BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**7101 of 2022**
Date of filing complaint	**10.11.2022**
Date of decision	**11.02.2025**

1. Yeshvir Kadyan
2. Param Jeet Singh

Resident of: 70-B, New Palam Vihar, Phase-3, Near Parkash Puri Ashram, Gurgaon — **Complainants**

Versus

Neo Developers Private Limited
Regd. office: 32-B, Pusa Road, New Delhi-110005.

Respondent

CORAM:	
Shri Arun Kumar	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Mr. Rajinder Singh (Advocate)	Complainants
Mr. Venkat Rao (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Neo-Square", Sector-109, gurugram, Haryana.
2.	Project area	8.237 acres
3.	Nature of project	Commercial
4.	RERA registered	Lapsed project validity upto-23.08.2021
5.	DTCP licence	Licence no.- 102/2008 Dated-15.05.2008
6.	Unit no.	Unit no.-15, Restaurant-unit, Floor-2nd. (As on page no. 20 of complaint)
7.	Unit area	516 sq.ft. [super buit up area] (As on page no. 20 of complaint)
8.	MOU dated	29.07.2015 (As on page no. 18 of complaint)
9.	Assured return clause	**Clause 13** *That the company shall pay a monthly return of* ***Rs.43,860/- on the total amount deposited i.e., Rs.21,94,047/- till the signing of the this M.O.U w.e.f 29.07.2015.*** ***Clause 17*** *That the responsibility of paying assured returns to be paid by the*

		*Company shall **cease upon the execution of First lease**. [Emphasis supplied] (As on page no. 21-22 of complaint)*
10.	Possession clause	Not available
11.	Due date of possession	29.07.2018 [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
12.	Total sales consideration	Rs.30,73,775/- (as per SOA dated 04.01.2023 on page 35 of reply)
13.	Amount paid by the complainant	Rs.25,56,640/- (as per SOA dated 04.01.2023 on page 35 of reply)
	Assured return paid	Rs. 20,64,344/- (as per SOA dated 04.01.2023 on page 35 of reply)
14.	Occupation certificate	14.08.2024

B. Facts of the complaint:

3. The complainant has made the following submissions:

a) That in or around 2013, complainants came across the project of M/s Neo Developers Private Limited namely "Neo Square" (hereinafter referred to as "the Project") situated in Sector 109, Dwarka Expressway, Gurugram. The complainants visited the office of respondent at 1507, Tower-D, Global Business Park, MG Road, Gurugram-122002, where they met representative of the company who explained the project to them. It was explained that the project consists of multiple towers having dedicated space for retail, food court, service apartment, hyper-mart, restaurants, cinema, and offices.

b) That based on the inducement and assurance of Mr. Ashish Anand, the Directors of the Company, the complainant purchased a commercial Unit no-15 situated at second floor (Food Court) having area admeasuring 516 sq. ft.

super built up area at the rate of Rs. 4,100/- per sq. ft. For the said purpose the complainant filed the application dated 13.05.2013 with the respondent builder and paid a sum of Rs. 12,50,000/-.

c) That Later, Memorandum of Understanding was executed between the complainants and respondent on 29.07.2015 wherein commercial unit No. 15 was assigned for the restaurant unit and the MoU was signed by Mrs. Jennifer Cyril, authorised representative of the company. As per the Memorandum of Understanding the sale consideration was agreed to be Rs. 21,94,047/- towards consideration of the Restaurant Unit vide Cheque No. 710639 amounting to Rs.12,50,000 /- dated 18/06/2013, Cheque No. 710642 amounting to Rs. 5,02,862 /- dated 16/07/2013, Cheque No. 059787amounting to Rs. 1,45,000 /- dated 18/07/2015and Cheque No. 130655 amounting to Rs. 2,96,185 /- dated 18/07/2015d rawn on Oriental Bank of Commerce and State Bank of India. It was agreed under the MOU that a monthly return of Rs. 43,860/- shall be payable as Assured Return from 29.07.2015 to the complainant.

d) On 11.08.2015 the Respondent issued the statement and post dated cheques for assured return for the Financial year 2015-2016/-.

e) That the respondent on 16.12.2015 demanded EDC and IDC from the complainants. The demand was satisfied by adjusting the assured return and invoice dated 30.05.2016 was issued to that effect.

f) That later on 30.03.2017 demands for VAT was made which was duly paid by the complainant vide cheques issued on 15.05.2017 against which Invoice cum receipt dated 18.05.2017 and 24.05.2017. On 15.05.2017 the respondent issued the statement and postdated cheques for assured return for the Financial year 2017-2018.

g) That the truth of the assurances made by the Directors and employees of the company surfaced when the company started delaying the monthly assured

returns and ultimately, the payments of assured return were completely stopped and are due since July, 2019.That the mala fide intentions of the Company also became conspicuous when the Company sent an email dated 09.04.2020 communicating its unilateral decision of not paying any assured return till the completion of the project. Such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the agreement entered between the parties since the payment towards the assured return was integral part of the agreement. The said decision was taken by the respondent under the garb of Covid-19 pandemic despite the fact that the project was already delayed by the respondent beyond 36 months, hence, exclusion of the period and non-payment of assured return due to Covid-19 is not available to the respondent.

h) 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 7 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 into 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 respondent has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well. Further the respondent has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and compete the project.

i) That the complainant visited the new office of the respondent at Gurugram wherein the company proposed to lease out the property to third party without completing the project. The respondent is forcing complainant 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 respondent will be obliviated from its responsibility to pay the monthly Assured Return. The respondent extended threat that if the complainant do not sign the Lease Assignment Form then the Respondent will forfeit the unit of complainants in accordance with MOU. This shows that the respondent from the inception had no intention to pay the Assured Return to the buyers and had prepared biased MOU to suit its whims and wishes.

j) That the respondent at the time of entering the MoU made misrepresentation with respect to the project and it's tower/building whereas the construction is not in conformity with the promises made since the respondent never had the permission to construct building/tower beyond the office building. The builder has neither completed the construction of office tower nor has completed the construction of other building/tower having Inox cinema, food Court, Entertainment Zone, and service apartment etc.

k) That the respondent has still date not executed the agreement to sale with the complainants despite the fact that the complainants have paid the entire consideration as and when demanded by the respondent.

l) That the complainants have filed the complaint before Economics Offence Wing Delhi on 24.06.2021 wherein FIR has been registered against the respondent.

m) That despite the fact that the VAT was paid in 2017 the complainant raised illegal demand for VAT again in 2020 whereas the complainant has already

paid all the payment towards the VAT in 2017. Hence the demand towards the VAT are illegal perse.

n) That the complainant is constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 85 per sq feet amounting to Rs. 43,860/- since July, 2019 till the handing over the possession/ Lease out of the property after the completion of the construction, complete the project as promised to the Complainant, registration of Sale deed in favor of the complainant with respect to the restaurant space purchased by him, setting aside the and compensation towards the delay in completing the project. The complainant reserves the right to amend the submission made herein, to produce documents and alter the prayer as and when deem necessary or on the direction of the Authority.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):

i. Direct the respondent to pay Assured Returns @ Rs. 85 per sq. ft. per month amounting to Rs. 43,860/- from justification as per MOU builder is duty bound to pay monthly assured return July, 2019 till handing over the possession/leasing out the property.
ii. Direct the respondent to execute the sale deed after the competition of the project in favour of the complainant.
iii. To direct the respondent to pay the penalty charges of damages with interest as per RERA Act.
iv. Declare that no VAT is payable by the Complainants and subsequent demands towards the VAT are not maintainable and illegal per-se.

5. On the date of hearing, the authority explained to the respondent-promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 22.11.2023 and written submissions dated 20.06.2024:

a) That in the year 2013, the complainants learned about the commercial project launched by the respondent under the name and title '**Neo Square**' situated at Sector 109, Gurgaon and being an investor, the complainants repeatedly visited the office of the respondent to know the details of the said project.

b) That after having interest in the commercial project being developed by the respondent, the complainants herein booked a space designated for the Food Court in the said project admeasuring to area of 516 Sq. ft. for a basic sale consideration Rs. 21,15,600/- on his free will and consent without any demur whatsoever and made a payment of Rs. 12,50,000/- as booking amount.

c) That thereafter, considering the future speculative gains the complainants from June 2013-August 2015, made a payment of Rs. 21,94,047/- at their own free will and consent towards the agreed sale consideration of the said space/unit for speculative gains.

d) That on 29.07.2015, a Buyer's Agreement *(hereinafter referred to as '**Agreement**')* was sent to the complainants to be executed between the complainants ***and*** the respondent for the unit allotted in the project. it is pertinent to mention, that the complainants, even after duly receiving the BBA from the respondent, never came forward to execute the same despite reminder from the respondent. It is also pertinent to mention here that, being delivered with the BBA for execution, the complainants were aware of terms and conditions under the aforesaid agreement but will fully failed to execute the same.

e) That on 29.07.2015 the complainants and the respondent entered into a Memorandum of Understating *(hereinafter referred to as "MOU")* which was a completely separate understanding between the parties in regards 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 submitted that as per clause 4 of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

f) That at this stage, it is categorical to highlight that the complainant is trying to mislead the Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties on 29.07.2015 was in the form of an "**Investment Agreement**." The complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

g) That it is also most humbly submitted before the Authority that the Respondent was always prompt in making the payment of assured returns as agreed under the agreement. It is not out of the place to mention that the Respondent herein had been paying the committed return of Rs. 43,860/- for every month to the complainant without any delay since 29.07.2015. It is to note, that as on July 2019, the complainant herein had already received an amount of Rs. 20.64,440/- as assured return as agreed by the respondent under the aforesaid agreement. However, post July 2019, the respondent could not pay the agreed Assured Returns due to prevailing legal position w.r.t. banning of returns over unregulated deposits post the enactment of the BUDS Act.

h) That it is pertinent to mention here that the liability of the respondent to pay assured return was till the commencement of the first lease on the said unit which is evident from the Clause 4 of the Memorandum of Understanding which was executed by the complainant out of his own free will.

i) That the respondent has already sent a lease assignment form to the complainant for the commencement of lease of the said unit, which is very much evident from the letter for assignment of lease sent to the complainant on 08th December, 2020 by the respondent.

j) That despite the said Invitation to Lease the said unit of the complainant, and constant reminders to come forward and sign the said lease assignment form, the complainant is malafidely not coming forward and claiming delay on part of the respondent, when it is evident from the admission of the complainant himself.

k) That further it is pertinent to mention here that there has been no default on part of the respondent who has duly paid Assured returns to the Complainant till the enactment of the BUDS act after which it became illegal due to the prevailing legal position over unregulated deposits post the enactment of said act. Further in the Memorandum of understanding, there was never any pre-condition of OC for the Invitation to Lease. The Respondent has duly sent the Invitation to lease to the complainant with reminders but the complainant has failed to come forwards. The complainant cannot be allowed to take advantage of its own wrongs doings and delays.

l) That it is further to clarify that the respondent is raising the demands towards VAT 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. That VAT amount is payable and applicable on any amount received from the Allottee till June 2017. Accordingly, the VAT amounts have been demanded from the complainants, as the same has been assessed and demanded by the competent Authority.

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

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

E. Jurisdiction of the authority:

9. 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

10. 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 the entire Gurugram District for all purposes 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(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.*

12. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainants being the investors.

13. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or

regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainants are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) **"allottee"** in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 29.07.2015. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay Assured Returns @ Rs. 85 per sq. ft. per month amounting to Rs. 43,860/- as per MOU wherein builder is duty bound to pay monthly assured return July, 2019 till handing over the possession/leasing out the property.

G.II Direct the respondents to pay penalty charges of damages with interest as per RERA Act on amount paid.

G.I. Assured returns

15. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 29.07.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

16. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the RERA Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

17. 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 properly as specified in terms of the agreement or arrangement.*

18. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

(i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

19. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
20. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019.
21. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
22. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns

between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

23. In the present complaint, the assured return was payable as per clause 13 and clause 17 of the MoU dated 29.07.2015, which is reproduced below for the ready reference:

> ***13.*** *"That the company shall pay a monthly return of* ***Rs.43,860/- on the total amount deposited i.e., Rs.21,94,047/- till the signing of the this M.O.U w.e.f 29.07.2015****.*
> ***17.*** *That the responsibility of paying assured returns to be paid by the Company shall* ***lease upon the execution of First lease****.*

24. Thus, the assured return was payable @Rs. ***43,860***/- per month w.e.f. 29.07.2015, till the execution of first lease.

25. Furthermore, the respondent promoter issued a letter on 08.12.2020 stating that the Assignment of Lease will be prepared and submitted to the complainant for review and signature. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the competent authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. Therefore, the respondent's contention regarding the non-payment of Assured Return after the letter regarding assignment of lease is hereby rejected. The validity of the said lease can be considered only upon obtaining the Occupation Certificate, i.e., on 14.08.2024, and the liability shall extend up to the date of obtaining the Occupation Certificate

26. In light of the reasons mentioned above, the authority is of the view that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 29.07.2018. The occupation certificate for the project in question has been obtained by the respondent on 14.08.2024 and accordingly, the respondent/promoter is liable to pay assured return to the complainant at the

agreed rate i.e., @Rs. Rs.43,860/- on the total amount deposited from the date i.e., 29.07.2015 till the obtaining of occupation certificate after deducting the amount already paid on account of assured return to the complainant.

II. Delay possession charges.

27. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which 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."*

28. **Due date of possession**: The subject unit was allotted to the complainants vide MoU dated 29.07.2015. As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** **-:**

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of*

the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

29. In the instant case, the MoU executed between the parties on 29.07.2015. In view of the above-mentioned reasoning, the date of MoU ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession comes out to be 29.07.2018.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. 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. ibid. 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]***
> *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."*

31. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. 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., 11.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

32. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the 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. 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—*
> *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;*
> *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
34. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 29.07.2018. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to pay assured return or delay possession charge till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement /MoU.
35. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
36. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.43,860/-. p.m. on the total amount deposited till the execution of first lease. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1)

of the Act, 2016, the assured return in this case is payable at Rs.43,860/- per month till the commencement of first lease which is higher than the delayed possession charges which come to approximately Rs.23,648/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount in terms of the MoU dated 29.07.2015. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as 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 delayed possession charges whichever is higher.

37. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 then the allottees shall be entitled to assured return without prejudice to any other remedy including compensation.

38. In the present complaint, as per clause 13 read with clause 17 of the MoU dated 29.07.2015, the amount on account of assured return was payable from 29.07.2015 upto the commencement of first lease. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.43,860/- per month on the total amount deposited from the date i.e., 29.07.2015 till the obtaining of occupation certificate after deducting the amount already paid on account of assured return to the complainant.

G.III. Direct the respondent to execute sale deed.

39. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

40. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges from the date of this order.

G.VII Declare that no VAT is payable by the complainants and subsequent demands towards the VAT are not maintainable and illegal per-se.

41. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea 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. 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 liveable. 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 complainant vis- à-vis the total area of the particular project. However, the complainant(s) 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.

H. Directions issued by the Authority:

42. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

I. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.43,860/- per month on the total amount deposited from the date i.e., 29.07.2015 till the obtaining of

occupation certificate after deducting the amount already paid on account of assured return to the complainant.

II. The respondent is directed to pay the above outstanding accrued assured return amounts till date along with interest at the rate of 9.10% p.a. within 90 days from date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would become payable with interest @ 9.10% p.a. till the date of actual realization.

III. The respondent shall not charge anything from the complainants which is not part of the MoU.

IV. The respondent-promoter is directed to handover the possession of the subject unit as per clause 18 of the MoU dated 29.07.2015.

V. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges from the date of this order

43. Complaint stands disposed of.

44. File be consigned to the Registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
11.02.2025