BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 16.09.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.
PROJECT NAME		New Square
S. No.	Case No.	Case title
1.	CR/755/2025	Mahender Singh Vs. M/s Neo Developers Private Limited
2.	CR/756/2025	Pranav Krishna and Vaibhav Krishna Vs. M/s Neo Developers Private Limited
3.	CR/760/2025	Anju Tayal Vs. M/s Neo Developers Private Limited

CORAM:

Shri Arun Kumar — **Chairman**

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

Shri Hemant Phogat (Advocate) — **Complainant**

Shri Venket Rao (Advocate) — **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*** 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 valid offer of possession of the unit along with assured return, waiver of fit out 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	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
1	**CR/755/2025** Mahender Singh Vs. M/s Neo Developers Pvt. Ltd.	Food court, 5th floor 100 sq. ft. (page 23 of complaint)	**BBA:** 30.01.2018 (page 20 of complaint) **MOU:** 30.01.2018 (page 46 of complaint)	*4. **The Company shall pay a monthly assured return of Rs. 6,500/- on the total amount received with effect from 01 August 2018** before deduction of Tax at*	**T.S.C:** Rs.5,23,588/- (as per assured return plan on page no. 38 of complaint) **A.P.:** - Rs.5,01,088/- (as per MOU at page 48 of complaint)	**O.O.P:** 16.10.2024 (page no. 58 of complaint) **Lease Out letter:** 10.12.2024

	DOF: 20.02.2025 **Reply:** 27.08.2025			*Source, 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 Payment Schedule annexed 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.*		(page 61 of complaint)
2	**CR/756/2025** Pranav Krishna and Vibhav Krishna Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 20.02.2025 **Reply:** 27.08.2025	3rd floor 304 sq. ft. (page 24 of complaint)	**BBA:** 12.09.2018 (page 21 of complaint) **MOU:** 12.09.2018 (page 40 of complaint)	*4.* ***The Company shall pay a monthly assured return of Rs. 29,847/- on the total amount received with effect from 12 September 2018*** *before deduction of Tax at Source, 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 Payment Schedule annexed 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*	**T.S.C:** Rs.17,70,830/- (as per payment plan on page no. 39 of complaint) **A.P.:** Rs.17,02,400/- (as per MOU at page 42 of complaint)	**O.O.P:** **04.12.2024** (page no. 53 of complaint)

				shall be paid from the effective date.		
3	**CR/760/2025** Anju Tayal Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 20.02.2025 **Reply:** 27.08.2025	5th floor 300 sq. ft. (page 27 of complaint)	**BBA:** 11.05.2017 (page 24 of complaint) **MOU:** 11.05.2017 (page 43 of complaint)	4. ***The Company shall pay a monthly assured return of Rs. 19,500/- on the total amount received with effect from 11 May 2019*** *before deduction of Tax at Source, 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 Payment Schedule annexed 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.S.C:** Rs.20,13,579/- (as per payment plan on page no. 42 of complaint) **A.P.:** Rs.17,26,200/- (as per MOU at page 45 of complaint)	**O.O.P:** **09.10.2024** (page no. 53 of complaint)

Relief sought by the complainant(s) in abovementioned complaints: -

1. To pay monthly assured return until the commencement of first lease of unit.
2. Direct the respondent to withdraw and waive off the demands made in reminder 1 demand notice & offer of possession letter dated 16.10.2024.
3. Waive off the demand for fit out charges raised in letter dated 10.12.2024.
4. To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.12.2024 on account of Development Charges, Labour Cess, FTTH charge and further be directed not to impose and waive off holding charges and interest imposed, (if any) towards these demands.
5. To direct the respondent to withdraw and waive off the demands made in demand notice

& offer of possession letter dated 09.10.2024 on account of Development Charges, Labour Cess, VAT, FTTH & IFMS charges as the charge towards IFMS has already been paid by the complainant. 6. Direct the respondent wave off the interest amount of Rs.3,19,630/- imposed upon the complainant in the demand notice and offer of possession letter dated 09.10.2024 as total sale price has been paid by the complainant. 7. Not to charge anything which is not part of payment schedule. 8. Direct the respondent to issue valid offer of possession and get the conveyance deed executed in favor of complainant.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer Of Possession

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 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/755/2025 titled as Mahender Singh 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/755/2025 titled as Mahender Singh Vs. M/s Neo Developers Pvt. Ltd.

S. No.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	5th floor (page no. 23 of complaint)
7.	Unit area admeasuring	100 sq. ft. (page no. 23 of complaint)
8.	Date of buyer's agreement	30.01.2018 (page no. 20 of complaint)
9.	Date of MoU	30.01.2018 (page no. 46 of complaint)
10.	Possession clause	*3. The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate.*
11.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Due date of possession	30.01.2021 (Calculated from date of agreement being later)

13.	Assured return Clause	*4. **The Company shall pay a monthly assured return of Rs. 6,500/- on the total amount received with effect from 01 August 2018** before deduction of Tax at Source, 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 Payment Schedule annexed 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.*
14.	Basic sale consideration	Rs.5,23,588/- (as per payment plan on page no. 38 of complaint)
15.	Amount paid by the complainant	Rs.5,01,088/- (as per MOU at page 48 of complaint)
16.	Occupation certificate	14.08.2024 (page 42 of reply)
17.	Offer of possession	01.10.2024 (page no. 63 of reply)
18.	Reminders for payment	16.10.2024, 17.12.2024, 03.12.2024, 10.03.2025 (page 67 of 70 of reply)

B. Facts of the complaint.

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

i. That, after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainant booked a commercial space in the area designated for Food Court and Entertainment Space on 5th floor having its super area 100 sq. ft. And covered area of 50 sq. ft. In the upcoming project of the respondent named "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram for a

total basic sale consideration of Rs.4,00,000/- and total sale price of Rs.5,23,588/- which includes the BSP, EDC, IDC, GST & IFMS and the complainant has paid a sum of Rs.5,01,088/- in respect of his space /unit.

ii. That the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.

iii. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 30.01.2018. The complainant has abided by all the terms of MOU and builder buyer agreement dated 30.01.2018 and has made all the payments/ installments in a timely manner, as and when demanded by the respondent and there are no dues pending in respect of the total sale price of the unit as per the (Annexure-1) payment schedule of the builder buyer's agreement.

iv. That, as per Clause–3 of the MOU dated 30.01.2018, the respondent was/is under legal obligation to complete the construction of the project within 36 months from the date of execution of MOU but the respondent has failed to complete the project and handover the possession of the unit within the committed time period and the respondent has delayed the project.

v. That, as per Clause–4 of the MOU dated 30.01.2018, the respondent was/is under legal obligation and was bound to pay the monthly assured Return of Rs.6,500/- on the total amount receipt w.e.f. 01.08.2018 until the commencement of first lease on the said unit.

vi. That the respondent/developer has failed to honor its own commitment of paying the monthly assured returns and has paid only 10 installments towards monthly assured return. The complainant has been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns via email communications and by visiting

the respondent/developer personally but the respondent/ developer has not paid any heed to the just and genuine demands of the complainant and has been lingering on the demands of the complainant on one pretext or the other.

vii. That upon communication with the respondent/developer, the complainant were given verbal assurance and assurance through latter dated 15.10.2020 and letter dated 29.01.2022, that the respondent/ developer will adjust payments of the complainant towards monthly interest/assured return at the time of possession and now even after the receiving of occupation certificate as informed by the respondent/ developer, the respondent/ developer has clearly denied to pay the assured returns.

viii. That further, the respondent in contravention to the terms of builder buyer agreement and MOU dated 30.01.2018 has raised unlawful demands via reminder-1 demand notice and offer of possession letter dated 16.10.2024 to the tune of Rs.1,02,453/-. The demands raised by the respondent in the said demand notice are not part and parcel of the payment schedule of the buyer's agreement and these demands are being raised illegally and in an arbitrary manner by the respondent with the sole intention to extort more money from the complainant.

ix. That the complainant upon the receiving of the reminder -1 demand and offer of possession letter dated 16.10.2024, confronted and approached the respondent/developer and sought clarification upon the unlawful demands raised in the letter dated 16.10.2024, despite of paying entire sale price as per the payment plan of the buyers agreement dated 30.01.2018 and further requested the respondent for the payment of due assured returns in respect of his unit but the respondent has failed to provide any satisfactory reply to the just and genuine demands of the complainant.

x. That the respondent is acting in arbitrary manner by not accepting the just and genuine requests of the complainant and is further pressurizing the complainant to pay the demands raised in the letter dated 16.10.2024 and is also threatening to terminate/cancel the allotment of the complainant by raising reminder-2 letter dated 20.11.2024 and reminder -3 letter dated 03.12.2024. The complainant upon receiving the reminder letters has been regularly confronting the respondent by visiting personally at their office, but the respondent is not willing to listen to the request of the complainant and is further sending these letters in order to unlawfully extort money out of the complainant.

xi. That the respondent has also raised a unlawful demand towards the fit out charges amounting of Rs.2,95,000/- vide letter dated 10.12.2024. The demand for the fit-out charges is completely bogus and are not part of the buyer's agreement or the MOU and neither the payment schedule mentioned in the buyer's agreement and MOU dated 30.01.2018.

xii. That the respondent is completely ignoring the terms of the buyer's agreement and is acting in an unlawful and arbitrary manner by making demands upon his whims and fancies which are not part of the buyer's agreement with a sole intention to extort money out of the complainant in order to cause wrongful loss to the complainant.

xiii. That the complainant had taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyer's agreement and to pay him the assured returns as per the terms of MOU dated 30.01.2018 but the respondent has completely ignored the just and genuine demands of the complainant.

xiv. That, till today the complainant has not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter dated 16.10.2024 and letter of fit out charges dated 17.12.2024 and therefore, the complainant is suffering from harassment and is going through a lot of mental and financial agony.

xv. That the respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyer's agreement, which is immoral, illegal and amounts to unfair trade practice.

C. Relief sought by the complainants

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

I. To pay monthly assured return until the commencement of first lease of unit.

II. Direct the respondent to withdraw and waive off the demands made in reminder 1 demand notice & offer of possession letter dated 16.10.2024.

III. Waive off the demand for fit out charges raised in letter dated 10.12.2024.

IV. Direct the respondent to issue valid offer of possession and get the conveyance deed executed in favor of complainant.

V. Not to charge anything which is not part of payment schedule

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:

I. That the complainants with the intent to invest in the Real Estate Sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a

booking application form dated 15.12.2017, whereby seeking allotment of Unit No. Virtual 20, admeasuring 100 sq. ft Super Area on the 14th floor of the Project having a basic sale price of Rs.4000/-. The complainants, 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 30.01.2018 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 complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 01.08.2018 till commencement of first lease. As per terms of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.

III. That by no stretch of imagination it can be concluded that the complainants herein are "allottee/consumer." The complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

IV. That the MOU executed between the parties was in the form of an "Investment Agreement." 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 Authority, in totality, does not exist.

V. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. That

the respondent had been rightly obliging with the payments of committed returns to be made by it.

VI. That the complainant voluntarily also executed the buyer agreement dated 30.10.2018 for Shop no. Virtual 20 14th floor admeasuring 100 sq. ft Super Area in the project.

VII. 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.

VIII. That under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.

IX. That a perusal of Section 13 (2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.

X. That the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance where the project was an ongoing project and provisions of the act were being made applicable, in such a situation, a strict interpretation of the statutory provisions is being mandated.

XI. That the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under Section 13. Section 13 nowhere mentions the Agreements pertaining to Assured Return are covered under the Act, 2016.

XII. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under Section 31 of the Act. Further, the Provisions of Section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the Act and Rules/Regulations made there under.

XIII. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the Promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.

XIV. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the Agreement of Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

XV. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The Rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That even this agreement does not contain any condition governing assured returns. Thus, any order of payment of Assured Return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.

XVI. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

XVII. On the basis of the above, it may be considered that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.

XVIII. Also, a perusal of the Section 2(d) defining allottee as well as Section 2 (zk) which defines "Promoter" does not include any transaction regarding "assured return". Therefore, the Assured Return scheme is beyond the scope of the Act, 2016 and jurisdiction of the Authority.

XIX. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of

either party to fulfil the terms and conditions of the Agreement for Sale (Buyer's Agreement). However, in the present matter the complainant is relying upon the terms of mou which is a distinct agreement than the Buyer's agreement and thus, the MOU is not covered under the provisions of the Act, 2016. The said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

XX. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:

> *"11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.*

XXI. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.

XXII. 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.

XXIII. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and

came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the Respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees/Complainant due above said prevailing confusion/anomaly. The preamble of the act reads as under:

> *"An Act 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."*

XXIV. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.

XXV. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.

XXVI. 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. 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.

XXVII. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.

XXVIII. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

XXIX. That recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. Vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

XXX. That an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee. Also, an Appeal bearing no. 647 of 2021, titled as *Vatika Limited vs Vinod Agarwal*, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein,

the Hon'ble Tribunal vide order dated 27.01.2021, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee.

XXXI. That the as per Clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.

XXXII. That as per Clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made. Accordingly, as per Clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession comes out to be 01.11.2019.

XXXIII. That the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons. The complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants 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.5,01,088/- against the total due amount of Rs.6,03,378/-. There is still an outstanding due of Rs.1,02,453/- which is to be paid by the complainant against the unit booked as per the demand letter dated 01.10.2024.

XXXIV. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days

from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

XXXV. That the allotee is not entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease. The decision taken and terms negotiated by the company shall be final and binding on the allotee(s).

XXXVI. That complainant is trying to negotiate to the demand of respondent on Fit out, the respondent has raised the demand of Rs.2500/- per sq. ft to the complainant which is sum of Rs.2,95,000/- for getting the said unit fit out which is essential for getting the said unit leased out.

XXXVII. That though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various Clauses of the buyer agreement and MOU.

XXXVIII. That the complainant failed to clear the outstanding dues of Rs.1,02,453/- payable against the unit. That the complainant has not obliged its duties as per the MOU & Buyer's Agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault.

XXXIX. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.

XL. That the respondent has not availed the Amnesty Scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

XLI. That the demand of VAT is done as per Clause 11 of the Buyer's Agreement. The said clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

XLII. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. No.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10	7th of April, 2015 to 6th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction

		years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			Activity. The Order had Completely Hampered The construction activity.
2.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is

					pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and 17th Nov, 2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the

					supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as *"MC Mehta vs. Union of India"* completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw

					materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

XLIII. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of *force majeure*. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled *"Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP"* decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

XLIV. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the said project in all aspect and obtained the completion certificate from the office of DTCP

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.

E. 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.

E.I Territorial jurisdiction

14. As per notification no. ***1/92/2017-1TCP dated 14.12.2017*** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

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

F. Findings on the objections raised by the respondent:

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

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.

G. Findings on the relief sought by the complainants.

G.I To pay monthly assured return until the commencement of first lease of unit.

19. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 30.01.2018 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 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 properly 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 4 of the MoU dated 30.01.2018, which is reproduced below for the ready reference:

> *4.*
> ***The Company shall pay a monthly assured return of Rs. 6,500/- on the total amount received with effect from 01 August 2018*** *before deduction of Tax at Source, 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 Payment Schedule annexed 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, as per the abovementioned clause the assured return was payable @Rs.6,500/- per month w.e.f. 01.08.2018, till commencement of first lease.

29. In light of the above, the Authority is of the view that as per the MoU dated 30.01.2018, it was obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation

certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was leased out by the respondent on 10.12.2024 (Annexure C-8). Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.6,500/- from the date i.e., 01.08.2018 till 10.12.2024.

30. However, in other two matters CR/756/2025 and CR/760/2025 no document has been placed on record by respondent to show that the respective units have been leased out. Accordingly, in those cases, the respondent continues to remain liable to pay assured return until the commencement of the first lease of the concerned units in accordance with the MoU dated 12.09.2018 and 11.05.2017.

G.II Direct the respondent to withdraw and waive off the demands made in reminder 1 demand notice & offer of possession letter dated 16.10.2024.

G.III Waive off the demand for fit out charges raised in letter dated 10.12.2024.

G.IV To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.12.2024 on account of Development Charges, Labour Cess, FTTH charge and further be directed not to impose and waive off holding charges and interest imposed, (if any) towards these demands.

G.V To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 09.10.2024 on account of Development Charges, Labour Cess, VAT, FTTH & IFMS charges as the charge towards IFMS has already been paid by the complainant.

G.VI Direct the respondent wave off the interest amount of Rs.3,19,630/- imposed upon the complainant in the demand notice and offer of possession letter dated 09.10.2024 as total sale price has been paid by the complainant.

31. The complainant in CR/755/2025 has raised objection towards the fit out charges raised by the respondent vide letter dated 10.12.2024 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. Vide proceedings dated 16.09.2025 the counsel for the respondent submitted that as per the Clause 8 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

(d)
That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee, *strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received.*

32. Upon understanding of the said clause, it is clear that Clause 8(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes, which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

33. Therefore, if the respondent seeks to levy fit out charges, it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of

the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.

34. Further, in CR/756/2025 the complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

- **Labour cess**

  Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Development charges**

  The undertaking to pay the development charges was comprehensively set out in the buyer agreement in clause 11. The said clause of the agreement is reproduced hereunder: -

"11.

***That the Allottee agrees to pay all taxes, charges**. Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST. **Development charges,** Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like. **These shall be paid on demand** and in case of delay. these shall be payable with interest by the Allottee"*

In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

The respondent during proceedings dated 16.09.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos.*** 3864-***3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under-

> 3. *"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the* ***holding*** *charges will not be payable to the developer.* ***Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."***

Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.

G.V Direct the respondent to issue valid offer of possession and get the conveyance deed executed in favor of complainant.

35. As per Section 11(4)(f) and Section 17(1) of the Act, 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.

36. 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.

H. Directions of the authority

37. 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 the assured return to the complainants at the agreed rate per month as per the MoU dated 30.01.2018 till 10.12.2024 i.e. the date of leasing out of unit after deducting the amount already paid on account of assured return to the complainants. In CR/756/2025 and CR/760/2025 the respondent/promoter is directed to pay assured return to the complainants at the agreed rate per month as per the MoU until the commencement of the first lease of the concerned units.

II. The respondent/promoter 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, failing which that amount would be payable with interest @8.85% 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 or buyers' agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law

settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020***.

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 as per applicable local laws from the date of this order.

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

39. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

40. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated:16.09.2025