

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

Order pronounced on: 14.05.2025

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/50/2024	Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd.	Rajinder Singh (Complainants) Pankaj Chandola (Respondent)
2.	CR/59/2024	Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd.	Rajinder Singh (Complainants) Pankaj Chandola (Respondent)
3.	CR/60/2024	Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd.	Rajinder Singh (Complainants) Pankaj Chandola (Respondent)
4.	CR/46/2024	Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd.	Rajinder Singh (Complainants) Pankaj Chandola (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of 4 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
<i>Clause-10 "That the company shall complete the construction of the said building/complex within which the said space is located within 36 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."</i>
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/50/2024 Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd. DOF-24.01.2024	Reply received on 24.04.2024	Unit no.-58-C, Ground floor, 275 sq.ft (As on page no. 36 of complaint)	01.11.2016 (As on page no. 32 of complaint)	Due date-01.11.2019 (Calculated from date of agreement being later) Offer of possession-Not offered	BSP: Rs. 22,68,750/- (As on page no. 23 of complaint) AP: Rs.26,30,274/- (As on page no. 27 of reply)	Assured Return, Possession, DPC, CD.
2.	CR/59/2024 Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd. DOF-24.01.2024	Reply received on 24.04.2024	Unit no.-58-B, Ground floor, 275 sq.ft (As on page no. 36 of complaint)	01.11.2016 (As on page no. 32 of complaint)	Due date-01.11.2019 (Calculated from date of agreement being later) Offer of possession-Not offered	BSP: Rs. 22,68,750/- (As on page no. 23 of complaint) AP: Rs.26,30,274/- (As on page no. 27 of reply)	Assured Return, Possession, DPC, CD.
3.	CR/60/2024 Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd. DOF-24.01.2024	Reply received on 24.04.2024	Unit no.-58-D, Ground floor, 275 sq.ft (As on page no. 50 of complaint)	01.11.2016 (As on page no. 32 of complaint)	Due date-01.11.2019 (Calculated from date of agreement being later) Offer of possession-Not offered	BSP: Rs. 22,68,750/- (As on page no. 22 of complaint) AP: Rs.26,30,274/- (As on page no. 27 of reply)	Assured Return, Possession, DPC, CD

4.	CR/46/2024 Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor V/s M/s Neo Developers Pvt. Ltd. DOF- 24.01.2024	Reply received on 24.04.2024	Unit no.-58-A, Ground floor, 505 sq.ft. (As on page no. 44 of complaint) (As on page no. 57 of complaint)	01.11.2016 (As on page no. 34 of complaint)	Due date- 01.11.2019 (Calculated from date of agreement being later) Offer of possession- Not offered	BSP: Rs. 41,66,250/- (As on page no of complaint) AP: Rs. 48,30,137/- (As on page no. 27 of reply)	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
BSP- Basic Sale Price
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/50/2024 titled as Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor 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/50/2024 titled as Dr. Harmeet Singh Kapoor & Dr. Satvinder Kapoor 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.	Unit no.-58-C, Ground floor (As on page no. 36 of complaint)
5.	Unit area admeasuring	275 sq.ft. (As on page no. 36 of complaint)
6.	Date of MoU	01.11.2016 (As on page no. 19 of complaint)
7.	Date of execution of apartment buyer's agreement	01.11.2016 (As on page no. 32 of complaint)
8.	Possession clause	11. "That the company shall complete the construction of the said building/complex within which the said space is located within 36 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." (As on page no. 22 of complaint)
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	01.11.2019 (Calculated from date of agreement being later)
11.	Basic sale consideration	Rs.22,68,750/- (As on page no. 23 of complaint)
12.	Amount paid by the complainant	Rs.26,30,274/- (As on page no. 27 of reply)
13.	Occupation certificate	14.08.2024 (as per DTCP website)
14.	Offer of possession	Not offered
15.	Reminder	30.10.2020 (page 72 of complaint)
16.	Final Notice	07.06.2021 (page 73 of complaint)

B. Facts of the complaint

8. The complainants have made the following submissions: -

- I. That the complainants were assured by directors of the respondent company that they have already obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan and further assured that the construction of the project will be completed within 36 months of purchasing the unit.
- II. That the director and employees of the company finally induced the complainant to purchase the unit in their investment return plan wherein the company would make the payment at the rate of Rs.127.4/- per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainants at the time of booking or at the time of execution of Memorandum of Understanding (MOU). Mr. Ashish Anand and Mr. Manish Bhola, Directors of the company, assured the complainants that there will be no delay in making payment towards the investment return under any circumstances whatsoever.

- III. That the complainants entered into Memorandum of Understanding with the company on 01.11.2016 and MOU was signed by Mr. Manish Bhola, Director of the said company. Further, it was assured that the investment return would be paid till the property is not leased out.
- IV. That based on the above inducement and assurance of Mr. Manish Bhola and the employees of the company, the complainants purchased 4 Commercial shops/units on the Ground floor and executed the Memorandum of Understanding dated 01.11.2016 having area admeasuring 275 sq. ft. super built up area at the rate of Rs.8,250/- per sq. ft. wherein commercial shop/unit bearing no. 58D was assigned on ground floor. That on the misrepresentation by Mr. Ashish Anand and Mr. Manish Bhola Directors of the respondent company, the complainants have already purchased shop/unit no-58A and also invested in shop/unit no 58B, 58C, 58D.
- V. That the complainants paid a sum of Rs.23,70,844/- towards consideration of the commercial shop/unit no. 58D, vide cheque no. 067722 dated 28.10.2016. It was agreed under the MOU that a monthly return of Rs.35,035/- shall be payable as investment return from 01.11.2018. The price was given at discounted rate since the complainants were getting the assured return after 2 years from the date of entering the BBA and MoU and the assured return of initial 2 year was adjusted in the price of the commercial unit.
- VI. That the respondent on 14.11.2018 raised the demand of EDC and IDC for shop/unit no. 58D on Ground floor of the project amount to Rs.1,45,992/-. The said demand was duly fulfilled by the

complainants by making the payments of Rs.1,45,992/- on 26.11.2018.

- VII. That the company demanded VAT from complainants, several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to Rs.1,13,438/- on 30.03.2017 and the same was paid by the complainant vide cheque no. 098222 for which receipt dated 18.05.2017 was issued by the respondent. Later the respondent vide letters dated 22.01.2020 again raised demand of Rs. 1,88,582/- for shop/unit no. 58C towards the VAT. It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent-company and due to the said reason, the respondent-company is demanding VAT again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside.
- VIII. That the payments of investment return were completely stopped and are due since January 2019. The mala fide intentions of the company also became conspicuous when the company sent a letter dated 18.12.2019 communicating its unilateral decision of not paying any investment return till the completion of the project.
- IX. That the company sent an email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibility of paying monthly assured return, the company invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in MOU. The company is forcing complainants to sign lease assignment form by which the company

intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliterated from its responsibility to pay the monthly investment return and threatens that if the complainants do not sign the lease assignment form, then the company will forfeit our unit in accordance with MOU. This shows that the company from the inception had no intention to pay the investment return to the buyers and had prepared biased MOU to suit its whims and wishes.

- X. That the respondent sent letter dated 01.10.2020 and 21.10.2020 for registration of BBA and MoU with revised fee. On 30.10.2020 the respondent again sent illegal demands towards the VAT without providing explanation for such demand. Later, the respondent again sent letter dated 22.01.2022 for illegal demands of VAT without providing explanation for such demand towards the unit.
- XI. That the wrongful acts of the company are not only limited to this, the company deducted TDS on the investment return paid by it, but till date the company has neither issued TDS certificate for the same nor deposited the deducted tax to the authorities due to while tax liabilities of the complainants are increased due to the fault of the respondent.
- XII. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of almost 8 years. The structure of only office building is constructed but which is also nowhere near to completion. The building wherein food court and restaurants as

were explained at the time of entering MOU, has been constructed up to 2nd floor only and there is no sign of construction of the Tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment zone were shown in the brochure. It has also come into complainant's knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building. The company has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the investment return and compete the project.

- XIII. That the company sent final notices dated 07.06.2021 raising illegal demands of dues and again no explanation was provided for the illegal demands by the respondent. Hence, the demand dated 07.06.2021 are liable to be set aside being illegal.
- XIV. That the complainants have filed the complaint before Economics Offences Wings Delhi on 16.03.2022 wherein FIR No- 0046/2022 has been filed under sections 406/420/120B against the respondent.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- i. Set aside the illegal demands of VAT made by the respondent vide letter dated 30.03.2017 and 22.01.2020.
 - ii. Direct the respondents to make payment towards assured return.
 - iii. Direct the respondent to pay delay possession charges and execute conveyance deed in their favour.
 - iv. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over of possession to complainants.

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

D. Reply by the respondent

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

- i. That despite repeated reminders and request, the respondent has not received outstanding amount from the complainant till date. Vide final notice/deemed cancellation letter dated 07.06.2021, it was brought to the very knowledge of the complainants that there exist an outstanding due of Rs.2,17,965/- which was required to be paid within 15 days from the date of final notice/deemed cancellation letter i.e., on or before 21.06.2021. It was further intimated to the complainants through the final notice/deemed cancellation letter that in case complainant failed to clear outstanding dues within the time period, the respondent would be compelled to consider this failure of complainant as breach of the terms and conditions of the MoU as well as the agreement and accordingly the unit no. 58-C in the project of the respondent shall be treated as cancelled from the next day following the last date of payment and the complainant shall be left with no lien, right, title, interest or claim of whatsoever nature in the said unit. It is submitted that post cancellation of the unit, the respondent requested the complainants to visit their office for the purposes of handing over the original documents in the custody of the complainants and for the purposes of executing the refund proceedings. However, the complainants despite of requests and reminders by the respondent deliberately and malafidely did not

- approached the respondent and due to which the refund proceedings could not be executed.
- ii. 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.
- iii. 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 apply to the respondent by submitting a booking application form dated 28.10.2016, whereby seeking allotment of unit no. 58C, admeasuring 275 sq. ft super area on the ground floor of the project having a basic sale price of Rs.22,68,750/- . The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.
- iv. That since the complainant had opted for the investment return plan, a Memorandum of Understanding dated 01.11.2016 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 complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per clause 18 of the MoU, the returns were to be paid from 01.11.2018 and as per clause 7 of the MoU, the returns were to be paid till notice of possession. It is also submitted that as per clause 12 of the MoU, the complainants had duly authorised the respondent to put the said unit on lease.
- v. That by no stretch of imagination it can be concluded that the complainants are "allottee/consumer." The complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income.
 - vi. That as the complainants in the present complaint are 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.
 - vii. That the complainants in the present complaint are 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 complainants are raising their grievance.
 - viii. That as per clause 11 of the 'MoU', 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. Accordingly, the due date of

delivery of possession in the present case is 36 months to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.

- ix. That the respondent issued demand request/reminder to the complainants to clear the outstanding dues against the booked unit. It is to be noted that the complainants miserably failed to comply the payment plan under which the unit was allotted to them and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainants as per the records of the respondent had only paid Rs.26,30,274/- against the total due amount of Rs.28,15,058/-. It is to be noted that there is still an outstanding due of Rs.1,84,784/- which is to be paid by the complainants against the unit booked. Further, against the above said amount paid by the complainants, the respondent had already paid Rs.2,80,280/- as assured return to the complainants.
- x. That though the complainants 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.
- xi. 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 Rule 49A of HVAT Rules, 2003, as evident from the list of builders as circulated by the Excise & Taxation Department Haryana.
- xii. 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.

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 objections raised by the respondent.

F. I. Objection regarding the complainants being investor.

17. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are 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 01.11.2016, it is revealed that the complainants are buyers, and they have paid a total price of Rs.26,30,274/- 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;"

18. 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 complainants are allottees as the subject unit was allotted to them 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 allottees being investor are not entitled to protection of this Act stands rejected.

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

19. 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, Covid-19 etc. First of all, the possession of the unit in question was to be offered by 01.11.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Further, the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-promoter leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid

reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

G.I Set aside the illegal demands of VAT made by the respondent vide letter dated 30.03.2017 and 22.01.2020.

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

G.II Direct the respondent to pay delay possession charges and execute conveyance deed in their favour.

20. The respondent has contended that despite repeated reminders and request, the respondent has not received outstanding amount from the complainant till date. Vide final notice/deemed cancellation letter dated 07.06.2021, it was brought to the very knowledge of the complainants that there exist an outstanding due of Rs.2,17,965/- which was required to be paid within 15 days from the date of final notice, failing which the unit shall be treated as cancelled from the next following day and the complainant shall be left with no lien, right, title, interest or claim of whatsoever nature in the said unit. The complainants have submitted that the respondent demanded VAT from complainants on several times on the same unit despite the fact that the same was paid at the time of very first demand only. The respondent raised the demand towards VAT amounting to Rs.1,13,438/- on 30.03.2017 and the same was paid by the complainant vide cheque no. 098222 for which receipt dated 18.05.2017 was issued by the respondent. Later, the respondent vide letters dated 22.01.2020 again raised demand of Rs.1,88,582/- on account of VAT without providing explanation for such demand. On 30.10.2020 the respondent again sent illegal demands of Rs.2,17,516/- towards the VAT. Thereafter, the company sent final notice dated 07.06.2021 raising illegal demands of dues and again no explanation was provided by the respondent. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 07.06.2021 is valid or not.

21. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainants have paid an amount of Rs.26,30,274/- against the basic sale consideration of Rs.22,68,750/-. As per clause 11 of the MoU, the due date for handing over of possession was 01.11.2019 whereas, the completion certificate for the project in question was obtained by the respondent on 14.08.2024. The respondent has contended that the complainants have failed to clear their outstanding dues, due to which their allotment was cancelled. However, in the instant case the complainants have already paid more than 100% of the basic sale consideration back in November 2016. Further, as per record, the respondent vide payment request letter dated 30.03.2017 raised a demand of Rs.1,13,438/- towards VAT which was duly paid by the complainants and the same was duly acknowledged by the respondent vide receipt dated 18.05.2017. Thereafter, on 22.01.2020, a demand towards VAT was again raised by the respondent and non-payment, a final notice dated 07.06.2021 was issued by the respondent. The authority is of view that since the amount demanded by respondent towards VAT vide letter dated 30.03.2017 has already been paid by the complainants, the further demand towards VAT on 22.01.2020 i.e., after coming into force of the GST and without any justification cannot be held valid. Thus, the final notice dated 07.06.2021, sent in continuation of the demand letter dated 22.01.2020 cannot be held valid in the eyes of law and is liable to be set aside. Moreover, it is determined that vide final notice dated 07.06.2021, the respondent had called upon the complainants to pay outstanding dues on or before 21.06.2021. Thus, the said letter cannot be treated as cancellation letter. In view of the above, the demand letter dated 22.01.2020 as well as final notice dated 07.06.2021 is hereby set aside.

Assured Return:

22. The complainants in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the MoU dated 01.11.2016. The complainants have submitted that as per clause 18 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.35,035/- with effect from 01.11.2018. Further, it was also agreed vide clause 7 of the said MoU that the responsibility of assured returns to be paid by the respondent would cease on notice of possession. The complainants are seeking unpaid assured returns on monthly basis as per the MoU dated 01.11.2016 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.
23. The respondent has submitted that the complainants in the present complaint are 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 complainants are raising their grievance.
24. 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 complainants are allottees.

25. The MoU dated 01.11.2016 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.
26. It is pleaded on behalf of respondent/promoter 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.*

27. 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;*

28. 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 promoter at the time of booking or immediately thereafter and as agreed upon between them.

29. 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.



30. The money was taken by the promoter 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 promoter 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.
31. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the respondent 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.
32. In the present complaint, the assured return was payable as per clause 18 and clause 7 of the MoU dated 01.11.2016, which is reproduced below for the ready reference:
17. "The Company shall pay a monthly return of **Rs.35,035/-** (Rupees Thirty Five Thousand And Thirty Five Only) on the total amount deposited till signing of this MOU, **with effect from 01-NOV-18**. 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.**"
33. Thus, the assured return was payable @Rs.35,035/- per month w.e.f. 01.11.2018, till the notice of possession is issued to the complainants.

34. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 01.11.2016, 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 01.11.2016. 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 the possession of the subject unit has not been offered to the complainants 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.35,035/- per month from the date i.e., 01.11.2018 till notice of possession is issued to the complainants as per the memorandum of understanding dated 01.11.2016, after deducting the amount already paid on account of assured return to the complainants.

Delay Possession Charges:

35. 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."*

36. Clause 11 of the MoU dated 01.11.2016 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 36 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.

37. **Due date of possession:** As per clause 11 of the MoU dated 01.11.2016, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 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 38 months from the date execution of agreement, being later. Thus, the due date of possession come out to be 01.11.2019.
38. **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.*
39. 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.

40. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
41. 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;"*
42. 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.
43. 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 11 of the MoU dated 01.11.2016, the possession of the subject unit was to be delivered by 01.11.2019. 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.

44. 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.35,035/- per month. If we compare this assured return with delay 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 allottees that they will be entitled for this specific amount from 01.11.2018 upto the notice of possession. Accordingly, the interest of the allottees 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.

45. 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.

46. In the present complaint, as per clause 18 read with clause 7 of the MoU dated 01.11.2016, the amount on account of assured return was payable from 01.11.2018 upto the notice of possession. The occupation/completion 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 complainants at the agreed rate i.e., @Rs.35,035/- per month from the date i.e., 01.11.2018 till notice of possession is issued to the complainants as per the memorandum of understanding dated 01.11.2016, after deducting the amount already paid on account of assured return to the complainants.
47. 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.
48. 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.

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

49. The complainants are seeking additional reliefs w.r.t restraining the respondent from entering the lease deed with 3rd party till the completion of project and handing over of possession to complainants. Since, the occupation/completion certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the above said relief become redundant.

H. Directions of the authority

50. 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 demand letter dated 22.01.2020 as well as final notice dated 07.06.2021 is hereby set aside.
 - ii. The respondent is directed to pay assured return to the complainants at the agreed rate per month from the date i.e., 01.11.2018 till notice of possession is issued to the complainants as per the memorandum of understanding dated 01.11.2016, after deducting the amount already paid on account of assured return to the complainants.
 - iii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.



- iv. The respondent is directed to handover possession of the unit to the complainants 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.
- v. The respondent shall not charge anything from the complainants which is not the part of the BBA/MoU dated 01.11.2016.
- vi. 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.
51. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
52. The complaints stand disposed of.
53. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2025