

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

**Complaint no.** : 1085 of 2024  
**Date of complaint** : 22.03.2024  
**Date of order** : 20.11.2024

Nitasha Mehra,  
**R/o:** - A-12, 1<sup>st</sup> Floor, Ashok Vihar,  
Phase I, New Delhi-110052.

**Complainant**

 Versus

M/s Neo Developers Pvt. Ltd.  
**Regd. Office at:** - 1205-B, 12<sup>th</sup> Floor,  
Tower-B, Signature Tower, South City-1,  
NH-8, Gurugram-122001.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Garvit Gupta (Advocate)  
Venket Rao (Advocate)

Complainant  
Respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present 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 provisions of the Act or the

Rules and regulations made thereunder or to the allottee 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:

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	Unit no.	Shop no.-126, First floor (As on page no. 37 of complaint)
5.	Unit area admeasuring	1911 sq.ft. (As on page no. 37 of complaint)
6.	Date of execution of buyer's agreement	05.01.2017 (As on page no. 35 of complaint)
7.	MoU	05.01.2017 (page 60 of complaint)
8.	Possession clause	<b>5.2</b> That the company shall complete the construction of the said building/complex within which the said space is located within <b>48 months from the date of execution of 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/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues. <b>5.4</b> That the allottee hereby also grants an additional period of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period.

		<i>(Emphasis supplied)</i> <i>(As on page no. 41 of complaint)</i>
9.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
10.	Due date of possession	05.07.2021 (Calculated from date of execution of buyer's agreement i.e. 05.01.2017 being later + Grace period of 6 months is allowed being unqualified) (inadvertently mentioned as 15.06.2020 on proceedings dated 25.09.2024)
11.	Total sale consideration	Rs. 1,08,21,993/- (As on page no. 53 of complaint)
12.	Amount paid by the complainant	Rs. 1,10,74,016/- (As on page no. 124 of reply)
13.	Occupation certificate /Completion certificate	14.08.2024
14.	Offer of possession	Not offered
15.	AR paid	Rs.50,77,710/- (page 125 of reply)

### **B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That on the basis of the representations made by the respondent, the complainant booked a unit admeasuring 1911 sq.ft. in the project of the respondent named "Neo Square" at Sector 109, Gurugram vide booking application form dated 22.12.2016. It is pertinent to mention here that the complainant at the time of booking had paid an amount



of Rs.42,00,000/- and the same was duly acknowledged by the respondent vide booking application form dated 22.12.2016. Thereafter, a buyer's agreement and MoU dated 05.01.2017 was executed between the parties vide which a unit bearing no. 126, first floor admeasuring super area of 1911 sq.ft. was allotted to the complainant.

- II. That as per clause 19 of the MoU, the total basic sale consideration of the unit was Rs.80,26,200/- and an amount of Rs.42,00,000/- had already been paid by the complainant along with the BSP & services tax as per the said clause of the MOU. The respondent had categorically assured at the time of the booking that it would be diligent in making payment towards the assured return and in adhering to its contractual obligations. It is submitted that as per clause 19 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.1,91,100/-. Furthermore, it was also agreed vide clause 8 and 9 of the said MoU that the responsibility of assured returns to be paid by the respondent would cease on notice of possession and thereafter, the respondent had agreed to make payment of Rs.100/- per sq. ft. per month rent to the complainant from possession till first lease. Moreover, it was decided as per clause 13 of the MoU that the respondent was to finalize the terms for leasing the premises with a prospective lessee with minimum price of Rs.100/- per sq.ft. and the allottee would be entitled to receive lease rentals.
- III. That the respondent categorically assured the complainant that the respondent would continue to make the payments against the monthly assured returns and no default whatsoever would be



committed by it and accordingly the complainant based on the said assurances continued to make the payments against the unit as allotted by the respondent. It is pertinent to mention here that the complainant had made a payment of Rs.1,10,74,016/- out of the total sale consideration of Rs.80,26,200/-. The said payments have been made against the basic sale consideration, GST charges, EDC/IDC and preferential location charges.

- IV. That the complainant without any delay or default complied with her contractual obligations and paid the total basic sale consideration as aforesaid. However, respondent kept on making delayed payment towards the monthly assured return to the complainant till June,2019. Some of the cheques issued by the respondent towards payment of assured return amount were even dishonoured.
- V. That upon the grievances raised by the complainant regarding the non-payment of assured returns, it was assured and promised by the representatives of respondent vide its letter dated 18.12.2019 that the said amount would be adjusted along with interest at the time of possession. It was also stated that the said payment could be made as it had become illegal for it to withdraw the funds from the bank account and that its auditors are refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of the interest payments.
- VI. That the complainant vide letter dated 07.01.2020 requested the respondent to remit the amount of the monthly assured returns. Moreover, vide the said letter it was informed to the respondent that it has charged Rs.9,55,500/- towards PLC without even providing the copy of the approved floor plan and layout plan. On account of the



same, the complainant demanded the refund of PLC charges vide the said letter.

- VII. That as per clause 12 of the MoU and 5.2 of the agreement, the construction of the project was to be completed by the respondent within a period of 48 months from the date of execution of the agreement or the date of start of construction. Thus, the due date to hand over the possession as per the terms of the MOU was 05.01.2021. The complainant visited the office of respondent in January 2021 to enquire about the date of possession and pending payment of the monthly assured returns. It was informed that the possession of the unit would soon be handed over along with adjustment of the delayed payment interest and monthly assured rentals.
- VIII. That there is an inordinate delay of more than 3 years calculated from the due date of possession upto April 2024 and till date basic requirements including handing over of possession and adjustment of the amount has not been completed due to default of respondent.

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

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay delayed interest on amount paid.
  - II. Direct the respondents to make payment towards assured return.
  - III. Direct the respondent to pay guaranteed return and lease rental as per MoU and to put the unit on lease.
  - IV. Direct the respondent to demarcate the unit and offer possession of the unit in habitable condition after obtaining the occupation certificate.
  - V. Direct the respondent to refund the PLC charges.



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 by filing reply dated 05.06.2024 on the following grounds: -

(i) That the respondent initially cancelled the unit of the complainant vide cancellation letter dated 19.07.2017 due to inability of the complainant to clear the outstanding dues and non-payment of dues as per the payment plan as agreed between the parties. Prior to cancellation vide above cancellation letter reasonable opportunity was provided to the complainant for clear the dues by issuing repeated reminders and request vide demand letter dated 24.04.2017, reminder letter dated 27.05.2017, despite of the same failed to clear the dues. However, upon the assurances by the complainant to clear the outstanding dues as per the payment plan the unit of the complainant was re-instated.

(ii) That despite assuring the respondent to clear the outstanding dues as per the terms and conditions of the agreement/MOU, again deliberately an intentionally failed to clear the dues. The respondent again afforded reasonable opportunities to the complainant to clear the outstanding dues vide demand/reminder letters dated 30.10.2020, 15.09.2021, 30.09.2021, however complainants failed to clear the same. The respondent upon failure of the complainant to clear the dues was constrained to issue due reminder letter dated 29.06.2022.



- (iii) At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. It is imperative to bring the attention of this Authority that the RERA Act 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 complainant cannot be construed to fall within the ambit of RERA Act. That the complainant has failed to provide the correct/complete facts that she is investor and not allottee therefore, the same are reproduced hereunder for proper adjudication of the present matter.
- (iv) 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 being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 22.12.2016, whereby seeking allotment of unit no. 126, admeasuring 1911 sq. ft super area on the first floor of the project having a basic sale price of Rs.80,26,200/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.
- (v) That since the complainant had opted for the investment return plan, a Memorandum of Understanding dated 02.01.2017 was executed between the parties, which was completely a separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per



clause 2 of the MoU, the MoU was effective from 02.01.2017 and as per clause 8 of the MoU, the returns were to be paid till notice of possession. It is also submitted that as per clause 14 of the MoU, the complainant had duly authorised the respondent to put the said unit on lease.

- (vi) That by no stretch of imagination it can be concluded that the complainant is "allottee/consumer." The complainant is simply investor who approached the respondent for investment opportunities and for a steady assured returns and rental income.
- (vii) That as the complainant in the present complaint is seeking the relief of assured return, which is not maintainable before the Authority upon enactment of the BUDS Act. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- (viii) That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties 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. Thus, 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 complainant is raising her grievance.
- (ix) That as per clause 5.2 of the 'BBA', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the agreement or from start of construction, whichever is later and apply for grant of occupancy/completion certificate. It is submitted that as per clause 5.4 of the agreement an additional 6 month grace period was allotted to the respondent post



expiry of the aforesaid period. Accordingly, the due date of delivery of possession in the present case is 36 months + 6 months grace period to be calculated from 02.01.2017, and the due date of possession in the instant case comes out to be 02.07.2021.

- (x) That the respondent issued demand request/reminder to the complainant to clear the outstanding dues against the booked unit. It is to be noted that the complainant miserably failed to comply the payment plan under which the unit was allotted to her and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs.1,10,74,016/- against the total due amount of Rs.2,12,31,098/-. It is to be noted that there is still an outstanding due of Rs.1,01,57,082/- which is to be paid by the complainant against the unit booked. Further, against the above said amount paid by the complainants, the respondent had already paid Rs.56,41,900/- as assured return to the complainant.
- (xi) That though the complainant may have cleared the basic sale price of the said commercial property, however, she is still liable to pay all other charges such as VAT, interest, registration charges, security deposit, duties, taxes, levies etc. as and when demanded.
- (xii) That the respondent is raising the VAT demands as per the government regulations. It is pertinent to mention here that the respondent has not availed the amnesty scheme under Rul 49A of HVAT Rules, 2003, as evident from the list of builders as circulated by the Excise & Taxation Department Haryana.
- (xiii) That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances



which were beyond the control of the respondent and in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions, the respondent was entitled for extension of time period for completion. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts which were beyond the power and control of the respondent. Due to the above reasons, the project in question got delayed from its scheduled timeline. However, the respondent is committed to complete the said project in all aspect at the earliest.

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 those undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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.....(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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 complainants being investor.**

11. The respondent has taken a stand that the complainant is an investor and not an allottee/consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The Authority observes 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 dated 05.01.2017, it is revealed that the complainant is a buyer, and she has paid total price of Rs.1,10,74,016/- to the promoter towards purchase of a 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;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, 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. In view of the above, the contention of promoter that the allottee being investor is not entitled to protection of this Act stands rejected.

**F. II Objection regarding the project being delayed because of force majeure circumstances.**

12. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities etc. As per clause 5.2 & 5.4 of the agreement dated 05.01.2017, the possession of the unit in question was to be offered within a period of 48 months from the date of execution of buyer's agreement or start of construction whichever is later along with a grace period of 6 months. Accordingly, the due date of possession has



been calculated as 48 months from the date of execution of buyer's agreement, being later. Further, a grace period of 6 months has already been granted to the respondent-promoter and thus, no period over and above grace period of 6 months can be given to the respondent-builder.

**G. Findings on the relief sought by the complainant.**

**G.I. Direct the respondent to make payment towards assured return.**

**G.II Direct the respondents to pay delayed interest on amount paid.**

**G.I Assured Return:**

13. The complainant in the present complaint is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 05.01.2017. The complainant has submitted that as per clause 19 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.1,91,100/- with effect from 05.01.2017. Further, it was also agreed vide clause 8 of the said MoU that the responsibility of assured returns to be paid by the respondent would cease on notice of possession. The complainant is seeking unpaid assured returns on monthly basis as per the MoU dated 05.01.2017 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.
14. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties 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. Thus, 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 complainant is raising her grievance.



15. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced 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;"*

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

16. The MoU dated 05.01.2017 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. 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.

17. It is pleaded on behalf of respondent/builder 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 the plea advanced 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.*

18. 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;*

19. 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.
20. 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.
21. 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.
22. 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 promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

23. In the present complaint, the assured return was payable as per clause 19 and clause 8 of the MoU dated 05.01.2017, which is reproduced below for the ready reference:

*19. "The Company shall pay a monthly return of Rs.1,91,100/- (Rupees One Lac Ninety-One Thousand One Hundred Only) on the total amount deposited till signing of this MOU, with effect from 05/01/2017. Service tax if to be deposited same shall be paid extra by the company."*

*8. That the responsibility of paying assured returns to be paid by the company shall cease on Notice of Possession."*

24. Thus, the assured return was payable @Rs.1,91,100/- per month w.e.f. 05.01.2017, till the notice of possession is issued to the complainant.
25. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 05.01.2017, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 05.01.2017. Further, it is to be noted that the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, whereas the possession of the subject unit has not been offered till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing.



Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.1,91,100/- per month from the date i.e., 05.01.2017 till notice of possession is issued to the complainant as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.

**G.II Delay Possession Charges:**

26. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

27. Clause 5.2 and 5.4 of the buyer's agreement dated 05.01.2017 provides for handing over of possession and is reproduced below: -

*5.2 "That the company shall complete the construction of the said building/complex within which the said space is located within 48 months from the date of execution of this agreement or from the start of construction whichever is later and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues.*

*5.4 That the allottee hereby also grants an additional period of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period."*

28. **Due date of possession:** As per clause 5.2 and clause 5.4 of the buyer's agreement dated 05.01.2017, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of execution of buyer's agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in



complaint bearing no. CC/1328/2019) whichever is later plus 6 months of grace period. Therefore, the due date has been calculated as 48 months from the date of execution of buyer's agreement being later. Further a grace period of 6 months is allowed to the respondent being unqualified. Thus, the due date of possession come out to be 05.07.2021.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date i.e., 20.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
34. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.2 and clause 5.4 of the agreement dated 05.01.2017, the possession of the subject unit was to be delivered by 05.07.2021. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to handover possession of the subject shop/unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its



obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

35. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the BBA or in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is Rs.1,91,100/- per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that she will be entitled for this specific amount from 05.01.2017 upto the notice of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as her money is continued to be used by the promoter even after the promised due date and in return, she is to be paid either the assured return or delay possession charges whichever is higher.

36. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of



possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

37. In the present complaint, as per clause 19 read with clause 8 of the MoU dated 05.01.2017, the amount on account of assured return was payable from 05.01.2017 upto the notice of possession. The counsel for the respondent vide proceedings dated 25.09.2024 has stated that the occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, possession of the subject unit has not been offered by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.1,91,100/- per month from the date i.e., 05.01.2017 till notice of possession is issued to the complainant as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.

**G.III Direct the respondent to pay guaranteed return and lease rental as per MoU and to put the unit on lease.**

38. The complainant is seeking additional reliefs w.r.t guaranteed return, lease rental as well as putting the unit on lease under clause 9, clause 13 and clause 14 of the MoU dated 05.01.2017 respectively. The Authority observes that vide clause 14 of the MoU, the complainant-allottee had duly authorised the respondent-promoter to put the said unit on lease. Further, vide clause 9 of the MoU, it was agreed between the parties that the respondent-promoter shall pay Rs.100/- per sq.ft. per month rent to the allottee from possession till first lease. Furthermore, vide clause 13 of the MoU, the complainant-allottee had



duly authorized the respondent-promoter to finalize the terms for leasing the said premises with any prospective lessee with minimum price of Rs.100/- per sq.ft. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent-promoter is directed to put the unit allotted to the complainant on lease and to pay agreed rent to the complainant-allottee from possession till first lease as well to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 05.01.2017.

**G.IV Direct the respondent to demarcate the unit and offer possession of the unit in habitable condition after obtaining the occupation certificate.**

39. The Authority observes that as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Further, as per Section 11(4)(a) of the Act, 2016, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or rules and regulations made thereunder or the agreement for sale. Therefore, in view of the above, the respondent/promoter is directed to provide specifications regarding unit in question to the complainant-allottee within a period of 1 month from the date of this order.
40. Furthermore, as the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, the respondent is directed to offer possession of the subject unit to the complainant within a period of 60 days from the date of this order.





**G.V Direct the respondent to refund the PLC charges.**

41. The complainant has submitted that the respondent has charged Rs.9,55,500/- towards PLC without even providing the copy of the approved floor plan and layout plan showing the unit allotted to her is at preferential location. The respondent has submitted that the PLC charges paid by the complainant against the subject unit were upon the request of the complainant against the preferential location and that to upon going through the plans and approvals as shown to her.
42. After considering the documents available on record as well as submissions made by the parties, it is determined that the respondent has miserably failed in disclosing the preferential location against which the preferential location charges has been levied. Further, as per Section 19(1) of the Act, 2016, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Thus, the Authority is of view that the respondent/promoter can charge amount on account of preferential location charges from the complainant only on furnishing details and proof to the complainant about PLC applicability on the unit opted by her within a period of one month failing which the respondent shall refund the amount so collected from the complainant on account of PLC.

**H. Directions of the authority**

43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

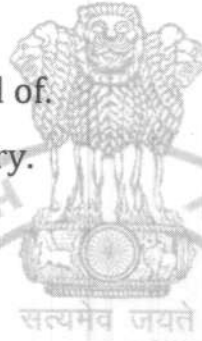


obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.1,91,100/- per month from the date i.e., 05.01.2017 till notice of possession is issued to the complainant as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent/promoter 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 complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
- iii. The respondent/promoter is directed to offer possession of the subject unit to the complainant within a period of 60 days from the date of this order.
- iv. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU dated 05.01.2017.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of payable assured returns.
- vi. The respondent/promoter is directed to put the unit allotted to the complainant on lease and to pay agreed rent to the complainant-allottee from possession till first lease as well to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 05.01.2017.



- vii. The respondent/promoter is directed to provide specifications regarding the unit in question to the complainant-allottee within a period of 1 month from the date of this order.
- viii. The respondent/promoter is directed to furnish details and proof to the complainant about PLC applicability on the unit opted by her within a period of one month failing which the respondent shall refund the amount so collected from the complainant on account of PLC.
44. Complaint stands disposed of.
45. File be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.11.2024