

**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/1421/2023	Rahul Bhargava & Ragini Bhargava V/S M/s Neo Developers Private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
2.	CR/1418/2023	Rahul Bhargava & Ragini Bhargava v/s M/s Neo developers private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
3.	CR/1415/2023	Rahul Bhargava & Ragini Bhargava v/s M/s Neo developers private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
4.	CR/1419/2023	Rahul Bhargava & Ragini Bhargava v/s M/s Neo developers private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
5.	CR/2029/2023	Rahul Bhargava & Ragini Bhargava 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 all 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**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.
3. 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	
<p><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></p>	
Assured Return Clause: -	
Clause 4 of MOU	
<p><i>" The Company shall pay a monthly assured return of Rs.22,500/- (Rupees twenty Two Thousand Five Hundred only) on the total amount received w.e/f 31.01.2015 after 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 and 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.</i></p>	

Sr. No	Complaint 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/1421 / 2023 Rahul Bhargava & Ragini Bhargava V/S M/s Neo Develepe	Reply received on 10.11.2023	24, Floor-3rd Area admeasuring 250 sq. ft. (super area)	31.01.2015 [As per page no. 17 of complaint]	31.01.2018 [Note: - calculated 36 months from the 31.01.2015]	TSC: - 11,25,000/- AP: - 11,66,715/- [As per M.O.U dated 31.01.2015]

	rs Private Limited					
	Date of Filing of complaint 13.04.2023					
2.	CR/1418 / 2023 Rahul Bhargava & Ragini Bhargava V/S M/s Neo Developers Private Limited. Date of Filing of complaint 13.04.2023	Reply received on 10.11.2023	22, Floor-3rd Area admeasuring 250 sq. ft. (super area)	31.01.2015 [As per page no. 18 of complaint]	31.01.2018 (Note: - calculated 36 months from 31.01.2015)	TSC: - 11,25,000/- AP: - 11,66,715/- (As per M.O.U dated 31.01.2015)
3.	CR/1415 / 2023 Rahul Bhargava & Ragini Bhargava V/S M/s Neo Developers Private Limited. Date of Filing of	Reply received on 10.11.2023	21, Floor-3rd Area admeasuring 250 sq. ft. (super area)	31.01.2015 [As per page no. 18 of complaint]	31.01.2018 (Note: - calculated 36 months from 31.01.2015)	TSC: - 11,25,000/- AP: - 11,66,715/- (As per M.O.U dated 31.01.2015)

	complaint 13.04.20 23					
4.	CR/1419 / 2023 Rahul Bhargava & Ragini Bhargava V/S M/s Neo Developers Private Limited. Date of Filing of complaint 17.04.20 23	Reply received on 10.11.20 23	23, Floor- 3rd Area admeasuring 250 sq. ft. (super area)	31.01.2015 [As per page no. 18 of complaint]	31.01.2018 (Note: - calculated 36 months from 31.01.2015)	TSC: - 11,25,000/- AP: - 11,66,715/- (As per M.O.U dated 31.01.2015)
5.	CR/2029 / 2023 Rahul Bhargava & Ragini Bhargava V/S M/s Neo Developers Private Limited.	Reply received on 04.10.20 23	25, Floor- 3rd Area admeasuring 250 sq. ft. (super area)	31.01.2015 [As per page no. 18 of complaint]	31.01.2018 (Note: - calculated 36 months from 31.01.2015)	TSC: - 11,25,000/- AP: - 11,66,715/- (As per M.O.U dated 31.01.2015)

Date of Filing of complain t 28.04.20 23					
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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/- since July, 2019 till the execution of first lease deed
2. Direct the respondent to execute registered conveyance deed after obtaining occupation certificate.
3. Set aside the illegal demand letter dated 22.01.2020 and 30.10.2020.

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 all the above mentioned complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/1421/2023 titled as Rahul Bhargava and Ragini Bhargava 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.	24, Floor-3 rd (As on page no. 34 of complaint)
6.	Unit area	250sq.ft. (As on page no. 34 of complaint)
7.	Buyer's Agreement executed	31.01.2015 (As on page no. 30 of complaint)
8.	M.O.U	31.01.2015 (As on page no. 30 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	31.01.2018

		[Calculated 36 months from the date of execution of the agreement]
11.	Assured return	<p>Clause 4</p> <p><i>The Company 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 31.01.2015 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.</i></p> <p>(Emphasis supplied)</p>
12.	Basic sale consideration	Rs. 11,25,000/- (As per M.O.U dated 31.01.2015)
13.	Total amount paid by the complainant	Rs.11,66,715/- (As per M.O.U dated 31.01.2015)
14.	First lease deed and addendum	01.10.2020 (As on page no. 94 of complaint)
15.	Lease assignment request	01.10.2020 (As on page no. 69 of complaint)
16.	Reminder for payment towards	30.10.2020

	VAT	(As on page no. 70 of complaint)
17.	Final reminder cum cancellation letter	07.06.2021 (As on page no. 71 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of Possession	Not offered

B. Facts of the complaint

8. The complainants have made the following submissions: -
- I. That the complainants are law-abiding citizens and 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.
 - II. That the complainants have already purchased a unit bearing no- 26 on 13.12.2014 in the project "*Neo Square*" situated in Sector 109, Dwarka Expressway, Gurugram. The representatives of the respondent explained the project to complainants wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.
 - III. The respondent represented that they have already obtained all the mandatory permissions/clearances to construct the project and the same would be constructed strictly in conformity with the sanctioned plan and further assured that the construction will be completed within 36 months of purchasing the unit.

- IV. That the respondent induced the complainants to purchase the unit under the Assured Return Plan wherein it would make the payment at the rate of Rs.90 per sq. ft. per month for the area purchased 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 (MOU). Mr. Ashish Anand, Director of the Company, assured the complainants that there will be no delay in making payment towards the Assured Return under any circumstances whatsoever.
- V. That the complainants entered into a Memorandum of Understanding and Builder Buyer Agreement was executed between the parties on 31.01.2015. It was explained to the complainants that the 3rd & 4th floor would be solely dedicated to modern restaurants, lounge and food court. Further, it was assured that the Assured Return would be paid till the property is not leased out.
- VI. Based on the assurance of the respondent, the complainants purchased a commercial unit (restaurant) on the third floor and executed the Memorandum of Understanding dated 31.01.2015 having area admeasuring 250 sq. ft. super built up area at the rate of Rs. 4,500/- per sq. ft. wherein commercial unit no. 25 was assigned on 3rd floor. That since on the misrepresentation by Mr. Ashish Anand Director of the respondent company, the complainants have already purchased unit no-26 and later invested in unit no 21-25.
- VII. That the complainants paid a sum of Rs.11,66,715/- . It was agreed under the MOU that a monthly return of Rs.22,500/- shall be payable as Assured Return from 31.01.2015 till the first lease of the unit.

- VIII. That the respondent raised the demand of EDC and IDC on 16.12.2015 amounting to Rs.1,18,500/- The said demand was duly fulfilled by the complainants by making the cumulative payments of Rs.5,17,770/- on 18.06.2018.
- IX. That the respondent demanded VAT payment several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to Rs.62,175/- on 30.03.2017 and the same was paid on 05.05.2017.
- X. That the truth of the assurances made by respondent surfaced when the respondent started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped and are due since July, 2019. That the mala fide intentions of the respondent also became conspicuous when a Letter dated 18.12.2019 was sent by the respondent communicating its unilateral decision of not paying any assured return till the completion of the project.
- XI. Later the respondent vide letters dated 22.01.2020 again raised demand of Rs.93,046/- towards the VAT . It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent and due to the said reason the respondent has been demanding VAT again and again from the buyers.
- XII. That the respondent has been forcing complainants to sign Lease Assignment Form by which the respondent intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of Lease Assignment Form, the respondent would

be obliterated from its responsibility to pay the monthly Assured Return and threatens the complainants that if they do not sign the Lease Assignment Form, the respondent will forfeit the unit in accordance with MOU.

- XIII. That on 23.09.2020 the respondent again sent an Email for Invitation for signing the lease agreement and registration of BBA and MOU. Later, the respondent again sent letter dated 01.10.2020 for registration of BBA and MoU with revised fee. On 30.10.2020, the respondent again sent illegal demands towards the VAT without providing explanation for such demand.
- XIV. The wrongful acts of the respondent were not only limited to this, the respondent deducted TDS on the assured return paid by it from April to June 2019, but till date the respondent has neither issued TDS certificate for the same nor deposited the deducted tax to the authorities due to while tax liabilities of the complainants have increased.
- XV. 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 8 years. The respondent has further cheated by selling Food Court and Restaurant units to other buyers on 2nd and 5th floor as well. Further the respondent has siphoned the money of the buyers and at present don't have the requisite money to pay the assured return and complete the project.
- XVI. That the respondent sent final notices dated 07.06.2021 raising illegal demands of dues and again no explanation was provided for

the illegal demands. Hence, the demand letter dated 07.06.2021 is liable to be set aside being illegal

- XVII. 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.
- XVIII. That no fresh construction has been carried out in the project since 2019. The occupation certificate has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the STP, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.

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 execute the Sale Deed after the completion of the project in favour of the complainants.
 - c) Set aside the illegal demand of VAT made by the respondent vide letter dated 22.01.2020 and 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 Act 2016 was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of the Act. That the complainants are investors and not allottees.
- II. 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. That after being fully satisfied with the project and the approvals thereof, the complainants decided to submit a booking application form dated 29.01.2015, whereby seeking allotment of Priority No. 25, admeasuring 250sq.ft super area on the 3rd floor of the project having a basic sale price of Rs.11,25,000/- The complainants, considering the future speculative gains, also opted for the **Investment Return Plan** being floated by the respondent for the instant Project.
- III. That a Memorandum of Understanding dated 31.01.2015 was executed between the parties, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the complainants in the project and leasing of the unit/space thereof. As per the mutually agreed terms between the complainants and the respondent, the returns were to be paid from 31.01.2015 till the commencement of first lease. It is also submitted that as per clause 4 of the MOU, the

complainants had duly authorised the respondent to put the said unit on lease.

- IV. That the complainants are simply investors who approached the respondent for investment opportunities and for a steady Assured Returns and rental income. That the complainants voluntarily executed the Buyer's Agreement dated 31.01.2015
- V. That the respondent had been paying the committed return of Rs.22,500/- for every month without any delay since 31.01.2015. It is to note, that as on July 2019, the complainants had already received an amount of Rs.11,92,500/- as assured return. 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.
- VI. That as per clause 4 and clause 7 of the MOU dated 31.01.2015, the obligation of payment of Assured Return was only till the commencement of the first lease on the unit and the first lease of the premises 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.
- VII. 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 complainant to come forward to sign the lease assignment, as had been agreed in the MOU. However, the complainants did not come to sign the lease assignment and therefore failed to fulfil their part of the obligations.

That, since the complainants did not come forward to sign the lease assignment, the respondent further sent reminder letters dated 10.12.2020 and 07.12.2021 to sign the Lease Assignment Form. However, all these requests and reminders fell on deaf ears of the complainants.

- VIII. That in the Memorandum of Understanding, there was never any pre-condition of obtaining the Occupation Certificate for the Invitation to Lease. The respondent has already executed the first lease deed and duly sent the Invitation to lease to the complainants with reminders, as per the terms of the MOU. It is most humbly submitted that it is an established practise in the Real Estate Sector, wherein the promoter executes a Lease Deed with a Lessee for a future project even before the completion of the project. Infact there is no bar by any statutory provision on entering into such understanding.
- IX. That assured return is not a matter contemplated under any provision of Act 2016 and thus the assumption of jurisdiction by the Authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.
- X. That as per Clause 3 of the MOU, the respondent was obligated to complete the construction of the 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. As per clause 5.2 of the agreement, the construction completion date was the date when the application for grant of completion/occupancy

certificate was made. However, it is pertinent to mention that the Authority in complaint bearing no. **1328 of 2019** titled as "**Ram Avtar Nijhawan vs M/s Neo Developers Pvt Ltd**", pertaining to the same project i.e., '**NEO Square**' vide order dated 05.09.2019 held that the due date of start of construction for the instant project was **15.12.2015** also a period of 6 months was granted as grace period. Accordingly, the due date of delivery of possession in the present case is 36 months + 6 months [grace period] to be calculated from 15.12.2015 and the due date of possession comes out to be 15.06.2019,

- XI. That the respondent from time-to-time issued demand request/reminders to the complainants to clear the outstanding dues against the booked unit. That the complainants miserably failed to comply the Payment Plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded. The complainants as per the records had only paid Rs.13,31,775/- against the total due amount of Rs.15,14,741/- It is to be noted that there lies an outstanding due of Rs.1,82,966.85/-.
- XII. That the respondent was constrained to send the final notice dated 07.06.2021 wherein the complainants were afforded a last opportunity to clear the dues by 21.06.2021 failing which the unit allotted would be treated as cancelled from 22.06.2021 and the complainants would be left with no lien, right, title, interest or claim of whatsoever nature in the unit. Since the dues were not cleared, the unit therefore stood cancelled. It is further pertinent to mention that

the complainants failed to clear the outstanding dues of Rs.1,82,966.85/-.

- XIII. 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. The demand of VAT is done as per **Clause 11 of the Buyer's Agreement**. The aforesaid mentioned clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc.
- XIV. That the completion of the unit was subject to the midway hindrances which were beyond the control of the respondent. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts. 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.
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. I 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.11,66,715/-** 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 31.01.2018. 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 31.01.2015. The basic sale consideration of the unit is Rs.11,25,000/- out of which the complainants have made a payment of Rs.11,66,715/-. As per the M.O.U dated 31.01.2015, the complainants have paid Rs.11,66,715/- vide cheque no 357437 dated 29.01.2015 drawn on Axis Bank against the total basic sale consideration of Rs.11,25,000/- 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 31.01.2015. The relevant clause of the MOU dated 31.01.2015 has been reproduced below:

" Clause 4

That against the total basic sale consideration of Rs.11,25,000/- (Rupees Eleven Lac Twenty Five Thousand 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.11,66,715/- (Rupees Eleven Lac Sixty Six Thousand Seven Hundred and Fifteen Only) vide cheque No. 357437 dated 29.01.2015 drawn on

Axis Bank, towards advance/part consideration of the unit, the receipt thereof, Company hereby admits and acknowledges.

The Company 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 31.01.2015 after 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 and 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 complainants 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.11,66,715/- out of the basic sale consideration of Rs.11,45,000/-. 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.1,78,194/- 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 the demand letter dated 22.02.2024. 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 the cancellation letter 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 31.01.2015 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 understandings 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 31.01.2015 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 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.*

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 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;*

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 (4) 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 latter 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. The Authority is

of the view that since the occupation certificate in respect to the project has not been received yet and thus the respondent cannot execute a lease deed with the third party. The lease deed executed on 24.07.2020 holds no relevance here.

35. 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., 31.01.2015 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 handover possession in habitable condition after the obtaining the Occupation certificate.

36. The respondent is directed to 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 22.01.2020 and 30.10.2020 and no to charge VAT.

37. 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.

38. The Authority is of the view that the respondent/promoter has made an illegal demand of Rs.93,046/- 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.1,78,194/- 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 and the cancellation dated 07.06.2021 are unjustified.

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

39. 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]

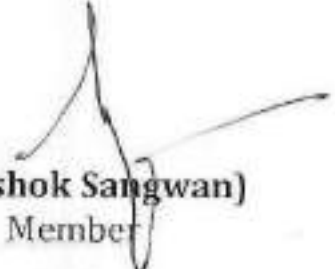
40. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.

II. Directions of the authority

41. 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 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., 31.01.2015 till the commencement of the first lease on the said unit 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 31.01.2015 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.

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- 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 shall not charge anything from the complainants which is not the part of the agreement of sale.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. Complaints stand disposed of.
44. True certified copy of this order shall be placed in the case file of each matter.
45. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2024