BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order pronounced on: 23.04.2025

Name of the Builder		**Neo Developers Private Limited**	
Project Name		**Neo Square**	
S.no.	**Complaint No.**	**Complaint title**	**Attendance**
1.	CR/6000/2022	Rajiv Gupta and Preetika Gupta V/s M/s Neo Developers Pvt. Ltd.	Amit Gupta (Complainants) Venket Rao (Respondent)
2.	CR/6093/2022	Rajiv Gupta and Preetika Gupta V/s M/s Neo Developers Pvt. Ltd.	Amit Gupta (Complainant) Venket Rao (Respondent)

CORAM:	
Ashok Sangwan	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Neo Square**" being developed by the same respondent/promoter i.e., **NEO Developers Private Limited.** The terms and conditions of the

builder buyer's agreements fulcrum of the issue involved in all these cases pertains to allotment and possession of the units in question along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram

Clause-10 *"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."*

1. Completion certificate- 14.08.2024

2. DTCP License no. *102 of 2008 dated 15.05.2008 valid upto 14.05.2025* - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.

3. Nature of Project- Commercial Colony

4. RERA registration –109 of 2017 dated 24.08.2017, valid upto 22.02.2024

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring	Date of execution of agreement for sale	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/6000/2022 Rajiv Gupta and Preetika Gupta V/s M/s Neo Developers Pvt. Ltd. DOF-21.09.2022	Reply received on 24.05.2023	Shop no. 43, Ground floor, 667 sq.ft. (super area) (As on page no. 57 of complaint)	18.05.2018 (As on page no. 54 of complaint)	Due date-15.12.2019 (Calculated from date of start of construction) Offer of possession-Not offered	TSC: Rs.81,50,740/- (as per BBA on page 39 of reply) AP: Rs.85,54,519/- (as per BBA on page 39 of reply)	Assured Return, Possession, DPC, CD.

2.	CR/6093/2022 Rajiv Gupta and Preetika Gupta V/s M/s Neo Developers Pvt. Ltd. DOF-21.09.2022	Reply received on 24.05.2023	Shop no. 42, Ground floor, 671 sq.ft. (super area) (As on page no. 57 of complaint)	18.05.2018 (As on page no. 54 of complaint)	Due date-15.12.2019 (Calculated from date of start of construction) Offer of possession-Not offered	TSC: Rs.81,99,620/- (as per BBA on page 57 of complaint) AP: Rs.85,54,519/- (as per BBA on page 59 of complaint)	Assured Return, Possession, DPC, CD.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form

DOF- Date of filing complaint
TSC- Total Sale consideration
AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/6000/2022 titled as Rajiv Gupta and Preetika Gupta V/s Neo Developers Pvt. Ltd.*** are being taken into consideration for determining the reliefs of the allottee(s) qua allotment and possession of the unit in question along with delayed possession charges.

A. Project and unit related details

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

CR/6000/2022 titled as Rajiv Gupta and Preetika Gupta V/s Neo Developers Pvt. Ltd.

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. 43, Ground floor (page 57 of complaint)
5.	Unit area admeasuring	667 sq. ft. (super area)
6.	Date of execution of apartment buyer's agreement	18.05.2018 (page 36 of reply)
7.	MOU dated	14.10.2014 (page 26 of reply)
8.	Possession clause as per MOU Dated 14.10.2014	10. 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.
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. 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	15.12.2019 (Calculated from date of start of construction)
11.	Total sale consideration	Rs.81,50,740/- (as per BBA on page 39 of reply)
12.	Amount paid by the complainant	Rs.85,54,519/- (as per BBA on page 39 of reply)
13.	Occupation certificate /Completion certificate	Not obtained
14.	Offer of possession	Not obtained

B. Facts of the complaint

8. The complainants have made the following submissions: -

I. That in the month of October 2014, the developer represented to the complainants that it is in possession of a large parcel of land on Dwarka Expressway, Sector-109, Gurugram and has received the requisite permissions, sanctions and licenses from the concerned authorities to develop a commercial project in the name and style of "Neo Square". That the developer further represented that the said project is very lucrative and that the complainants should invest in it as fast as possible for procuring maximum returns. The developer further promised to the complainants that under the assured monthly returns plan, the complainants would be paid certain sums of money per month, until the allotted unit/shop is leased out.

II. That relying on the developer's representations, warranties and promises, the complainants invested their hard-earned money into the said project and paid the entire sale consideration of Rs.85,54,519/- to the developer vide cheque nos. 000034 and 000038 drawn on HDFC Bank, Bengali Market.

III. That a memorandum of understanding dated 14.10.2014 was executed between the complainants and developer, and further an allotment letter dated 14.10.2014 was issued by the developer in favour of the complainants, whereby the complainants were allotted unit no, 51 on the Ground Floor of the said project having super area approx. 675 sq. ft. and carpet area 337.5 sq. ft. That as per the MOU, the developer had a contractual obligation to complete the construction of the said project and hand over the possession of the said unit to the complainant complete in all respects, within 48 months i.e. latest by 14.10.2018. Further, the developer had promised to pay assured monthly returns of Rs.93,379/- per month to the complainants till the commencement of the first lease of the said unit.

IV. That thereafter, amidst miserably failing to carry out the construction as per timelines, on 30.03.2017 the developer raised an additional VAT demand of Rs.4,28,423/- from the complainants and threatened to charge interest @18% in case of non-payment of the amount.

V. That the layout of the said project was substantially changed and the units allotted to the complainants were also shifted to less premium locations. The allotted unit number was arbitrarily changed from shop no. 51 to shop no. 43 and even the carpet area of the unit was reduced from 337.5 sq. ft. to 333.5 sq. ft.

VI. That from January 2019 onwards, the developer stopped paying assured monthly returns and the cheques given by the developer started bouncing due to 'insufficient funds'. When the complainants raised the issue, the developer requested the complainants not to initiate any legal proceedings as the same would destroy its

reputation and further promised to start paying the assured monthly returns soon. Not wishing to spoil the relations and with hefty amounts already invested with the developer, the complainants did not initiate cheque bounce proceedings under Section 138 of the N.I. Act and waited patiently for the developer to honour its commitments.

VII. That thereafter, instead of honouring its commitments to pay the assured monthly returns, the developer in December 2019 sent a letter out of the blue, stating that it would not be paying assured monthly returns. This was in total contradiction to the promises made by the developer. Further, the developer failed to provide TDS certificates to the complainants for the TDS deducted from the previous assured monthly return payments. This conduct of the developer is clearly an unfair trade practice and has caused grave unnecessary prejudice upon the complainants, who had further financial commitments based upon the presumption of receiving the assured monthly returns.

VIII. That in January 2020, a new frivolous demand notice of Rs.6,10,297/- towards 'VAT outstanding' was sent by the developer to the complainants. It is pertinent to mention herein that even before this illegal demand, the developer had made such demands in 2017 and the complainants had readily cleared all the VAT payments, after which the developer had sent an email stating that no dues are payable. However, despite the same being an admitted position, developer again raised this demand without giving any legal basis on the basis of which such demand is being made, as VAT already has been superseded by the GST regime.

IX. That due to the illegal actions of the developer, the complainants sent a legal notice dated 07.02.2020 to the developer, calling upon the developer to refund the entire sale consideration of Rs.3,42,05,943/- paid by the complainants and their family members to the developer towards booking of three units in the said project, along with interest@18% p.a. till the date of refund, and to pay the outstanding assured monthly returns and a further sum of Rs. 25,00,000/- towards mental trauma and agony caused to the complainants. The legal notice has not been replied to by the developer.

X. That when the complainants refused to accede to the illegal demands by the developer, the developer sent a 'final notice' dated 07.06.2021, containing completely false claims regarding 'outstanding amounts' and further threatened to cancel the allotment and resell the said unit if the demanded amount was not paid before 21.06.2021.

XI. That despite 8 years having passed, neither possession has been offered, nor the arrears of assured monthly return have been paid which were abruptly stopped in 2019, and further the developer has threatened to illegally cancel the allotment of the complainants, even though full sale consideration has been paid to the developer. Due to all the aforesaid, the complainants are constrained to file this present instant complaint.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):

i. Direct the respondent to handover possession, to pay delayed interest on amount paid and execute conveyance deed in their favour.

ii. Direct the respondents to make payment towards assured return.

iii. Direct the respondent to refund the excess amount taken towards VAT and also to withdraw the illegal VAT demand letter dated 22.01.2020.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds:

i. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "Neo Square" situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to opt for the investment return plan of the said project. Accordingly, a Memorandum of Understanding dated 14.10.2014 was executed between the parties for receiving returns as per the investment return plan. That as per the MOU, it was agreed that return of an amount of Rs.93,379/- will be paid to the complainants from 14.10.2014. Further as per clause 8 of the MOU the said returns were to be paid from 24.08.2016 till the commencement of first lease.

ii. That along with the said MOU, a provisional allotment letter was issued to the complainants for provisionally allotting a unit bearing no. 51, Ground Floor in the said project. It is further submitted that after the execution of the MOU, the complainants were called upon many times by the respondent to execute the builder buyer agreement. However, the complainants failed to do so and after much persuasion, only on 18.05.2018 the complainants came forward to execute the buyer agreement dated 18.05.2018.

iii. That as per buyer agreement, the shop bearing no. 43 on the ground floor having super area of 667 sq.ft. and a basic sale consideration of Rs.81,50,740/- was finally allotted to the complainants.

iv. That the complainants after being well satisfied and with full knowledge and understanding of the terms and conditions, executed the buyer agreement dated 18.05.2018 on their own volition. In the buyer's agreement, the complainants agreed and accepted that the area of the allotted unit was tentative and subject to change at the time of approval of building plans and on completion of the construction. It is further pertinent to mention that the complainants have also issued a "no objection certificate dated 18.05.2018, wherein complainants have agreed that without any protest and with wilful consent agreed and confirmed that no future consent of the complainants shall be required if there is changes in the said complex such as change in the position of the said space, change in its dimensions, change in its area or change in its number or change in the height of the building, change in number of floors; change in zoning or change in usage.

v. That the as per clause 10 of the 'MOU' the due date for handing over of the possession was within 48 months from the date of execution of the agreement or from the start of construction, whichever is later.

vi. That it is pertinent to mention that this Authority in complaint bearing no. 1328 of 2019 titled as Ram Avtar Nijhawan vs M/s Neo Developers Pvt. Ltd." pertaining to the same project i.e., 'NEO Square' vide order dated 05.09.2019 held that the date of start of construction for the instant project was 15.12.2015 and the Authority also granted a period of 6 months as grace period.

Accordingly, the due date of delivery of possession comes out to be 15.06.2020.

vii. That on 07.02.2020, the complainants sent a legal notice to the respondent calling upon the respondent to refund the amounts paid against the sale consideration of the unit along with interest @18% p.a. Therefore, it is abundantly clear that the complainants were not interested in continuing with the said unit.

viii. That the request for refund by the complainants were before the due date of possession i.e. 15.06.2020, meaning thereby that in the present case the complainants are surrendering their unit. Therefore, in view of Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of Earnest Money by Builder) Regulations, 2018 dated 05.12.2018, the respondent herein is entitled for forfeiture of 10% earnest money.

ix. That it is a matter of fact, that time was essence in respect to the complainant obligation for making the respective payment and, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.

x. That the respondent had been running behind the complainants for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. It is humbly submitted that though the complainants may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, interest, registration charges, security deposit, duties, taxes, levies etc. when demanded.

xi. That the complainants failed to clear the outstanding dues payable towards statutory taxes and for this reason the respondent was forced to issue the reminders for payment dated 22.01.2020 and reminder dated 17.10.2020.

xii. That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent authority. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the lumpsum scheme/amnesty scheme under Rule 49A of HVAT Rules, 2003. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement.

xiii. That in compliance of the terms and conditions of the above said MOU dated 14.10.2014 executed between the parties and upon the amount paid by the complainants i.e., Rs.85,54,519/- till the execution of the MOU, respondent had paid Rs.48,25,918/- as assured return payment.

xiv. That the respondent was always prompt in making the payment of assured return as agreed under MoU and has been paying the committed assured return of Rs.22,500/- for every month to the

complainant without any delay since 24.08.2016. As of 2020, the complainant has already received an assured return of Rs.7,70,250/- . However, the respondent could not pay the assured return due to enactment of BUDS Act.

xv. That without prejudice and without admitting any averments of the complainants, after the enforcement of the "Banning of Unregulated Deposit Schemes Act, 2019" the respondent was constrained to cease all payment pertaining to assured return to all its allottees who had opted for the same.

xvi. That under the scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return. Also, the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.

xvii. That recently a writ petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. vs Union of India & Anr. - CWP-26740-202, on similar grounds of directions passed for payment of assured return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the petitioner therein, seeking recovery of deposits till the next date of hearing. It is further submitted that in a judgment dated 29.09.2020 passed by the Uttar Pradesh Real Estate Appellate Tribunal at Lucknow, in appeal bearing no. 211/2022, titled as "Meena Gupta vs One Place Infrastructure Pvt Ltd", the Appellate Tribunal held that assured return is independent commercial

arrangements between the parties which sometimes a promoter/developer offer in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. Further the Ld. Appellate Tribunal held that there is no provision under the scheme of the Act, 2016 for examining and deciding the issue relating to the provisions of assured return.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. 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

14. 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

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.*

16. 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 relief sought by the complainants:

F. I Direct the respondent to handover possession, to pay delayed interest on amount paid and execute conveyance deed in their favour.

F.II Direct the respondents to make payment towards assured return.

Assured Return:

17. The complainants in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the MoU dated 14.10.2014. The complainants have submitted that as per clause 17 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.93,379/- with effect from 14.10.2014. 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 commencement of first lease. The complainants are seeking unpaid assured returns on monthly basis as per the MoU dated 14.10.2014 at the rates mentioned therein. It is pleaded by

the complainants that the respondent has not complied with the terms and conditions of the said MoU.

18. The MoU dated 14.10.2014 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. 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.

19. 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 '*d*eposit' 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 properly as specified in terms of the agreement or arrangement.

20. 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;

21. 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.

22. 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.

23. 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.

24. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The 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.

25. In the present complaint, the assured return was payable as per clause 17 and clause 8 of the MoU dated 14.10.2014, which is reproduced below for the ready reference:

> ***17.*** *"The Company shall pay a monthly return of* ***Rs.93,379/-*** *(Rupees Ninety-Three Thousand Three Hundred Seventy Nine Only)* ***on*** *the total amount deposited till signing of this MOU,* ***with effect from 14-Oct-14****. 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 commencement of first lease****."*

26. Thus, the assured return was payable @Rs.93,379/- per month w.e.f. 14.10.2014, till the commencement of first lease after obtaining of occupation/completion certificate.

27. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 14.10.2014, 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 14.10.2014. Further, it is to be noted that the occupation/completion certificate for the project in question has already been obtained by the respondent on 14.08.2024, whereas neither the possession of the subject unit has not been offered nor the unit of the complainants has been put on lease 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 complainants at the agreed rate i.e., @Rs. 93,379/- per month from the date the payment of assured return was stopped till the commencement of the first lease on the said unit as per the memorandum of understanding dated 14.10.2014.

Delay Possession Charges:

28. In the present complaint, the complainants intend to continue with the project and are 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."*

29. Clause 10 of the MoU dated 14.10.2014 provides for handing over of possession and is reproduced below: -

> ***10.*** *"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.*

30. **Due date of possession:** As per clause 10 of the MoU dated 14.10.2014, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of execution of that 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. Therefore, the due date has been calculated as 48 months from the date of date of commencement of construction. Thus, the due date of possession come out to be 15.12.2019.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.*

32. 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.

33. 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., 23.04.2025

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

34. 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;"*

35. Therefore, interest on the delay payments from the complainants 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 complainants in case of delay possession charges.

36. 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. By virtue of clause 10 of the MoU dated 14.10.2014, the possession of the subject unit was to be delivered by 15.12.2019. The occupation/completion 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.

37. 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.93,379/- 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 they will be entitled for this specific amount from 14.10.2014 upto the commencement of first lease which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. 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 allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delay possession charges whichever is higher.

38. 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.

39. In the present complaint, as per clause 17 read with clause 8 of the MoU dated 14.10.2014, the amount on account of assured return was payable from 14.10.2014 upto the commencement of first lease. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on lease by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.93,379/- per month from the date, the payment of assured return was stopped till the commencement of the first lease on the said unit as per the memorandum of understanding dated 14.10.2014.

40. Further the complainants are seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

41. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on

payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

F.III Direct the respondent to refund the excess amount taken towards VAT and also to withdraw the illegal VAT demand letter dated 22.01.2020.

42. The complainants have contended that the respondent has illegally charged amount from her towards VAT submitting that in January 2020, a demand notice of Rs.6,10,297/- towards 'VAT outstanding' was sent by the developer to the complainants. It is pertinent to mention herein that even before this illegal demand, the developer had made such demands in 2017 and the complainants had readily cleared all the VAT payments, after which the developer had sent an email stating that no dues are payable. However, despite the same being an admitted position, developer again raised this demand without giving any legal basis on the basis of which such demand is being made, as VAT already has been superseded by the GST regime. But the version of respondent is otherwise and took a plea that respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed,

no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants vis- à-vis the total area of the particular project. However, the complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainants.

G. Directions of the authority

43. Hence, the authority hereby passes this order and issue 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 complainants at the agreed rate i.e., Rs.93,379/- per month from the date the payment of assured return was stopped till the commencement of the first lease on the said unit as per the memorandum of understanding.

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, 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 handover possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them, on payment of outstanding dues if any, within 60 days. The respondent is further

directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

iv. The respondent/promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants vis- à-vis the total area of the particular project. However, the complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainants.

v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

45. The complaints stand disposed of.

46. Files be consigned to registry.

(Ashok Sangwan)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.04.2025