

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

**Complaint no.** : 1427 of 2023  
**Date of decision** : 14.08.2024

1. Rahul Bhargava  
2. Ragini Bhargava  
**Both R/o-** 2205, A-169, Ganesh Pura ,  
Tri Nagar, Delhi.

**Complainants**

**Versus**

M/s. Neo Developers Private Limited  
**Regd. office:** - 32-B, Pusa Road,  
New Delhi-110005.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

Member

**APPEARANCE:**

Sh. Rajinder Singh (Advocate)  
Sh. Venkat Rao (Advocate)

Complainants  
Respondent

**ORDER**

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

Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

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.	26, Floor-3rd (As on page no. 37 of complaint)
6.	Unit area	250 sq.ft. [Super Built up area] (As on page no. 37 of complaint)
7.	Builder Buyer Agreement	13.12.2014 (As on page no. 32 of complaint)
8.	Memorandum of understanding	13.12.2014 (As on page no. 22 of complaint)
9.	Possession clause	<b>Clause 3</b>

		<p><i>The company shall complete the construction of the said Building/Complex , within which the said space is located <b>within 36 months from the date of execution of this Agreement</b> or from the start of construction, whichever is later and apply for grant of completion/Occupancy certificate.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 22 of complaint)</p>
10.	Due date of possession	<p>13.12.2017</p> <p>[Calculated 36 months from the date of agreement]</p>
11.	Assured return	<p><b>Clause 4</b></p> <p>The Company shall pay a monthly return of <b>Rs.22,500/-</b> on the total amount received <b>with effect from 13.12.2014</b> after deduction of Tax at Source and 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 A. the monthly assured return shall be paid to the Allottee(S) until the commencement of the return shall be paid to the Allottee(S) <b>until the commencement of the first lease on the said lease.</b> This shall be paid from the effective date. .</p> <p>[Emphasis supplied]</p> <p>(As on page no. 23 of complaint)</p>

12.	Total sale consideration	Rs. 11,25,000/- (As on page no. 22 of complaint)
13.	Total amount paid by the complainant	Rs. 11,66,715/- (As on page no. 22 of complaint)
14.	Lease deed	24.07.2020 (As on page no. 95 of reply)
15.	Payment request on account of VAT	22.01.2020 (As on page no. 69 of complaint)
16.	Reminder for payment on account of VAT	30.10.2020 (As on page no. 73 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has 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 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 13.12.2014. It was explained to the complainants that the 3<sup>rd</sup> & 4<sup>th</sup> 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 13.12.2014 having area admeasuring 250 sq. ft. super built up area at the rate of Rs. 4,500/- per sq. ft. wherein commercial unit no. 26 was assigned

on 3<sup>rd</sup> floor. That since on the misrepresentation by Mr. Ashish Anand Director of the respondent company.

- 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 13.12.2014 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:**

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay Assured Returns @Rs.90 per sq.ft. per month amounting to Rs.22,500/- from July 2019 till handing over the possession/leasing out the property after completion.
  - ii. Direct the respondent to execute the Sale Deed after the completion of the project in favor of the complainant.



- iii. Direct the respondent to set aside the illegal demands of VAT made vide letter dated 22.01.2020 and 30.10.2020.
  - iv. Direct the respondent to set aside the illegal demands made vide letter dated 07.06.2021.
  - v. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant.
5. 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.**

6. 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. 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.
- II. 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.
- III. 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
- IV. 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.

- V. 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.
- VI. 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.
- VII. 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.

VIII. 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.

IX. 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,

- X. 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/-.
- XI. 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/-.

- XII. 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.
- XIII. 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.
7. 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 submission 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**

8. 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**

9. 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**

.....

*(1) 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;*

10. 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 the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.**

11. The respondent/promoter has raised the contention that the delivery of possession 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 13.12.2017. 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 the aforesaid reasons and 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 assured return @Rs.22,500/- from July,2019 till the handing over of possession.**

12. The complainants booked a unit in the project of the respondent and the MOU was executed on 13.12.2014. The total basic sale consideration of the unit was Rs.11,25,000/- out of which the complainant has paid Rs.11,66,715/-. The complainants in the present complaint seeks relief for the pending assured return. The plea of the respondent is otherwise and stated that the respondent cancelled the allotted unit of the complainant vide final reminder letter dated 07.06.2021.



13. Now the question before the Authority is whether the cancellation issued vide reminder letter dated 07.06.2021 is valid or not?
14. The Authority observes that the complainants have paid an amount of Rs.11,66,715/- out of the basic sale consideration of Rs.11,25,000/-. The respondent has issued a reminder letter dated 07.06.2021 for the payment of the outstanding dues and as per that letter they have provided one last and final opportunity to pay and clear all arrears of instalments within 15 days i.e., on or before 21.06.2021. The relevant part of the said 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.1,80,888/- within 15 days from the date of this notice i.e., on or before 21<sup>st</sup> June 2021.*

15. The Authority is of the view that the cancellation letter dated 07.06.2021 is not valid as the complainant has already paid more than 100% of the basic 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 dated 07.06.2021 cannot be treated valid cancellation.

- **Assured return**

16. 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.

17. The M.O.U dated 13.12.2014 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 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. 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.

18. 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.*
19. 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;*
20. 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.
  21. 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.
  22. 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.
  23. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee 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 complainant besides

initiating penal proceedings. So, the amount paid by the complainant 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.

24. 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 complainant 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 thus holds no relevance here.

25. Hence, the Authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.22,500/- per month from the date i.e., 3.12.2014 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 handover possession in habitable condition after the obtaining the Occupation certificate.**

26. The respondent/promoter 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 on account of VAT payment**

27. 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.
28. The Authority is of the view that the respondent/promoter has made an illegal demand vide demand letter dated 22.01.2020 and 30.10.2020 for the payment of outstanding dues on account of VAT charges was illegal. Thus, the demand letter dated 22.01.2020 and 30.10.2020 are unjustified.

**G.IV. Direct the respondent to execute sale deed after completion of the project in favour of the complainants.**

29. 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 deed .....local 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]*

30. 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.

**G.V. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant.**

31. The Authority is of the view that since the occupation certificate in respect to the project has not been received yet and without obtaining the occupation certificate from the concerned authorities as 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**


32. 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., 13.12.2014 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 13.12.2014 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 60 days from the date of obtaining occupation certificate from the concerned authorities.
- iv. The respondent is directed to execute the registered conveyance deed in favour of the complainants within 3 months from the date of obtaining the occupation certificate.
- v. The respondent is directed to not force the complainants to execute any lease deed prior to obtaining the occupation certificate.
- vi. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.



37. Complaint stands disposed of.
38. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2024



**HARERA**  
GURUGRAM