

**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/1708/2023	Prerna Ramawat & Devender Saini & Kanta Saini V/S M/s Neo Developers Private Limited	Shri. Rajinder Singh Advocate and Shri. Venket Rao Advocate
2.	CR/1700/2023	Prerna Ramawat & Devender Saini & Kanta Saini V/S M/s Neo Developers Private Limited	Shri. Rajinder Singh Advocate and Shri Venket Rao Advocate
3.	CR/1699/2023	Prerna Ramawat & Devender Saini & Kanta Saini 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:

<b>Project Name and Location</b>	<b>Neo Developers Private limited at "Neo Square", Sectors 109, Gurugram.</b>
<b>Occupation Certificate: - not obtained</b>	
<b>Possession Clause: -</b>	
<b>Clause-3 of MOU</b>	
<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**

" 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 18.12.2016** 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) from 18.12.2016 until the commencement of the first lease on the said unit.

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/1708/2023  Prerna Ramawat & Devender Saini & Kanta Saini V/S M/s Neo Developers Private Limited  <b>Date of Filing of complaint</b> 27.04.2023	Reply received on 04.10.2023	06, Floor-3rd  Area admeasuring 250 sq. ft. (super area)	18.12.2014  [As per page no. 23 of complaint]	18.12.2017  (Note: - calculated 36 months from the 18.12.2014 )	TSC: - 12,75,000/-  AP: - 13,22,277/-  ( As per M.O.U dated 18.12.2017)

2.	CR/1700/ 2023  Prerna Ramawat & Devender Saini & Kanta Saini V/S M/s Neo Developers Private Limited  <b>Date of Filing of complaint</b> 27.04.2023	Reply received on 04.10.2023	09, Floor- 3rd  Area admeas uring 250 sq. ft. (super area)	18.12.2014  [As per page no. 45 of complaint]	18.12.2017  (Note: - calculated 36 months from 18.12.2014 )	TSC: - 12,75,000/-  AP: - 13,22,277/-  (As per M.O.U dated 18.12.2014)
3.	CR/1699/ 2023  Prerna Ramawat & Devender Saini & Kanta Saini V/S M/s Neo Developers Private Limited  <b>Date of Filing of complaint</b> 27.04.2023	Reply received on 04.10.2023	07, Floor- 3rd  Area admeas uring 250 sq. ft. (super area)	18.12.2014  [As per page no. 23 of complaint]	18.12.2017  (Note: - calculated 36 months from 18.12.2014 )	TSC: - 12,75,000/-  AP: - 13,22,277/-  (As per M.O.U dated 18.12.2014)

**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/1708/2023 titled as Prerna Ramawat, Devinder Saini & Kanta Saini 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.	06, Floor-3 <sup>rd</sup> (As on page no. 45 of complaint)
6.	Unit area	250sq.ft. (As on page no 45 of complaint)
7.	Buyer's Agreement executed	07.01.2015 (As on page no. 40 of complaint)
8.	M.O.U	18.12.2014 (As on page no. 19 of complaint)
9.	Possession clause	<b>Clause 3 of the MOU</b>

		<p><i>The company shall complete the construction of the said Building/Complex, within which the said space is locate within <b>36 months from the date of execution this agreement or from the start of construction, whichever is later</b> 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	<p>18.12.2017</p> <p>[Calculated 36 months from the date of execution of the agreement]</p>
11.	Assured return	<p><b>Clause 4</b></p> <p><i>The Company shall shall pay a monthly assured return of <b>Rs.22,500/-</b> (Rupees Twenty Two Thousand Five Hundred Only) on the total amount received with effect from <b>18.12.2016</b> 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) <b>until the</b></i></p>



		<i>commencement of the first lease on the said unit. This shall be paid from the effective date.</i> (Emphasis supplied)
12.	Basic sale consideration	Rs. 12,75,000/- (As per M.O.U dated 18.12.2014 on page no. 23 of complaint)
13.	Total amount paid by the complainant	Rs.13,22,277/- (As per M.O.U dated 18.12.2014 on page no. 23 of complaint)
14.	First lease deed	24.07.2020 (As on page no. 102 of reply)
15.	Lease assignment request	01.10.2020 (As on page no 119 of reply)
16.	Reminder for payment towards VAT	30.10.2020 (As on page no. 148 of reply)
17.	Occupation certificate	Not obtained
18.	Offer of Possession	Not offered

**B. Facts of the complaint**

8. The complainants have made the following submissions: -

1. That the That the complainants Mrs. Prerna Ramawat and Mr.Devender Saini purchased the unit on 18.12.2014. Later on 04.09.2017, Mrs. Kanta Saini was also added as a co-applicant. 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 in or around November 2014, the complainants met the representative of the respondent who explained the project to them. Later, the representatives of the respondent 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. That the respondent assured the complainants 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 plans. That the construction of the project would be completed within 36 months of purchasing the unit.
  - IV. That the respondent induced the complaints to purchase the unit 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 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).
  - V. That the complainants entered into a Memorandum of Understanding with the respondent on 18.12.2014 and subsequently a Builder Buyer Agreement was executed on 07.01.2015. The complainants have paid a sum of Rs.13,22,277/- towards the consideration of the unit, through two cheques, firstly vide cheques no. 974089 dated 27.11.2014 drawn on State Bank of India and secondly vide cheque no. 974088 dated 27.11.2014 & drawn on State Bank of India which were duly accepted

- by the respondent. It was agreed under the MOU that a monthly return of Rs.22,500/- shall be payable as Assured Return from 18.12.2016.
- VI. That the respondent sent an Email on 16.12.2015 raising the cumulative demand of Rs.4,74,000/- of EDC and IDC for unit no. 06 ,07,08,09 on 3<sup>rd</sup> floor of the project and Rs.1,18,500 was charged for each unit. The said demand was duly fulfilled by the complainants by making the cumulative payments of Rs.4,74,000/- through monthly assured return payment.
- VII. That the respondent demanded VAT from the complainants several times in respect of the same unit despite the fact it was paid at the time of very first demand. The respondent raised the demand towards VAT amounting to Rs.69,675/- on 30.03.2017 and the same was paid through adjusting the said amount of VAT in monthly assured return amount.
- VIII. That the truth of the assurances made by the 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 the respondent communicated its unilateral decision of not paying any assured return till the completion of the project.
- IX. That the payment towards VAT was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent and due to the said reason, the demands of VAT are being made again and again from the buyers.

- X. That the respondent sent an email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibility of paying monthly assured return. The respondent is forcing the complainants to sign the "Lease Assignment Form" by which the respondent 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 obliviaded from its responsibility to pay the monthly Assured Return.
- XI. That despite assurance of completion of construction of the 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 structure of only office building is constructed but which is also nowhere near to completion. The building wherein food court and restaurants situates 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 as were shown in the brochure. It has also come into complainants', knowledge that the respondent has not even received the license from the concerned authorities to construct the tower/building besides office building. The respondent has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well.
- XII. That the respondent has no intention to complete the project as no permission is available to construct the project beyond the office tower. The complainants have filed a complaint before the Economics Offences

Wings Delhi on 16.03.2022 wherein FIR No- 0046/2022 has been filed under sections 406/420/120B against the respondent.

- XIII. That no fresh construction has been carried out in the project since 2019. The completion certificate of the respondent 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.
- XIV. That the complainants are constrained to file the present complaint seeking the payment of assured return at the rate of Rs.90 per sq feet amounting to Rs.22,500 for unit admeasuring 250 sq.ft., since July 2019 till the handing over the possession/ lease out of the property after the completion of the construction.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s):
- Direct the respondent to pay Assured Returns amounting to Rs.22,500/- from July, 2019 till handing over the possession/leasing out the property.
  - Direct the respondent to execute the Sale Deed after the completion of the project in favour of the complainants.
  - Restrain the respondent from entering the lease deed with third party till the completion of the project and anding over possession to the complainants.
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. 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 apply and filed an application form on 15.12.2014, whereby seeking allotment of priority no. 7, admeasuring 250sq.ft of super area on the 3rd floor of the restaurant/food court space having a basic sale price of Rs. 12,75,000/- and opted for the investment return plan.
- III. That a Memorandum of Understanding dated 18.12.2014 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 said 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 18.12.2016 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 voluntarily executed the Buyer Agreement dated 07.01.2015 after having full knowledge and being well satisfied and conversant with the terms and conditions of the Buyer Agreement.
- V. That the respondent had been paying the committed return of Rs.22,500/- for every month to the Complainant without any delay since 18.12.2016. It is to note, that as on July 2019, the complainants had already received an amount of Rs.6,39,750 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 the obligation of payment of assured return by the respondent to the complainants was only till the commencement of the first lease on the unit. The first lease has already been executed with M/s Ayan Foods on 24.07.2020. Thereby, the respondent has duly fulfilled its obligations in terms of the MOU. The since as per the terms of the MOU, the respondent has already fulfilled its obligation of payment of assured return and that the first lease has also been executed, the present complaint becomes infructuous.
- VII. That after the commencement of the First Lease, the respondent has duly intimated the complainants about the same vide letter dated 01.10.2020 and also by various telephonic conversations regarding the same and have further sent a Letter for Assignment of Lease form to the complainants to come forward and 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 obligations. That, since the complainants did not come forward to sign the lease assignment, the respondent sent reminder letters dated 10.12.2020 and 07.12.2021 to sign the Lease Assignment Form.

- VIII. That in the Memorandum of Understanding, 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. However, the complainants have failed to come forward.
- IX. 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 said project. Infact there is no bar by any statutory provision on entering into such understanding. There have been numerous instances where renowned developers have adopted such a practise. Few of such instances/ are reproduced herein, which will also prove that it is legally valid to lease out a premises before the completion of the project:

- a. That the real estate firm "Embassy Group", one of the leading commercial real estate developer in its statement released on 08.08.2018 said it shall develop a 11,00,000 sq. feet. built to suit facility "Embassy Tech Village" project in Bengaluru in phases, with the first phase expected to be delivered by the first quarter of 2021. In the same statement it was also mentioned that they have signed a long-term lease agreement with JP Morgan for commercial office space at the same project. It is noteworthy

mention here that the said statement was released by the Embassy Group on 08.08.2018, when the project was under construction and the expected date of delivering the first quarter was 2021.

- b.** Similarly, the Embassy Office Parks REIT leased 1.8 million sq. ft. across 25 deals including a 5.50 lakh sq. ft. pre-commitment from JP Morgan at Embassy Tech Village in the June quarter of 2022. Hence, it proves that the executing a lease deed before the completion of the project is valid in the eyes of law.
- c.** In a news article it is stated that real estate firm DLF has leased nearly 3,00,000 sq. ft. office space to three companies in Gurugram. Majority of the space has been taken at DLF Downtown, an upcoming project in Gurgaon. It was further stated that the leasing is part of these company's expansion plan once the current Covid-19 situation stabilises. The building where space has been taken is under construction and is expected to be ready by December 2021.
- d.** In another article, Embassy Group stated that it has leased 85,000 sq. ft. of office space to automotive software company Acsia Technologies at Embassy Taurus TechZone (ETTZ) in Trivandrum in April 2022 before the completion of the project which is scheduled for handover in April 2023.
- X.** In view of the above said submissions, it is evident that executing a lease deed before the completion of a project is a common practice adopted by the developers/promoters in the real estate sector. Therefore, the respondent cannot be held liable to pay any assured returns to the



complainants after the commencement of the first lease, any payment thereof in fact will also be contrary to the prevailing laws and violation thereof.

- XI. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- XII. That the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the Agreement for Sale (Buyer's Agreement). However, in the present matter the complainants are relying upon the terms of MOU which is a distinct agreement than the Buyer's Agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainants are raising their grievance.
- XIII. That as per clause 3 of the MOU, the respondent was obligated to complete the construction of the said project within 36 months from the date of execution of the MOU or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. 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 project was 15.12.2015. The Authority also granted a period of 6 months 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 in the instant case comes out to be 15.06.2019.

- XIV. That the complainants as per the records had only paid Rs.15,10,452/- against the total due amount of Rs. 16,63,826/- It is to be noted that there is still an outstanding due of Rs.1,53,374/- which is to be paid by the complainants against the unit booked.
- XV. That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainants as the same has been assessed and demanded by the competent authority.
- XVI. That upon failure to pay the outstanding dues against EDC/IDC dated 16.12.2015 and VAT dues dated 30.03.2017, the complainants requested the respondent to adjust the said outstanding amount against the Assured Return payments from April 2017 onwards till the said demands of EDC/IDC and VAT becomes nil.
- XVII. That the respondent had already paid Rs.6,39,750/- as Assured Return to the complainants till date after adjustment of EDC/IDC and VAT dues against the Assured Return payments, against the sale consideration of Rs.16,63,826/- of the unit.
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.13,22,277/-** 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 18.12.2017. 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 complainants:**

**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 18.12.2014. The basic sale consideration of the unit is Rs.12,75,000/- out of which the complainants have made a payment of Rs.13,22,277/-. As per the M.O.U dated 18.12.2014, the complainants have paid Rs.13,22,277/- vide cheque no 974089 dated 27.11.2014 drawn on State Bank of India against the total basic sale consideration of Rs.12,75,000/- 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 18.12.2016. The relevant clause of the MOU dated 18.12.2014 has been reproduced below:

**"Clause 4**

*That against the total basic sale consideration of **Rs.12,75,000/-** (Rupees Twelve Lakh Seventy 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.13,22,277/-** (Rupees Thirteen Lakh Twenty Two Thousand Two Hundred Seventy Seven Only) vide cheque No. 974089 & 974088 dated dated 27.11.2014 drawn on State Bank of India, 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 18.12.2016 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 18.12.2016 onwards until the commencement of the first lease on the said unit.*

*[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 Authority does not have the jurisdiction of granting the said relief.

- **Assured return**

21. 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.

22. The M.O.U dated 18.12.2014 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 18.12.2014 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.

23. 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.*

24. 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;*
25. 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.
26. 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.
27. 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.

28. 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.
29. 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.
30. 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.

31. 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., 18.12.2016 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.**

32. 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. Restrain the respondent from entering into lease deed with third party till the completion of the project.**

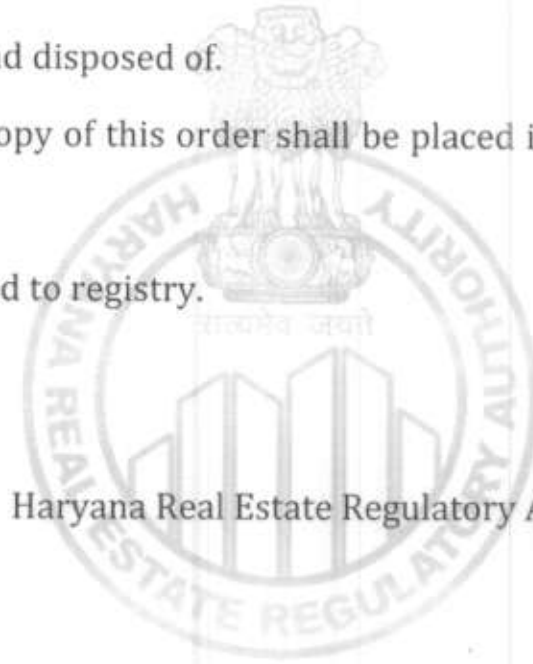
33. The Authority is of the view that since the occupation certificate in respect to the project has not been received yet and without receiving the occupation certificate, the premises cannot be presumed to be fit for occupation. The respondent is directed to not force the

complainants to execute any lease deed prior to obtaining the occupation certificate.

#### **H. Directions of the authority**

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 18.12.2016 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 18.12.2014 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 not force the complainants to execute any lease deed prior to obtaining the occupation certificate.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. Complaints stand disposed of.
37. True certified copy of this order shall be placed in the case file of each matter.
38. File be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2024

**HARERA**  
**GURUGRAM**