

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

Complaint no. : 2239 of 2023
Date of complaint : 07.06.2023
Date of order : 11.02.2025

Santosh,
R/o: - 132, Village Daultabad, Tehsil Gurgaon,
Haryana

Complainant

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 1205-B, 12th Floor,
Tower-B, Signature Tower, South City-1,
NH-8, Gurugram-122001.

Respondent

| | | |
|--|--|-----------------|
| 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

- The present complaint has been filed by the complainant/allottee 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| 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. | Unit no.-9 & 2 nd floor (As per page no. 21 of the complaint) |
| 8. | Unit area admeasuring | 601sq. ft. (Super Area) (As per page no. 22 of the complaint)) |
| 9. | Date of execution of MoU | 19.02.2013 (As per page no. 20 of the complaint) |
| 10. | Assured Return clause | 3. The company has agreed to allot to the allottee(s) premises measuring 601 sq. ft. super built up area on the second floor of the said project. The allottee(s) has opted for the investment return plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.6,000/- per sq. ft. taking into consideration a return of Rs.85/- per sq. ft. per month, subject |

| | | |
|-----|---|--|
| | | to the terms of this MoU. Return is provided till possession is offered to the customer. (As per page no. 22 of the complaint) |
| 11. | Date of execution of buyer's agreement | 08.05.2015 (As per page no.65 of reply) |
| 12. | Construction completion date as per buyer agreement | 5.2 that the construction completion date shall be the date when the application for grant of completion/occupation certificate is made. |
| 13. | Total Sale Consideration | Rs.46,70,706/- (As per statement of account on page no. 94 of the reply) |
| 14. | Amount paid by the complainants | Rs.41,96,844/- (As per statement of account on page no. 94 of the reply) |
| 15. | Assured return paid by the respondent | Rs.39,02,894/- (As per statement of account on page no. 94 of the reply) |
| 16. | Payment Plan | Construction linked plan |
| 17. | Due date of possession | 23.01.2023 (The respondent applied grant of occupation certificate) |
| 18. | Occupation certificate /Completion certificate | 14.08.2024 |
| 19. | Offer of possession | Not available |
| 20. | Demand letters | 16.12.2015 & 30.03.2017 |
| 21. | Lease deed | 24.07.2020 (As per page no. 95 of the reply) |

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in 2013, complainant came across the project of M/s Neo Developers Private Limited namely "Neo Square" (hereinafter referred to as "the Project") situated in Sector 109. Mr. Ashish Anand, Director of the company and employees at the office of the company explained the project to the complainant and stated that the project consists of multiple towers having dedicated space for retail, food court, service apartment, hyper-mart, Restaurants, Cinema, and offices etc.
- II. That the brochure of the project was shown to the complainant wherein it was provided that the logos and name of the brands like Pizza Hut, McDonald's, KFC, Nike, INOX etc. which were printed on the brochure Mr. Ashish Anand, Director of the company stated that these brands have already entered into agreements with the company for opening of an outlet in the project. Mr. Ashish Anand further explained the site plan of the Project in the brochure and explained that the project is situated on Dwarka Expressway and is a front facing development in a corner plot which is 4 side open. Mr. Ashish Anand, Director of the company again assured the complainant that they have already obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan and further assured that the construction of the project will be completed within 36 months of purchasing the unit. It is submitted that the project has been constructed at a distance from expressway, hence, the unit has been sold to the complainant by misrepresenting the facts, wherein a bloomy picture was shown to the complainant. The abovementioned brands with logo were printed on the brochure of the project.
- III. That the respondent induced the complainant to purchase the unit in their assured return plan wherein the company would make the payment at the

rate of Rs. 85 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainant at the time of booking or at the time of execution of Memorandum of Understanding (MOU). Mr. Ashish Anand, Director of the Company, assured the complainant that there will be no delay in making payment towards the assured return under any circumstances whatsoever.

- IV. That complainant entered memorandum of understanding with the company on 19.02.2013. the respondent again assured the complainant that there will be no delay in making payment towards the assured return under any circumstances and 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. Based on the above inducement and assurance of respondent, the complainant purchased a commercial unit (restaurant) on the second floor and executed the Memorandum of Understanding dated 19.02.2013 having area admeasuring 601 sq. ft. super built-up area at the rate of Rs. 6,000 - per sq. ft. wherein commercial unit no.09 was assigned on 2nd floor. That since on the misrepresentation by Mr. Ashish Anand Director of the respondent.
- V. That the complainant paid a sum of Rs. 37,17,426/- towards consideration of the commercial unit no. 9, vide cheque no. 007763 amount Rs. 5,00,000/- dated 15.02.2013 drawn on Allahabad Bank and cheque no. 007765 amount Rs. 32,17,426/- dated 16.02.2013 drawn on Allahabad Bank which was duly accepted by the respondent. It was agreed under the MOU that a monthly return of Rs. 51,085/- shall be payable as Assured

Return from 19.02.2013. a receipt of unit confirmation and cheque of assured return has been issued by the respondent company on 25.02.2013.

- VI. That the respondent on 16.12.2015 raised the demand of EDC and IDC for unit no. 9 on 2nd floor of the project amount to Rs. 2,84,874/-.
- VII. That 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. 1,80,300/- on 30.03.2017 and Rs. 14,244/- on 30.03.2017 for Unit No.9. 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 and unit no- 09.
- VIII. 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 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.
- IX. That the respondent again raised demand for unit no. 09 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.

- X. That the respondent informed the complainant in order to oblivate itself from its responsibility of paying monthly assured return, that it has invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in MOU. 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 company will be obliterated 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.
- XI. That wrongful acts of the respondent are not only limited to this, the respondent 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.
- XII. That the company sent final notices raising illegal demands of dues and again no explanation was provided for the illegal demands by the respondent. Hence, the demand is liable to be set aside being illegal.
- XIII. That 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. brochure of the site plan as given by the respondent is annexed herewith.

- XIV. That 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.
- XV. That 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.
- XVI. That 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.

- XVII. That the respondent is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainant by misguiding them, keeping them in dark and putting their future at risk by rendering them income less.
- XVIII. That the complainant are constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 85 per sq feet amounting to Rs. 51,085/- for unit admeasuring 601 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 complainant:

4. The complainant has sought following relief(s):
- I. Direct the Respondent to pay Assured Returns (i) @ Rs. 85 per sq feet per month amounting to Rs. 51,085/- (Rupees Fifty-One Thousand Eighty-Five Thousand Only) for Unit No. 9, since July, 2019 till handing over the possession/leasing out the property after completion.
 - II. Direct execute the Sale Deed after the competition of the project in favour of the Complainant.
 - III. Direct to set aside the illegal demands of VAT made by the Respondent vide letter dated 30.03.2017.

- IV. Direct to restrain the Respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the Complainant.
- V. To direct the respondent to pay the penalty charges as per the RERA act.
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) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply dated 05.06.2024 on the following grounds: -
- (i) That the complainant herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter considering the future speculative gains, also opted for the **Investment Return Plan** being floated by the Respondent for the instant project.
- (ii) That since the complainant had opted for the investment return plan, a Memorandum of Understanding dated 19.02.2013 (*hereinafter referred to as "MOU"*) was executed between the parties, which was a completely separate understanding between the parties in regards 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 19.02.2013 till possession is offered to the complainant. It is also submitted that as per clause 4 of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

- (iii) That the complainant is trying to mislead the authority by concealing facts which are detrimental to this complaint at hand. 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.
- (iv) That the aspect of leasing of the unit and the investment of the complainant cannot be dealt with by the authority. Without prejudice to the rights of the respondent, at the utmost *bonafide*, the is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.
- (v) That the complainant voluntarily also executed the buyer agreement dated 08.05.2015 for the unit no. 9 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.
- (vi) 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. 51,085/- for every month to the Complainant without any delay since 05.03.2015. It is to note, that as on August 2019, the complainant herein had already received an amount of **Rs. 39,02,894/-** as assured return as agreed by the respondent under the aforesaid agreement against the basic sale consideration of Rs. 36,06,000/- of the unit. However, post August 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, which has been detailed herein below.

- (vii) That is most humbly submitted that as per Clause 3 and Clause 16 of the MOU dated 19.02.2013, which was executed by the complainant out of his own free will, the obligation of payment of assured return by the respondent to the complainant was only till the commencement of the first lease on the unit.
- (viii) That the first lease of the premises wherein the unit no. 9 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.
- (ix) That after the commencement of the first lease the respondent has duly intimated the complainant vide letter dated 08.12.2020. 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 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.
- (x) 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. The complainant cannot be allowed to take advantage of its own wrong doings and delays.

- (xi) That he promoter executes a lease deed with a lessee for a future project even before the completion of the said project. In fact there is no bar by any statutory provision on entering into such understanding. There have been numerous such instances where renowned developers have adopted such a practise.
- (xii) That as per the mutually agreed terms between the complainant and the respondent, the payment of assured returns was to commence only from 19.02.2013 till possession is offered to the complainant. The same has been confirmed and admitted by the complainant in his complaint at para 7 to the complaint. However, the Banning of Unregulated Deposits Schemes Act, 2019 came into force in 2019 and therefore the respondent was constrained to cease all payment pertaining to assured return to all its allottees who had opted for the same from 2019.
- (xiii) 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 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.
- (xiv) That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of prevailing legal position. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

- (xv) That it is pertinent to mention herein that the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act. It is also pertinent to note herein that for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the competent authority constituted under the Act.
- (xvi) That it is to be noted that the complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant 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. 41,96,844/- against the Total due Amount of Rs. 46,70,706/-. It is to be noted that there lies an outstanding due of Rs. 4,73,862/- which is to be paid by the complainant against the unit booked. further against the amount paid by the complainant i.e., Rs. 41,96,844/-, the respondent had already paid Rs. 39,02,894/-.
- (xvii) That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the Competent Authority.
- (xviii) That It is also noteworthy that the grievances of the complainant are all arising from the MOU which is not within the jurisdiction of the Authority, therefore, there arise no grounds that can be adjudicated by

this forum and thus, present complaint deserves to be dismissed at the very outset for want of jurisdiction.

- (xix) That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled the Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable before the Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. All other averments made in the complaints 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 on the basis of those undisputed documents and submission made by the parties.

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 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

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

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.

F. Findings on the objections raised by the respondent.**F.1. Objection regarding the complainants being investor.**

13. The respondent has taken a stand that the complainant is an investor and not an allottee/consumer. Therefore, she is not entitled to the protection of the Act and is 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 05.01.2017, it is revealed that the complainant is a buyer, and she has paid total price of Rs.1,10,74,016/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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 19.02.2013. 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 the relief sought by the complainant.

G.I. Direct the respondent to make payment towards assured return.

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

G.III Direct to restrain the Respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the Complainant.

14. The above mentioned reliefs no. G.I, G.II & G.III as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

G.I Assured Return:

15. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 19.02.2013 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/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.*
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 an 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 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 3 of the MoU dated 19.02.2013, which is reproduced below for the ready reference:

3. "The company has agreed to allot to the allottee(s) premises measuring 601 sq. ft. super built up area on the second floor of the said project. The allottee(s) has opted for the investment return plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.6,000/- per sq. ft. taking into consideration a return of Rs.85/- per sq. ft. per month, subject to the terms of this MoU. Return is provided till possession is offered to the customer.

24. Thus, the assured return was payable @Rs.85/- per month till possession is offered to the complainant.

25. 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 after obtaining the Occupation Certificate, i.e., on 14.08.2024, and the liability shall extend up to the date of possession is offered after obtaining the Occupation Certificate.

26. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 19.02.2013, 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.51,085/- (Rs. 85/- per sq.ft.) till possession is offered to the complainant after deducting the amount already paid on account of assured return to the complainant.

G.II Delay Possession Charges:

27. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

28. Clause 5.2 of the buyer's agreement dated 08.05.2015 provides for handing over of possession and is reproduced below: -

5.2 "5.2 that the construction completion date shall be the date when the application for grant of completion/occupation certificate is made.

29. **Due date of possession:** As per clause 5.2, the construction completion date shall be the date when the application for grant of completion/occupation certificate is made. The respondent-promoter applied for grant of occupation certificate on 23.01.2023. Therefore, the due date of possession comes out to be 21.01.2023.

30. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:-

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

31. 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.

32. 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%.

33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. 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.

35. 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 23.01.2023. 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.

36. 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?

37. 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.51,085/- p.m. on the total amount received till possession is offered to the complainant. 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.51,085/- p.m. on the total amount received till possession is offered to the complainant whereas the delayed possession charges are payable 38,821/- 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.
38. 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.
39. In the present complaint, as per clause 3 of the MoU dated 19.02.2013, the amount on account of assured return was payable till the possession is offered to the complainant. The admitted fact is that the respondent-

promoter paid assured return till June 2019. 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.51,085/- per month till possession is offered to the complainant after deducting the amount already paid on account of assured return to the complainant.

G.III Direct the respondent to execute sale deed.

40. 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.

41. 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.

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

42. 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 of the authority

43. 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):

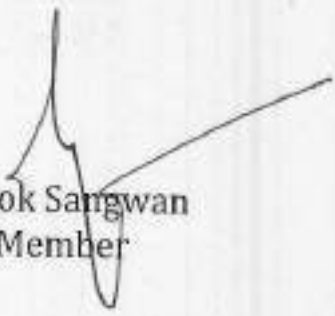
- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.51,085/- per month till possession is offered to the complainant after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be 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.

44. Complaint stands disposed of.

45. File be consigned to registry.


Ashok Sangwan
Member


Arun Kumar
Chairman


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2025