

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

Date of decision: 11.02.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.
PROJECT NAME		New Square
S. No.	Case No.	Case title
1.	CR/2244/2023	Santosh Vs. M/s Neo Developers Private Limited.
2.	CR/2326/2023	Anita Devi Vs. M/s Neo Developers Private Limited.
3.	CR/2605/2023	Anita Devi Vs. M/s Neo Developers Private Limited.

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Rajinder Singh (Advocate)	Complainant
Shri Venkat Rao and Gunjan Kumar (Advocates)	Respondent

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority 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/MOU 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, New Square situated at Sector 109, Gurugram being developed by the same respondent/promoter i.e., M/s Neo Developers Pvt. Ltd. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges, assured return, Vat Charges and other reliefs..
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Neo Square", sector 109, Gurugram, Haryana
Nature of the project	Commercial
Project area	3.08 acres
Occupation certificate obtained on	14.08.2024

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Assured Return Clause	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession /Date of lease Deed	Relief sought



1	CR/2244/2023 Santosh Vs. M/s Neo Developers Pvt. Ltd. DOF: 07.06.2023 Reply: 25.01.2024	Food Court unit, 100 Sq.ft.	08.05.20 15	The company shall pay a monthly assured return of Rs.9,000/- on the total amount received w.e.f. 08.05.2015 after deduction of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annex as Annexure I. the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.	T.C Rs. 6,44,801 /- (As per SOA dated 05.05.20 15 on page no. 95 of reply) AP- Rs. 5,93,310 /- (As per SOA dated 05.05.20 15 on page no. 95 of reply) Assured return Paid: 4,47,900 /- (As per statemen t of account on page no. 95 of the reply)	Not placed on record Lease Deed: 24.07.20 20	<ul style="list-style-type: none"> Assured Return Since July 2019 Execution of sale deed DPC Retrain the respondent from entering lease deed with third party.
2.	CR/2326/2023 Anita Vs. M/s Neo Developers Pvt. Ltd. DOF: 07.06.2023	Food Court unit, 100 Sq.ft.	21.09.20 15	The company shall pay a monthly assured return of Rs.9,000/- on the total amount received w.e.f. 21.09.2015 after deduction	T.C Rs. 12,21,28 2/- (As per statemen t of account on page no. 91 of	Not placed on record Lease Deed:	<ul style="list-style-type: none"> Assured Return Since June 2019 Execution of sale deed Setaside the VAT DPC Retrain the respondent



	Reply: 25.01.2024			of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annex as Annexure I. the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.	the reply) AP- Rs. 11,19,526/- (As per statement of account on page no. 91 of the reply) Assured return Paid: 4,08,000/- (As per statement of account on page no. 91 of the reply)	24.07.2020	from entering lease deed with third party.
3	CR/2605/2023 Anita Vs. M/s Neo Developers Pvt. Ltd. DOF: 07.06.2023 Reply: 25.01.2024	Food Court unit, 100 Sq.ft.	26.12.2015	The company shall pay a monthly assured return of Rs.9,000/- on the total amount received w.e.f. 26.12.2015 after deduction of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration	T.C Rs. 12,43,871/- (As per statement of account on page no. 95 of the reply) AP- Rs. 11,22,044/- (As per statement of account	Not placed on record Lease Deed: 24.07.2020	<ul style="list-style-type: none"> Assured Return Since June 2019 Execution of sale deed Setaside the VAT DPC Retrain the respondent from entering lease deed with third party.

				shall be payable by the allottee(s) to the company in accordance with the payment schedule annex as Annexure I. the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.	on page no. 95 of the reply) Assured return Paid: 3,79,500 /- (As per statement of account on page no. 95 of the reply)		
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4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement /MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the delayed possession charges, Assured return, Vat and other charges.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/2244/2023 titled as Santosh Vs. M/s Neo Developers Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

6. 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/2244/2023 titled as Santosh Vs. M/s Neo Developers Pvt. Ltd.



S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	Unit and Floor no.	Food Court unit (As per page no. 19 of the complaint)
8.	Unit area admeasuring	100 sq. ft. (Super Area) (As per page no. 19 of the complaint))
9.	Date of execution of MoU	08.05.2015 (As per page no,17 of the complaint)
10.	Assured Return clause	1. <i>The company shall pay a monthly assured return of Rs.9,000/- on the total amount received w.e.f. 08.05.2015 after deduction of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annex as Annexure I. the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date..</i> (As per page no. 19 of the complaint)

11.	Date of execution of buyer's agreement	08.05.2015 (As per page no.66 of the reply)
12.	Possession Clause	N.A.
13.	Total Sale Consideration	Rs.6,44,801/- (As per statement of account on page no. 95 of the reply)
14.	Amount paid by the complainants	Rs.5,93,310/- (As per statement of account on page no. 95 of the reply)
15.	Assured return paid by the respondent	Rs.4,47,900/- (As per statement of account on page no. 95 of the reply)
16.	Payment Plan	Construction linked plan
17.	Due date of possession	Cannot be ascertained
18.	Lease deed executed on	24.07.2020 (As per page no. 96 of the reply)
19.	Occupation certificate /Completion certificate	14.08.2024
20.	Offer of possession	Not available

B. Facts of the complaint

7. The complainants have made following submissions in the complaint:

- i. That complainant entered Memorandum of Understanding with the respondent on 08.05.2015. The said MOU was signed by Mr. Jennifer Cyril, Authorised Representative and Director of the company and assured that soon the respondent would enter into builder buyer's agreement with the complainant. The property would be constructed and delivered within 36 months period from entering of the MoU since respondent has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC,

Nike, Inox Cinema etc. Further, it was assured that the assured return would be paid till the property is not leased out. Mr. Ashish Anand, Director, assured the complainant that the project would be state-of-the-art and that the respondent had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. In view of the above assurance an impression was given to complainant that since the project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the restaurant in future. Based on the above inducement and assurance of Mr. Ashish Anand and the employees of the company, the complainant purchased a commercial Unit (restaurant) on the First floor and executed the Memorandum of Understanding dated 08.05.2015 having area admeasuring 100 sq. ft. super built up area at the rate of Rs.5,000/- per sq. ft. wherein commercial unit No.06 was assigned on 1st floor.

- ii. The complainant paid a sum of Rs. 5,18,540/- towards consideration of the commercial unit no. 06, vide cheque no. 002391 dated 04.05.2015 amount Rs. 5,18,540/- drawn on Allahabad Bank, which was duly accepted by the respondent. It was agreed under the MOU that a monthly return of Rs. 9,000/- shall be payable as assured return from 08.05.2015.
- iii. That the respondent on 16.12.2015 raised the demand of EDC and IDC for unit no. 06 on 1st floor of the project amount to Rs. 47,400/-.
- iv. That the respondent demanded VAT from complainant, 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. 27,370/- on 30.03.2017 for unit no.06 (**Annexure-5**). The said demand

was duly fulfilled by the complainant by making the cumulative payment of Rs. 5,54,188/- for the EDC, IDC and VAT payment of unit no- 06.

- v. That the truth of the assurances made by the Directors and employees of the Company surfaced when the respondent started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped and are due since July, 2019. The mala fide intentions of the respondent also became conspicuous when the Company sent a Letter dated 18.12.2019 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.
- vi. Later the respondent again raised demand for unit no. 06 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 and due to the said reason, the respondent 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.
- vii. That the respondent sent an Email to the complainant in order to oblivate itself from its responsibility of paying monthly assured return, the respondent invoked Force Majeure clause despite the fact that no such clause pertaining to Force Majeure exist either in MOU. The Company is forcing complainant to sign lease assignment form by which the respondent 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 obviated from its responsibility to pay the monthly assured return and

threatens that if the complainant do not sign the lease assignment form, then the respondent will forfeit our unit 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.

- viii. That the wrongful acts of the company are not only limited to this, the company deducted TDS on the Assured Return paid by it from April to June of 2019, but till date the respondent has neither issued TDS certificate for the same nor deposited the deducted tax to the authorities due to while tax liabilities of the complainant are increased due to the fault of the respondent.
- ix. 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 respondent 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.

- x. The respondent at the time of entering the MoU made misrepresentation with respect to the project and it is 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.
- xi. That the respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. Further, by refusing to give assured return, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement rather illegal and unreasonable demands with respect to the VAT has been raised again and again.
- xii. That the respondent under the garb of force-majeure is delaying the completion of the project. It is submitted that no fresh construction has been carried out in the project since 2019. The completion certificate of the respondent has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the Senior Town Planner, Gurugram that the project is not complete, and they had withdrawn the application seeking completion certificate in the year 2020.
- xiii. That the Complainant are constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 90 per sq. feet amounting to Rs. 9,000/- for unit admeasuring 100 sq. feet, since July 2019 till the handing over the possession/ Lease out of the property after the completion of the construction. The respondent may be directed to complete the project as promised to the complainant and execute the sale deed in favour of the complainant with respect to the restaurant space purchased by him, Further,

to set aside the illegal demand of VAT by the respondent 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.

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

- I. Direct the Respondent to pay Monthly Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 9,000/- (Rupees Nine Thousand Only) for Unit No. 06, since July 2019 till handing over the possession/leasing out the property after completion.
- II. To execute the Sale Deed after the competition of the project in favour of the Complainant.
- III. Restrain the Respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the Complainant.
- IV. To direct the Respondent to pay the penalty charges as per RERA Act

9. 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

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

- a. 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**", (*hereinafter referred to as the "Project"*) 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 04.05.2015, whereby seeking allotment of unit/premises bearing No. 6, admeasuring 100 Sq. Ft Super Area on the 2nd floor Food Court space of the Project having a Basic Sale Price of Rs. 5,00,000/- (hereinafter referred to as the "**Unit**"). The complainant, considering the future speculative gains, also opted for the **investment return plan** being floated by the respondent for the instant project.

- b. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 08.05.2015 (*hereinafter referred to as "MOU"*) was executed between the parties, which was a completely 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 complainant and the respondent, the returns were to be paid from 08.05.2015 till the commencement of the first lease. It is also submitted that as per clause 8(a) of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.
- c. 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 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.

- d. That it is also pertinent to mention that the complainant voluntarily also executed the **buyer** agreement dated 08.05.2015 for the Unit No. 6 on 2nd Floor of the Project, after having full knowledge and being well satisfied and conversant with the terms and conditions of the buyer agreement.
- e. That the respondent was always prompt in making the payment of assured returns as agreed under the MOU. It is not out of the place to mention that the respondent herein had been paying the committed return of Rs. 9,000/- for every month to the complainant without any delay since 06.05.2015. It is to note, that as June 2019, the complainant herein had already received an amount of **Rs. 4,47,900/-** as assured return as agreed by the respondent under the aforesaid agreement against the basic sale consideration of Rs. 5,00,000/- of the unit. However, post June 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
- f. That that the first lease of the premises wherein the unit no. 6 of the complainant is situated has already been executed with M/s Ayan Foods on 24.07.2020. Thereby, the respondent has duly fulfilled its obligations of execution of the first lease in terms of the MOU.
- g. That after the commencement of the first lease the respondent has duly intimated the complainant vide letter dated 01.10.2020 and various telephonic conversations regarding the same. The respondent further sent a letter for assignment of lease form to the complainant to come forward to sign the lease assignment, as had been agreed in the MOU. However, the complainant did not come to sign the lease assignment and therefore failed to fulfil his part of the obligations. That, since the complainant did not come forward to sign the lease assignment, the respondent further sent a reminder letter dated 10.12.2020, 07.12.2021 to sign the Lease Assignment Form.

However, all these requests and reminders fell on deaf ears of the complainant and the complainant blatantly ignored his obligations.

- h. That in the Memorandum of Understanding, there was never any pre-condition of obtaining the occupation certificate for the invitation to Lease. The respondent has already executed the first lease deed and duly sent the invitation to lease to the complainant with reminders, as per the terms of the MOU. However, the complainant have failed to come forward. That the complainant cannot be allowed to take advantage of its own wrong doings and delays.
- i. It is also pertinent to mention that the Memorandum of Understanding was executed by the complainant of their own volition and after fully satisfying themselves with the terms and conditions contained thereof. It is reiterated that as per the terms of the MOU it was agreed between the parties that the unit would be leased out to the third party as the first lease by the respondent and for the same the complainant would be obligated to sign the lease assignment form as and when demanded by the respondent. However, the complainant despite repeated reminders by the respondent deliberately ignored the same and failed to sign the lease assignment form.
- j. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
11. All other averments made in the complaint were denied in toto.
12. Copies of all the relevant documents have been filed and placed on 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.

D. Jurisdiction of the authority

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

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

E. Findings on the objections raised by the respondent:

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

17. 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;"

18. 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 08.05.2015. 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

F. Findings on the relief sought by the complainants

F.I Direct the Respondent to pay Monthly Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 9,000/- (Rupees Nine Thousand Only) for Unit No. 06, since July, 2019 till handing over the possession/leasing out the property after completion.

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

F.I. Assured returns

19. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 08.05.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
20. 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.
21. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service,*

with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

- (i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
- (ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

22. 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;*

23. 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.

24. 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.

25. 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.
26. 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.
27. In the present complaint, the assured return was payable as per clause 13 and clause 17 of the MoU dated 08.05.2015, which is reproduced below for the ready reference:

4.The company shall pay a monthly assured return of Rs.9,000/- on the total amount received w.e.f. 08.05.2015 after deduction of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the alloottee(s) to the company in accordance

with the payment schedule annex as Annexure I. the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.

28. Thus, the assured return was payable @Rs. **9,000/-** per month w.e.f. 08.05.2015, till commencement of first lease.
29. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 24.07.2020. 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 execution of first lease 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.
30. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 08.05.2015, it was obligation on part of the respondent to pay the assured return. The occupation certificate for the project in question has already 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.9,000/- from the date i.e., 08.05.2015 the obtaining of occupation certificate after deducting the amount already paid on account of assured return to the complainant.

II. Delay possession charges.

31. 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."***

32. 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."

33. In the instant case, the MoU executed between the parties on 08.05.2015. 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 08.05.2018.

34. **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."

35. 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%.

36. The definition of term 'interest' as defined under Section 2(z) 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;”

37. 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.
38. 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 08.05.2018. 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 the assured return and 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.
39. 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?
40. 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.9,000/- p.m. on the total amount received till the commencement 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 is much better i.e., assured return in this case is payable at Rs.9,000/- per month till the commencement of first lease whereas the delayed possession charges are payable approximately Rs.5,488/- 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 MoU. 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.

41. 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.
42. In the present complaint, as per clause 4 read of the MoU dated 08.05.2015, the amount on account of assured return was payable from 08.05.2015 upto the commencement of first lease. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, possession of the subject unit has not been offered by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.9,000/- per month 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.

F.III Direct the respondent to execute sale deed

43. 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.
44. 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 from the date of this order.

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

45. 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.

G. Directions of the authority

46. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.9,000/- per month on the total amount deposited from the date i.e., 08.05.2015 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 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.

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



HARERA
GURUGRAM

Complaint No., 2244 of 2023, 2326 of 2023
& 2605 of 2023

48. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
49. Files be consigned to registry.

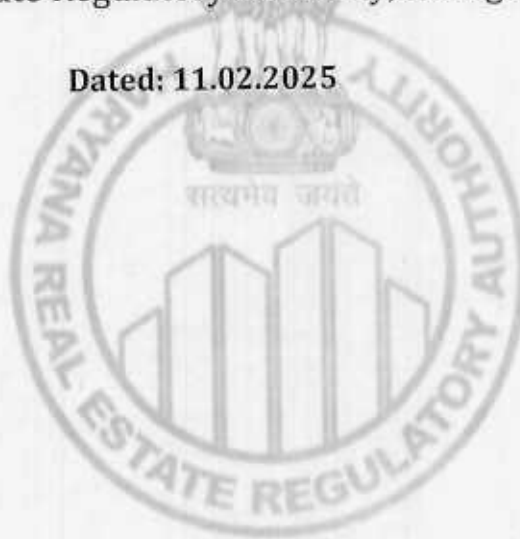

Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2025



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GURUGRAM