

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

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| Complaint no.: | 2014 of 2023 |
| Date of complaint: | 04.05.2023 |
| Date of pronouncement: | 08.08.2024 |

1. Raj Kumar

2. Ajay Singh

Both R/o V.P.O Daultabad, Tehsil & District Gurgaon,
Haryana-122001.

Complainants

Versus

M/s Neo Developers Pvt Ltd

Registered Address at: 32B Pusa Road, New Delhi-
110005.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rajinder Singh (Advocate)

Shri Venket Rao (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee 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

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

| S. No. | Particulars | Details |
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| 1. | Name of the project | "Neo Square" |
| 2. | Location of the project | Sectors 109, Gurugram |
| 3. | Nature of the project | Commercial |
| 4. | Project Area | 3.08 acres |
| 5. | DTCP license no. and validity status | 102 of 2008 dated 15.05.2008 Valid up to 14.05.2024 |
| 6. | RERA Registered/ not registered | Registered 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021 |
| 7. | Unit and Floor no. | 14 at 2 nd floor (As per page no. 18 of the complaint) |
| 8. | Unit area admeasuring | 585 sq. ft. (Super Area) (As per page no. 18 of the complaint) |
| 9. | Application Form | 31.03.2013 (As per page no. 16 of the complaint) |
| 10. | Date of execution of MoU's | 26.04.2013 (As per page no. 17 of the complaint) |
| 11. | Assured return clause as per MOU dated 26.04.2013 | "3. <i>That company hereby has agreed to allot to the allottee(s) premises measuring 585 sq. ft. super built-up area on the second floor of tower of the said project. The allottee(s) has opted for the investment return plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.6,500/- per sq. ft. taking into consideration a return of Rs.85/- per sq. ft. per month, subject to the terms of this MOU. return is provided till first lease is offered to the customer.</i> 12. ... The company shall pay a monthly return of Rs.49,725/- on the total amount deposited till the signing of this MOU with |

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| | | <i>effect from 26th day April of 2013."</i> |
| 12. | Date of execution of flat buyer's agreement | Annexed but not executed. (As per page no. 60 of the reply) |
| 13. | Possession Clause | Not available |
| 14. | Due date of possession | <p>26.04.2016</p> <p><i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."</i></p> <p>In view of the above-mentioned reasoning, the date of the MOU dated 26.04.2013 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 26.04.2016.</p> |
| 15. | Total Sale Consideration | Rs.49,53,195/- (As per statement of account on page no. 84 of the reply) |
| 16. | Amount paid by the complainants | Rs.44,01,278/- (As per statement of account on page no. 84 of the reply) |
| 17. | Assured return paid by the respondent | Rs.36,74,678/- (As per statement of account on page no. 84 of the reply) |
| 18. | Execution of lease deed | 24.07.2020 (As per page no. 85 of the reply) |
| 19. | Payment Plan | Investment return plan |
| 20. | Occupation certificate /Completion certificate | Not Obtained |
| 21. | Offer of possession | Not Offered |
| 22. | Reminder letters (for payment of VAT) | 30.10.2020 and 15.09.2021 |

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| 23. | Complaint before EOW <i>By Sh. Jagmohan Ahluwalia</i> | 16.03.2022 (As per page no. 45 of the complaint) |
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B. Facts of the complaint

3. 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 in 2013, I came across the project of "M/s Neo Developers Private Limited namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram, the complainant, met representative of the company who explained the project to the complainants. Later, the complainants were introduced to Mr. Ashish Anand, Director, and employees of the company 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. That the director and employees of the company finally induced the complainant to purchase the unit in their assured return plan wherein the company would make the payment at the rate of Rs.85 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainant 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 complainant that there will be no delay in making payment towards the assured return under any circumstances whatsoever.
- iv. That complainant entered into memorandum of understanding with the company on 26.04.2013. The said MOU was signed by Mr. Ashish Anand, authorized representative and director of the company and I was also assured by Mr. Ashish Anand, director of the company that soon the



respondent company would enter into builder buyer's agreement with the complainants. However, till date no such builder buyer's agreement has been executed and Mr. Ashish Anand, director of the company again assured that there will be no delay in making payment towards the assured return under any circumstances and the property would be constructed and delivered within 36 months period from entering of the MoU since company has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC, Nike, Inox Cinema etc. Further, it was assured that the assured return would be paid till the property is not leased out. Mr. Ashish Anand, director, assured the complainant that the project would be state-of-the-art and that the company had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. In view of the above assurance an impression was given to complainant that since the project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the restaurant in future. Based on the above inducement and assurance of Mr. Ashish Anand and the employees of the company, the complainant purchased a commercial unit (restaurant) on the second floor and executed the memorandum of understanding dated 26.04.2013 having area admeasuring 585 sq. ft. super built up area at the rate of Rs. 6,500/- per sq. ft. wherein commercial unit no. 14 was assigned on 2nd floor.

- v. The complainant paid a sum of Rs.39,40,408/- towards consideration of the commercial unit no. 14, vide cheque no. 011052, 060910 and 100571 drawn on Gurgaon Gramin & Allahabad Bank which was duly accepted by the company and for the said purpose respondent sent a letter dated 31.03.2013 confirming of payment and application of booking unit no-14. It was agreed



under the MOU that a monthly return of Rs.49,725/- shall be payable as assured return from 26.04.2013.

- vi. The respondent on 16.12.2015 raised the demand of EDC and IDC for unit no.14 on 2nd floor of the project amount to Rs.2,56,880/-. The said demand was duly fulfilled by the complainants by making payments of Rs.2,56,880/- through three different cheques Vide cheque no. 016182 dated 29.03.2016 amount of Rs.1,67,374/- drawn on Allahabad Bank and vide cheque no. 223101 dated 31.03.2016 amount of Rs.44,753/- drawn on Yes Bank Limited and vide cheque no. 223100 dated 05.03.2016 amount of Rs.44,753/- drawn on Yes Bank Limited and an invoice cum receipt is also issued by the respondent for the Yes bank payment which is of Rs.89,506/- dated 30.04.2016.
- vii. The company demanded VAT from complainant, 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.1,90,125/- and Rs.13,865/- on 30.03.2017 for unit no. 14. The complainant has paid a sum of Rs 1,01,645/- vide cheque no. 510801 dated 25.04.2017 drawn on Sarva Haryana Gramin Bank and sum of Rs.1,02,345/- vide cheque no. 014076 dated 25.04.2017 drawn on Allahabad bank for 14 units.
- viii. That the truth of the assurances made by the directors and employees of the company surfaced when the company 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 company also became conspicuous when the company sent a letter dated 18.12.2019 communicating its unilateral decision of not paying any assured return till the completion of the project. Such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the

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agreement entered between the parties since the payment towards the assured return was integral part of the agreement.

- ix. Later the respondent vide letters dated 22.01.2020 again raised demand of Rs.2,99,685/- for unit no.14 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-company and due to the said reason, the respondent-company is demanding VAT again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside.
- x. That the company sent an Email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibility of paying monthly assured return, the company invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in MOU. The company is forcing complainants to sign lease assignment form by which the company 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 company will be obliterated from its responsibility to pay the monthly assured return and threatens that if the complainants do not sign the lease assignment form, then the company will forfeit our unit in accordance with MOU. This shows that the company from the inception had no intention to pay the assured return to the buyers and had prepared biased MOU to suit its whims and wishes.
- xi. That on 28.09.2019 the respondent sent a Letter for payment request for outstanding BSP, GST, Interest till 16.08.2019. Later on, 01.10.2020 the respondent sent a letter of notice for registration of BBA and MOU. Later, the respondent again sent letter dated 21.10.2020 for registration of BBA and MoU with revised fee. On 30.10.2020 the respondent again sent illegal

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demands towards the VAT without providing explanation for such demand. Later, the respondent again sent letter dated 15.09.2021 for illegal demands towards the VAT without providing explanation for such demand.

- xii. The wrongful acts of the company are not only limited to this, the company deducted TDS on the assured return paid by it from April to June of 2019, but till date the company has neither issued TDS certificate for the same nor deposited the deducted tax to the authorities due to while tax liabilities of the complainants are increased due to the fault of the respondent.
- xiii. 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 structure of only office building is constructed but which is also nowhere near to completion. The building wherein food court and restaurants as were explained at the time of entering MOU, has been constructed up to 2nd floor only and there is no sign of construction of the tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment zone were shown in the brochure. It has also come into complainant's, knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building. The company has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and complete the project.
- xiv. The respondent at the time of entering the MoU made misrepresentation with respect to the project and it is tower/building whereas the construction is not in conformity with the promises made since the respondent never had the permission to construct building/tower beyond the office building. The

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builder has neither completed the construction of office tower nor has completed the construction of other building/tower having inox cinema, food court, entertainment zone and service apartment etc. brochure of the site plan as given by the respondent is annexed herewith.

- xv. The respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. Further, by refusing to give assured return, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement rather illegal and unreasonable demands with respect to the VAT has been raised again and again.
- xvi. 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 406/420/468/471 against the respondent.
- xvii. The respondent under the garb of force-majeure is delaying the completion of the project. 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 Senior Town Planner, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.
- xviii. The cause of action to file the present complaint first arose when the builder failed to construct and handover the possession after 36 months from entering the MoU. It further arose when the respondent stopped making payments towards the assured return in June, 2019. It further arose when the force-majeure clause was enforced illegally by the respondent.
- xix. The complainant declares that he has not filed any other complainant, petition etc. before any other Court or Tribunal seeking same or similar relief.

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C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- a. Direct the respondent to pay assured returns of Rs.49,725/- @Rs.85/- per sq. ft. per month for unit no.14, since June, 2019 till handing over the possession/ leasing out the property after completion.
- b. Execution of sale deed after the completion of the project in favor of the complainant.
- c. Set aside illegal demands of VAT made by the respondent vide letter dated 22.01.2020, 30.10.2020 and 15.09.2021
- d. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant.
- e. To direct the respondent to pay the interest as per RERA Act.

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 RERA Act of 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 herein, have failed to provide the correct/complete facts that they are investors and not allottees.
- ii. That the complainant 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

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decided to apply to the respondent by submitting an application form dated 31.01.2013, whereby seeking allotment of priority no. 14, admeasuring 585 sq. ft. of super area on the 2nd floor restaurant/food court space of the project having a basic sale price of Rs.38,02,500/-. The complainants considering the future speculative gains also opted for the Investment Return Plan being floated by the respondent for the project.

- iii. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 26.04.2013 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 complainant. As per the M.O.U, the returns were to be paid from 01.05.2013 till the commencement of First Lease. It is also submitted that as per clause 4 of the MOU, the complainant had duly authorised the respondent to put the said unit on lease.
- iv. That the MOU executed between the parties was in the form of an "Investment Agreement." That the complainant approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the unit contained a "Lease Clause" which empowers the developer to put the unit on lease.
- v. It is pertinent to mention that the respondent requested the complainant to come forward and execute the Builder Buyer Agreement. However, the complainant despite of repeated reminders and request deliberately failed to execute the same for the reasons best known the complainant.
- vi. That the respondent had been paying the committed return of Rs.49,725/- for every month to the complainant without any delay since 05.05.2013. That the complainant had already received an amount of Rs.36,74,678/- as assured return till July 2019. However, post July 2019, the respondent could not pay the agreed Assured Returns due to prevailing legal position w.r.t.

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banning of returns over unregulated deposits post the enactment of the BUDS Act

- vii. That as per Clause 3 and Clause 12 of the MOU dated 26.04.2013 the obligation of payment of Assured Return by the respondent was only till the commencement of the first lease on the unit. That 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.
- viii. That after the commencement of the First Lease, the respondent has duly intimated the same to the complainant vide letter dated 08.12.2020 and through various telephonic conversations. The respondent further sent a "Letter for Assignment of Lease form" to sign the lease assignment, as had been agreed in the MOU. However, the complainant did not come to sign the lease assignment and therefore failed to fulfil his part of the obligations. That, since the complainant did not come forward to sign the lease assignment, the respondent further sent a reminder letter dated 08.12.2020 to sign the Lease Assignment Form.
- ix. It is also pertinent to mention herein 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 with reminders, as per the terms of the MOU. However, the complainants have failed to come forward.
- x. That post execution of the Memorandum of understanding dated 26.04.2013, which was specifically for the purpose of ascertaining the-amounts-of Assured Return by and between the complainant and the respondent. However, despite of repeated reminders and requests by the respondent for the execution of the builder buyer agreement, the complainant failed to

execute the same, which included the possession clause in its terms, which reiterated that the possession was to be handed over within 36 months from the start of construction including grace period of 6 months.

- xi. The complainant as per the records had only paid Rs.44,01,278/- against the total due amount of Rs.49,53,195/-. It is to be noted that there lies an outstanding dues of Rs.5,51,917/- which are to be paid by the complainant against the unit booked.
- xii. That the respondent had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plan, the complainant has failed to pay the outstanding dues on time. It is humbly submitted that though the complainant may have cleared the basic sale price of the unit however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc.
- xiii. That the respondent is raising the VAT demands as per government regulations. That the rate at which the VAT amount is charges is as per the provisions of the Haryana Value Added Tax Act 2003.
- xiv. 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 by the statutory authorities.

| S. no. | Date of Order | Directions | Period of Restriction | Days affected | Comments |
|--------|---------------|---|--|---------------|---|
| 1. | 07.04.2015 | National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. | 7 th of April, 2015 to 6 th of May, 2015 | 30 days | The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers |

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| | | | | | used diesel vehicles more than 10 years old. The order had completely hampered the construction activity. |
| 2. | 19 th July 2016 | National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority. | Till date the order in force and no relaxation has been given to this effect. | 30 days | The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready-mix concrete required for construction activities. |
| 3. | 8 th Nov, 2016 | National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order. | 8 th Nov, 2016 to 15 th Nov, 2016 | 7 days | The bar imposed by Tribunal was absolute. The order had completely stopped construction activity. |
| 4. | 7 th Nov, 2017 | Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice. | Till date the order has not been vacated | 90 days | The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. |
| 5. | 9 th Nov 2017 and 17 th Nov, | National Green Tribunal has passed the said order dated | | 9 days | On account of passing of the aforesaid order, |

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| | 2017 | 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17. | | | no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period. |
| 6. | 29 th October 2018 | Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution [Prevention and Control] Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018. | 1 st Nov to 10 th Nov, 2018 | 10 days | On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period. |
| 7. | 24 th July, 2019 | NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration. | | 30 days | Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced |

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| | | | | | manifolds and there was a sharp increase in prices which consequently affected the pace of construction. |
| 8. | 11 th October 2019 | Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period. | 11 th Oct 2019 to 31 st Dec 2019 | 81 days | On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period. |
| 9. | 04.11.2019 | The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. | 04.11.2019 - 14.02.2020 | 102 days | These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court. |
| 10. | 3 rd week of Feb 2020 | Covid-19 pandemic | Feb 2020 to till date | To date (3 months Nationwide lockdown) | Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said |



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| | | | | | embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern. |
| 11. | Covid in 2021 | That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State | 12.04.2021 - 24.07.2021 | 103 days | Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. |
| | | | Total days | 582 days | |

xv. That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. All other averments made in the complaint were denied in toto.

8. 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. Written submission made by the complainants

9. The complainant has filed the written submission on 19.07.2024 and the same are taken on record. No additional facts apart from the complaint has been stated in the written submission.

F. Jurisdiction of the authority

10. 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.

F. I Territorial jurisdiction

11. 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.

F. II Subject matter jurisdiction

12. 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

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(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;

13. 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.

G. Findings on the objections raised by the respondent.

G.I. Objection regarding maintainability of complaint on account of complainant being investor

14. The respondent took a stand that the complainants are investors and not consumers and 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.

However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. 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;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

16. 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, Supreme Court orders and Covid-19 etc. However, All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for

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short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 26.04.2016, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

H. Findings on the reliefs sought by the complainants:

- H.I Direct the respondent to pay the assured return @Rs.49,725/- from July,2019 till the handing over of possession.**
- H.II Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant.**
- H.III To direct the respondent to pay the interest as per RERA Act.**

17. The complainants booked a unit in the project of the respondent and the MOU was executed on 26.04.2013. The sale consideration of the unit was Rs.49,53,195/- out of which the complainants have paid Rs.44,01,278/-.

18. The complainants in the present complaint seeks relief for the pending assured return. It is pleaded that the respondent has not complied with the terms and conditions of the memorandum of 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.

19. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017*. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4) (a) of the Act

of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

20. It is now well settled proposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by

taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

21. 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.*

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. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as *Nikhil Mehta, Pioneer Urban Land and*

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Infrastructure which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case **Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including **Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)** as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

24. 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 2016 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 later from the former against the immovable property to be transferred to the allottee later on.
25. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. That the memorandum of understanding (MoU) was executed between the parties on



26.04.2013, if we look into the assured return clause 3 and 12 of MoU, it clearly states that the amount of assured return is payable after the execution of MoU.

26. It is worthwhile to consider that the assured return is payable to the allottees on account of provisions in Memorandum of understanding. The assured return in this case is payable as per "clause 3 and 12 of the MoU dated 26.04.2013". The rate at which assured return has been committed by the promoter is Rs.85/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till first lease is offered.
27. In the present complaint, the respondent has put the unit of the complainants-allottees and other allottees at same floor on lease with M/s Ayaan foods and entered into a lease deed on 24.07.2020 without obtaining occupation certificate from the competent authority. Hence, 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 any third party. Neither any lease rental has been received or paid to the complainant. Thus, the lease deed executed on 24.07.2020 holds no relevance here.
28. Hence, the Authority directs the respondent/promoter to pay the arrears of amount of assured return at the rate i.e., Rs.49,725/- per month from the date the payment of assured return has not been paid i.e., July, 2019 till the first lease is offered after obtaining the occupation certificate from the competent authority.

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

29. As per 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 from the competent authority. 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]

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.

H.V. Direct the respondent to revoke the demand letter dated 30.10.2020 and 15.09.2021 on account of VAT payment

31. 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 + five 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.

32. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only. But if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

I. Directions of the authority

33. 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):

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- i. The respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.49,725/- per month from the date the payment of assured return has not been paid i.e., July, 2019 till the first lease is offered after obtaining the occupation certificate from the competent authority.
 - ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9% p.a. till the date of actual realization.
 - iii. The respondent is directed to execute the registered conveyance deed in favour of the complainants within 3 months after receipt of the occupation certificate from competent authority.
 - iv. The respondent is direct not to force the complainants to execute any lease deed prior to obtaining the occupation certificate from the competent authority.
34. Complaint stands disposed of.
35. File be consigned to registry.

Dated: 08.08.2024

HARERA
GURUGRAM

V. I. - G
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram