

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

Order pronounced on: 02.04.2025

Name of the Builder		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2205/2024	Ranvir Singh and Surendri Singh V/s M/s Neo Developers Pvt. Ltd.	Namrata Malik Adv. (Complainant) Vikas Adv. (Respondent)
2.	CR/2207/2024	Praveen Kumar and Ritu Chaudhary V/s M/s Neo Developers Pvt. Ltd.	Namrata Malik Adv. (Complainant) Vikas Adv. (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

agreement to sell against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and pending assured return.

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
Possession Clause as per MoU
<i>Clause-3 "..... 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. The Company on grant of Occupancy/Completion certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.</i>
1. Completion certificate- Not yet obtained
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 Complainants	Relief Sought
1.	CR/2205/2024 Ranvir Singh and Surendri Singh Vs NEO Developers Private Limited DOF- 21.05.2024	Reply received on 04.12.2024	Priority no.75, Third floor (As on page no. 30 of complaint)	24.08.2016 (As on page no. 25 of complaint)	Due date- 24.08.2019 (Calculated from the date of execution of agreement being later) Offer of possession- Not offered	TSC: Rs.24,31,703/- (As per Annexure R-10 at page 150 of reply) AP: Rs. 10,45,000/- (As on page 150 of reply)	Refund and assured return.
2.	CR/2207/2024 Praveen Kumar and Ritu Chaudhary Vs NEO Developers Private Limited DOF- 21.05.2024	Reply received on 04.12.2024	Priority no.74, Third floor (As on page no. 35 of complaint)	31.08.2016 (As on page no. 30 of complaint)	Due date- 31.08.2019 (Calculated from the date of execution of agreement being later) Offer of possession- Not offered	TSC: Rs.24,31,855/- (As per Annexure R-10 at page 150 of reply) AP: Rs. 10,45,000/- (As on page 150 of reply)	Refund and assured return.

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)

- 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.
- 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/2205/2024 titled as Ranvir Singh and Surendri Singh V/s Neo Developers Pvt. Ltd.** are being taken into consideration for determining the reliefs of the allottee(s) qua refund of the entire paid-up amount along with interest and others.

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/2205/2024 titled as Ranvir Singh and Surendri Singh 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.	Priority no.75, Third floor (As on page no. 30 of complaint)
5.	Unit area admeasuring	250 sq.ft. (super area) (As on page no. 30 of complaint)
6.	Date of MoU	24.08.2016 (page 60 of complaint)
7.	Date of execution of buyer's agreement	24.08.2016 (As on page no. 25 of complaint)
8.	Possession clause	3. 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. 62 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	24.08.2019 (Calculated from the date of execution of MoU being later)
11.	Total sale consideration	Rs.24,31,703/- (As per Annexure R-10 at page 150 of reply)
12.	Amount paid by the complainants	Rs.10,45,000/- (As on page 150 of reply)
13.	Occupation certificate	14.08.2024 (as per DTCP website)
14.	Offer of possession	Not offered
15.	Payment request/Reminder	02.05.2017, 22.01.2020, 30.10.2020, 15.09.2021 (page 145-149 of reply)
16.	Assured return paid	Rs.7,70,250/- (As on page 150 of reply)

B. Facts of the complaint

8. The complainants have made the following submissions: -

- I. That complainant for the purpose of present matter has made a SPA of himself and from his wife Surendri Singh in favour of Praveen Kumar.
- II. That by way of agreement dated 24.08.2016, the respondent allotted 250 sq. ft. super area, in the area designated to food court in the project of the respondent named "Neo Square", at Sector 109, Gurgaon. The allottee was allotted priority no.75 at 3rd Floor of mall in restaurant. That the project mainly aims for investment from

allottee where an assured return be paid in favour of the allottee monthly.

- III. That the lucrative offers of the respondent has allured the complainant to enter the agreement, wherein the respondent no.1 by way of agreement proposed for commercial space of 250 sq. ft. where the units were not allotted and a priority no.75 on 3rd Floor was only allotted and promised to be delivered in three years with specific demarcations of the unit.
- IV. That the said agreement enclosed the consideration amount of @250/- sq.ft. for 250 sq.ft. Accordingly, an amount of Rs.10,45,000/- alongwith other charges and tax, was made at the behest of demand letters.
- V. That the respondent has even undergone the payment of assured return of Rs.22,500 per month as paid last till 2020 against the allotment. The respondent has stopped the payment of assured return from 2021 and has not made a single monthly payment till date.
- VI. That the complainant has tried pillar to post all the possible ways to reach to the respondent on the status of non-payment of assured return not being paid for about 3 year and in the year 2023, the complainant has requested the respondents to clarify the status of non-payment of assured return by way of legal notice dated 14.12.2023 and status of the unit of complainant.
- VII. That the complainants have been cheated and harassed on the fake promises of delivery of possession of commercial space in the said mall and no response by the respondent on its non-payment of assured return - status till date despite the further lease agreement in 2023 till date.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainants along with interest at prescribed rate.
 - Direct the respondent to pay the arrears of assured return @Rs.22,500/- per month for 52 months (from March 2021 till filing of complaint) amounting to Rs. 11,70,000/- and till pendency of complaint.
 - Direct the respondents to pay litigation cost and compensation.
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:
- 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.
 - That the complainant with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "Neo Square" situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 06.08.2016, whereby seeking

allotment of priority no. 75, admeasuring 250 sq. ft. super area on the third floor of the project having a basic sale price of Rs.10,00,200/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

- iii. That since the complainant had opted for the investment return plan, a Memorandum of Understanding dated 24.08.2016 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 complainant in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the parties, the returns were to be paid from 24.08.2016 till the commencement of first lease. It is also submitted that as per clause 8(a) of the MoU, the complainant had duly authorised the respondent to put the said unit on lease.
- iv. That by no stretch of imagination it can be concluded that the complainant is "allottee/consumer." The complainant is simply investor who approached the respondent for investment opportunities and for a steady assured returns and rental income.
- v. 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.

- vi. That the first lease of the premises wherein the unit of the complainant is situated has already been executed with M/s Ayan Foods on 24.07.2020. Since, as per the terms of the MoU, the respondent has already fulfilled its obligation of payment of assured return and execution of first lease, the present complaint is infructuous.
- vii. That after commencement of first lease, the respondent has duly intimated the complainant about the signing of lease assignment form to come forward to sign the lease assignment as has been agreed in MoU. However, the complainant did not come to sign the lease assignment and therefore failed to fulfil his part of the obligations.
- viii. That as the complainant in the present complaint is seeking the relief of assured return, which is not maintainable before the Authority upon enactment of the BUDS Act. Further, any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- ix. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the RERA Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.
- x. That as per clause 3 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 24.08.2016, and the due date of possession in the instant case comes out to be 24.08.2019.

- xi. That the respondent issued demand request/reminder to the complainant to clear the outstanding dues against the booked unit. It is to be noted that the complainant miserably failed to comply the payment plan under which the unit was allotted to her and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs.10,45,000/- against the total due amount of Rs.24,31,703/-. It is to be noted that there is still an outstanding due of Rs.12,78,490/- which is to be paid by the complainant against the unit booked. Further, against the above said amount paid by the complainants, the respondent had already paid Rs.7,20,250/- as assured return to the complainant.
- xii. That though the complainant may have cleared the basic sale price of the said commercial property, however, she is still liable to pay all other charges such as VAT, interest, registration charges, security deposit, duties, taxes, levies etc. as and when demanded.
- xiii. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent and in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions, the respondent was entitled for extension of time period for completion. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by

various authorities/forums/courts which were beyond the power and control of the respondent. Due to the above reasons, the project in question got delayed from its scheduled timeline. However, the respondent is committed to complete the said project in all aspect at the earliest.

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 has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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 allottees/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 24.08.2016, it is revealed that the complainants are buyers, and have paid total price of Rs.10,45,000/- to the promoter towards purchase of a unit/space 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.

G. Findings on the relief sought by the complainants:

- G. I Direct the respondent to refund the entire amount paid by the complainants along with interest at prescribed rate.
- G.II Direct the respondent to pay the arrears of assured return @Rs.22,500/- per month for 52 months (from March 2021 till filing of complaint) amounting to Rs. 11,70,000/- and till pendency of complaint.
19. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be

prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

20. Clause 3 of the Memorandum of Understanding dated 24.08.2016 provides for handing over of possession and is reproduced below:

Clause-3 "..... 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. The Company on grant of Occupancy/Completion certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues."

21. **Due date of handing over possession:** As per clause 3 of the memorandum of understanding dated 24.08.2016, the possession of the allotted space/unit was supposed to be offered within a stipulated timeframe of 36 months from the date of 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. Accordingly, the due date of possession is being calculated from the date of execution of MoU, being later. Thus, the due date of possession comes out to be 24.08.2019.

22. **Admissibility of refund along with prescribed rate of interest:** The complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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.

23. 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.
24. 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., 02.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3 of the MoU executed between the parties, the possession of the subject unit/space was to be delivered by 24.08.2019. However, possession of the unit/space in question has not been offered to the complainants till date. Further, it is to be noted that as per official website of the DTCP, Haryana, occupation certificate for the project in question was granted on 14.08.2024, whereas the complainants vide present complaint dated 21.05.2024, have already surrendered the unit in question, which is prior to the receipt of occupation certificate, but after the due date. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. In view of

the above-mentioned facts, the allottees intended to withdraw from the project and are well within their right to do the same in view of section 18(1) of the Act, 2016.

26. Keeping in view the fact that the complainant/allottees wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
27. Moreover, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 observed as under:

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the

promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

29. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.
30. The Authority further observes that the complainant is also seeking the relief of payment of pending assured return in terms of clause 4 of the MOU dated 24.08.2016, vide which it was mutually agreed between the parties that the respondent will pay to the complainants a monthly assured return of Rs.22,500/- w.e.f. 24.08.2016 till the commencement of first lease. The complainants have submitted that the respondent has paid monthly assured return till March 2021 and they are seeking pending assured returns. The respondent has submitted that there has been no default on their part as it has duly paid assured returns to the complainants till the enactment of the BUDS Act after which it became illegal due to the legal position over unregulated deposits post the enactment of the BUDS Act.
31. In the instant case, the complainants intend to withdraw from the project and are seeking refund along with prescribed rate of interest and assured returns. The authority observes that if the allottees do not wish to continue with the project, they are not entitled to the benefits of assured return as the

purpose of assured return is to compensate the allottees for the amount paid by them in upfront and which is continued to be used by the promoter for the period specified in the agreement/MOU and the payment of assured return as well as the prescribed interest on the amount paid up would result in double benefit to the complainant and would not balance the equities between the parties.

32. In view of the above, the respondent/promoter is directed to refund the amount received by it i.e., Rs.10,45,000/- with interest at the rate of 11.10% of the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules.
33. Out of the amount so assessed, the amount paid by the respondent on account of assured return shall be deducted from the refundable amount.

G.III Direct the respondent to pay cost of litigation and compensation.

34. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra), has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

35. 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 refund the entire paid-up amount of Rs.10,45,000/- received by it from the complainants along with interest at the rate of 11.10%p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. Out of the amount so assessed, the amount paid by the respondent on account of assured return shall be deducted from the refundable amount.
 - iii. 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.
36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
37. The complaints stand disposed of.
38. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.04.2025