing to lease out the property to third party without completing the project and is forcing them to sign the "Lease Assignment Form" by which it intends to lease out the unit to a third party and has also inserted a clause according to which after the execution of Lease Assignment Form, the respondent will be obliterated from its responsibility to pay the monthly Assured Return and threatens that if the complainants do not sign it then the respondent will forfeit the unit.
- XI. That on 01.10.2020 the respondent sent a letter for registration of BBA and MOU with revised fee. On 30.10.2020 again illegal demands towards the VAT were made by the respondent without providing explanation for such demand. Later, the respondent sent an E-mail dated 10.12.2020 for Invitation for Signing Lease Agreement and Registration of BBA and MOU.
- XII. That the respondent is delaying the completion of the project under the garb of Force-majeure. It is submitted that no fresh construction has been carried out in the project since 2019. The occupation certificate of has been denied on several occasions, and on 15.12.2021 the representative of the respondent has admitted before the STP, Gurugram that the project is not complete and they have withdrawn the application seeking completion certificate in the year 2020.

XIII. That the company sent final notices dated 07.06.2021 raising illegal demands of dues and again no explanation was provided for the illegal demands. The respondent again sent a letter dated 07.12.2021 for invitation for signing lease agreement and registration of BBA and MOU.

XIV. The complainants have filed the complaint before Economics Offences Wings Delhi on 16.03.2022. wherein FIR No- 0046/2022 has been filed under sections 406/420/120B against the respondent.

XV. That the respondent is guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainants by misguiding them, keeping them in dark and putting their future at risk by rendering them income less.

C. Relief sought by the complainants:

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

- a) Direct the respondent to pay Assured Returns amounting to Rs.22,500/- from July, 2019 till handing over the possession/leasing out the property.
- b) Direct the respondent to hand over peaceful physical possession of the unit, duly demarcated.
- c) Direct the respondent to execute the Sale Deed after the completion of the project in favour of the complainants.
- d) Set aside the illegal demand of VAT made by the respondent vide letter dated 30.10.2020.

10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have

been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

11. The respondent has contested the complaint on the following grounds:

- I. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants made a booking seeking allotment of Priority No. 54-A, admeasuring 250sq.ft (Super Area) on the 3rd floor of the restaurant/food court space having a Basic Sale Price of Rs.10,00,000/- The complainants also opted for the "Investment Return Plan" being floated by the respondent for the project.
- II. That a Memorandum of Understanding dated 13.12.2016 was executed between the parties, which was a completely separate understanding between the parties in regards to the payment of assured returns and leasing of the unit/space. As per the mutually agreed terms between the complainants and the respondent, the returns were to be paid from 13.12.2018 till the commencement of first lease. As per clause 4 of the MOU, the complainant had duly authorised the respondent to put the unit on lease.
- III. It is also pertinent to mention that the complainants voluntarily executed the Buyer's Agreement dated 13.12.2016 for the unit-

Priority No.54-A on the 3rd floor, after having full knowledge and being well satisfied and conversant with the terms and conditions. It is most humbly submitted that the respondent had been paying the committed return of Rs.22,500/- for every month to the complainants without any delay since 13.12.2018. Prior to that, the assured return payable from 13.12.2016 to 12.12.2018 has been adjusted against the amount sale consideration amount payable by the complainants. It is to note, that as on July 2019, the complainants have already received an amount of Rs.5,64,685/- . However, post July 2019, the respondent could not pay the agreed Assured Returns due to prevailing legal position w.r.t. banning of returns over unregulated deposits post the enactment of the BUDS Act.

- IV. That as per clause 4 and clause 7 of the MOU, the obligation of payment of Assured Return was only till the commencement of the first lease on the unit. That the first lease has already been executed with M/s Ayan Foods on 24.07.2020. Thereby, the respondent has duly fulfilled its obligations of execution of the first lease in terms of the MOU. That after the commencement of the first lease, the respondent has duly intimated the complainants vide letter dated 01.10.2020 and various telephonic conversations regarding the same and further sent a Letter for Assignment of Lease form to the complainants to come forward to sign the lease assignment, as had been agreed in the MOU. However, the complainants did not come forward to sign the lease assignment and therefore failed to fulfil his part of the obligations, reminder letters dated 10.12.2020 and 07.12.2021 were sent to sign the Lease Assignment Form.

- V. That in the MOU, there was never any pre-condition of obtaining the Occupation Certificate for the execution of the lease-deed. The respondent has already executed the first lease deed and duly sent the invitation to sign lease assignment to the complainants with reminders, as per the terms of the MOU.
- VI. That as per clause 3 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of Completion/Occupancy Certificate. Accordingly, the due date of delivery of possession in the present case is 36 months + 6 months (grace period) to be calculated from 13.12.2016 and the due date of possession comes out to be 12.06.2020.
- VII. That the respondent from time-to-time issued demand request/reminders to the complainants to clear the outstanding dues against the booked unit. The complainants as per the records had only paid Rs.6,78,815/- against the total due amount of Rs.16,36,849/- It is to be noted that there is still an outstanding due of Rs.9,58,034/-. That the respondent was constrained to send the Final Notice dated 07.06.2021 wherein a last opportunity to clear the dues by 21.06.2021 was granted to the complainants, failing which the unit allotted would be treated as cancelled from 22.06.2021. Since the dues were not cleared, the unit therefore stood cancelled. That the complainants have only paid Rs.6,78,815/- against the total basic sale consideration of Rs.10,00,000/- and upon the request of the complainants, an amount of Rs. 4,16,185/- i.e., assured return for two years was adjusted in

advance against the sale consideration totalling in Rs.10,95,000/-, (**Rs. 6,78,815 + Rs. 4,16,185/-**) paid by the complainants against the total sale consideration.

- VIII. That the respondent is raising the VAT demands as per government regulations. That the rate at which VAT amount is charged is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded as the same has been assessed and demanded by the competent Authority. That the respondent has not availed the Amnesty Scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016 floated by the Government of Haryana for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003.
- IX. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The contention of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

15. 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.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding complainants being investor not allottees.

16. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection



of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The Authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement and the M.O.U, it is revealed that the complainants are buyers and have paid total price of **Rs.10,45,000/-** to the promoter towards purchase of an unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement and MOU executed between promoter and complainant, it is crystal clear that they are allottees as the subject unit is allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to the protection of this Act stands rejected.

F.II. Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

18. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 13.12.2019. Moreover, some of the events mentioned above are of routine in nature happening

annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons as it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the reliefs sought by the complainant

G.I Direct the respondent to pay the arrears of assured return @Rs22,500/- per month from July 2019 till handing over the possession/leasing out the property.

19. The complainants booked a unit in the project of the respondent and the MOU was executed on 13.12.2016. The basic sale consideration of the unit is Rs.10,00,000/- out of which the complainants have made a payment of Rs.10,45,000/-. As per the M.O.U dated 13.12.2016, the complainants have paid Rs.6,28,815 vide cheque no's 383337 and 383341 and an adjustment from assured return amounting to Rs.4,16,185/- has been made by the respondent as an advance of assured return for the period 13.12.2016 to 30.12.2018. The complainants have paid an amount of Rs.10,45,000/- to the respondent against the total basic sale consideration of Rs.10,00,000/- and the same has been duly admitted by the respondent. Thereafter, the respondent undertook to pay a monthly assured return of Rs.22,500/- w.e.f 13.12.2018. The relevant clause of the MOU dated 13.12.2016 has been reproduced below:

"Clause 4

That against the total basic sale consideration of **Rs.10,00,000/-** (Rupees ten lacs Only) determined as per clause 3 above, the Allottee(s) has, paid unto Company upon/or prior to the execution of this MOU, an amount of **Rs.10,45,000/-** (Rupees Ten lacs Forty Five Thousand Only) (includes BSP & Service Tax), towards advance/part consideration of the unit, the receipt whereof, Company hereby admits and acknowledges. Payment detail are as follows:

Cheque No.	Cheque Dated	Amount (Rs.)	Drawn on
383337	22.10.2016	1,00,000.00	Syndicate Bank
383341	06.12.2016	5,28,815.00	Syndicate Bank
Adjustment From Assured Return		Rs.4,16,185.00	

The Company has paid assured return for two years in advance totalling amount **Rs.4,62,427.80/-** (Rupees Four Lacs Sixty Two Thousand Four Hundred Twenty Seven and Eighty paise Only) before deduction of Tax at Source and shall pay a monthly assured return of **Rs.22,500/-** (Rupees Twenty Two Thousand Five Hundred Only) on the total amount received with effect from **13-December-2018** before deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company. The balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1. The monthly assured return shall be paid to the Allottee(s) **until the commencement of the first lease on the said unit**. This shall be paid from the effective date.

[Emphasis supplied]

20. The complainant in the present complaint seeks relief for the pending assured return. The plea of the respondent is otherwise and stated that the allotted unit of the complainants stands cancelled vide final reminder letter dated 07.06.2021.
21. Now the question before the Authority is whether the cancellation issued vide reminder letter dated 07.06.2021 is valid or not?

22. The Authority observes that the complainants have paid an amount of Rs.10,45,000/- out of the basic sale consideration of Rs.10,00,000/-. The respondent has issued a reminder letter dated 07.06.2021 for the payment of the outstanding dues and as per that letter one last and final opportunity was provided to the complainants to pay and clear all arrears of instalments within 15 days i.e., on or before 21.06.2021. The relevant part of the reminder letter dated 07.06.2021 is reproduced hereunder for ready reference:
- " You are hereby called upon to clear all outstanding payments amounting to Rs.99,281/- within 15 days from the date of this notice i.e., on or before 21st June 2021 (Referred herein as Last Date for Payment)"*
23. Also, vide proceedings dated 28.02.2024, the counsel for the complainants stated that the complainants have received a communication from the respondent seeking payment of dues and seeks an opportunity to bring on record the said letter and the same was granted to the complainants. On 03.05.2024, the complainants filed additional documents wherein demand letter dated 22.02.2024 was brought on record. Thus, proving the cancellation never took place.
24. The Authority is of the view that the cancellation letter dated 07.06.2021 is not valid as the complainants have already paid more than 100% of the total sale consideration. Moreover, the respondent has only issued a reminder letter dated 07.06.2021 which clearly provides time period to make payments within 15 days. Hence, the

letter dated 07.06.2021 cannot be treated valid cancellation letter and and the cancellation dated 07.06.2021 is hereby set aside.

- **Assured return**

25. It is pleaded that the respondent has 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 respondent 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 respondent is otherwise and who took a stand that though it paid the amount of assured returns and did not paid after coming into force of the Act of 2019 as it was declared illegal.
26. The M.O.U dated 13.12.2016 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understanding and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and

liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 13.12.2016 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.

27. It is pleaded on behalf of respondents/builders that after the Banning of Unregulated Deposit Schemes 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 Z(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.*

28. 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 an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
- (ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

29. 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.

30. 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 (4J) of the BUDS Act 2019.

31. 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.
32. The project in which the advance has been received by the developer from the allottees is an ongoing project as per section 3(1) of the Act of 2015 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainants besides initiating penal proceedings. 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.
33. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of

assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

34. 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 latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings.
35. In the present case, the assured return was payable till the commencement of first lease. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. However, the respondent has not received occupation certificate from the competent authority till the date of passing of this order. Hence, the said building cannot be presumed to be fit for occupation. Furthermore, the respondent has put the said premises on lease by way of executing lease deed dated 24.07.2020. In the absence of occupation certificate, the said lease cannot be considered to be valid in the eyes of law. In view of the above, the

assured return shall be payable till the said premises is put to lease after obtaining the occupation certificate from the competent authority.

36. Hence, the Authority directs the respondent/promoter to pay assured return to the complainants at the rate of Rs.22,500/- per month from the date i.e., 13.12.2018 till the commencement of the first lease on the said unit after obtaining the occupation certificate as per the memorandum of understanding after deducting the amount already paid on account of assured returns to the complainants.

G.II. Direct the respondent to demarcate the unit in question and handover possession in habitable condition after the obtaining the Occupation certificate.

37. Under section 19, clause 1 the allottee is entitled to obtain the information relating to sanctioned plans, layout plans alongwith the specifications from the promoter. Relevant section has been reproduced below:

"Section 19 Rights and duties of allottees-

(1)The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter"

[Emphasis supplied]

38. The respondent/promoter is directed to provide specifications to the complainants/allottees regarding the subject matter unit of the complainants and also offer possession of the unit to the

complainants, within 60 days after receiving the occupation certificate from the concerned authorities. The complainants/allottees are directed to pay the outstanding dues, if any.

G.III. Direct the respondent to revoke the demand letter dated 30.10.2020 and no to charge VAT.

39. The Authority has held in *CR/4031/2019 titled Varun Gupta Vs. Emaar Mgf Land Ltd.* that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only.
40. The Authority is of the view that the respondent/promoter has made an illegal demand of Rs.50,000/- and the same has been paid by the complainants on 17.05.2017 and also made the demand vide letter dated 30.10.2020 for the payment of outstanding dues on account of VAT charges and then issued a final notice dated 07.06.2021, thereby calling the complainants to pay the outstanding dues amounting to Rs.99,281/- within 15 days of the notice i.e., 21.06.2021, without giving any justification to the amount demanded. Thus, the demand letter dated 30.10.2020 and in furtherance to the same letter dated 07.06.2021 is unjustified.

G.IV Direct the respondent to execute conveyance deed in respect of the unit after obtaining the Occupation certificate.

41. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

"Section 17. Transfer of title

(1) *the promoter shall execute a registered conveyance deedlocal laws:*

Provided that, in absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate.

[Emphasis supplied]

42. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.

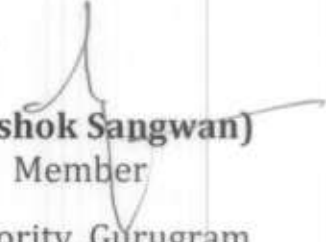
H. Directions of the Authority

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 cancellation letter dated 07.06.2021 is hereby set aside and the respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 13.12.2018 till the commencement of the first lease on the said

- unit after obtaining the occupation certificate, as per the memorandum of understanding, after deducting the amount already paid by the respondent on account of assured return to the complainants.
- ii. The respondent is directed to pay arrears of accrued assured return as per MOU dated 13.12.2016 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 @9% p.a. till the date of actual realization.
 - iii. The respondent is directed to offer possession of the unit within 2 months from the date of obtaining occupation certificate from the concerned authorities.
 - iv. The respondent is directed to execute conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate.
 - v. The respondent/promoter is directed to provide specifications to the complainants/allottees regarding the subject matter unit of the complainant.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.
44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
45. Complaints stand disposed of.
46. True certified copy of this order shall be placed in the case file of each matter.

47. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2024



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