

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

**Date of Order: 22.07.2025**

Name of the Builder		NEO Developers Private Limited	
Project Name		Neo Square	
Sr. No.	Case No.	Case title	Appearance
1.	CR/4946/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)
2.	CR/4916/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)
3.	CR/4920/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)
4.	CR/4934/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)
5.	CR/4936/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)
6.	CR/4940/2022	Dr. Lt. Col. Binny Kohli VS NEO Developers Private Limited	Sapna Malik (Complainant) Venkat Rao (Respondent)

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman  
Member**

**ORDER**

1. This order shall dispose of 6 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 executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Neo Square", Sector 109, Gurugram being developed by the same respondent/promoter i.e., "NEO Developers Private Limited". The terms and conditions of the buyer's agreements, Memorandum of Understanding (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 assured returns and possession of the units of the amount paid by the complainant along with interest at the prescribed rate.
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
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Nature of the Project	Commercial Project
Project area	2.71 acres
DTCP License No. and validity	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
HRERA Registration	109 of 2017 dated 24.08.2017
Possession Clause	3. That the company shall complete the construction of the said building/ complex within which the said space is located <b>within 36 months from the date of execution of this agreement or from the start of construction, whichever is later</b> and apply for grant of completion/ occupation certificate.
Occupation certificate	14.08.2024 (As per the DTCP site)

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. and size	Date of execution of BBA/MOU	Basic Sale Consideration / Total Amount paid by the complainant and Assured Returns (AR) paid by the Respondent
1.	CR/4946/2022 Dr. Lt. Col. Binny Kohli Vs Neo Developers Pvt. Ltd.  DOF: 10.08.2022	Unit 39, 3rd Floor  Area: 500 sq. ft. (As per pg. no. 131 of the complaint)	12.09.2015  (As per pg. no. 38 of the reply)	BSC: Rs.22,50,000/- AP: Rs.27,04,743/- AR: Rs. 19,18,500/-  (As per pg. no. 131 of the complaint)
2.	CR/4916/2022 Dr. Lt. Col. Binny Kohli Vs Neo	Unit 27, 3rd Floor  Area: 500 sq. ft.	09.02.2015	BSC: Rs. 22,50,000/- AP: Rs. 26,94,780/- AR: Rs. 22,38,000/-

	Developers Pvt. Ltd.  DOF: 09.08.2022	(As per pg. no. 131 of the complaint)	(As per pg. no. 67 of the reply)	(As per pg. no. 131 of the complaint)
3.	CR/4920/2022 Dr. Lt. Col. Binny Kohli Vs Neo Developers Pvt. Ltd.  DOF: 09.08.2022	Unit 28, 3rd Floor  Area: 500 sq. ft. (As per pg. no. 131 of the complaint)	09.02.2015 (As per pg. no. 38 of the reply)	BSC: Rs. 22,50,000/- AP: Rs. 26,94,780/- AR: Rs. 22,38,000/-
4.	CR/4934/2022 Dr. Lt. Col. Binny Kohli Vs Neo Developers Pvt. Ltd.  DOF: 10.08.2022	Unit 29, 3rd Floor  Area: 500 sq. ft. (As per pg. no. of 131 the complaint)	12.02.2015 (As per pg. no. 29 of the reply)	BSC: Rs.22,50,000/- AP: Rs.26,94,780/- AR: Rs.22,33,500/-  (As per pg. no. of 131 the complaint)
5.	CR/4936/2022 Dr. Lt. Col. Binny Kohli Vs Neo Developers Pvt. Ltd.  DOF: 10.08.2022	Unit 37, 3rd Floor  Area: 500 sq. ft. (As per pg. no. of 131 the complaint)	03.08.2015 (As per pg. no. 41 of the reply)	BSC: Rs.22,50,000/- AP: Rs.27,04,743/- AR: Rs.19,77,000/- (As per pg. no. of 131 the complaint)
6.	CR/4940/2022 Dr. Lt. Col. Binny Kohli Vs Neo Developers Pvt. Ltd.  DOF: 10.08.2022	Unit 38, 3rd Floor  Area: 500 sq. ft. (As per pg. no. of 131 the complaint)	03.08.2015 (As per pg. no. 28 of the reply)	BSC: Rs.22,50,000/- AP: Rs.27,04,743/- AR: Rs.19,77,000/- (As per pg. no. of 131 the complaint)

The complainant herein is seeking the following reliefs:

1. Direct the Respondent to Reinstate and handover the possession of the commercial unit.
2. Direct the respondent to give or allot another unit/shop on the same sq. ft. i.e. 500 sq. ft. to the Complainant in the Neo Square, Sector-109, Dwarka Expressway, Gurugram, in case the Respondent already sold out of the aforesaid unit before filing the present complaint.
3. Amount paid till now Rs.27,04,743/- (Including EDC/IDC, Service Tax/GST, VAT) till date. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession i.e. 15.06.2019 till the date of actual handing over of complete and valid physical possession of the Unit No. Priority No.39, Neo Square, Sector-109, Dwarka Expressway, Gurugram.
4. Direct the Respondent to pay the Assured Returns of Rs.45,000/- per month.
5. Declare the Notice of Cancellation dated 06.07.2021 invalid.
6. To direct the respondent to provide the details of charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the complainant.
7. To direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainant as they were constrained to file the same because of the callous and indifferent attitude of the respondent.

**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
BSC	Basic sale consideration
AP	Amount paid by the allottee/s
AR	Assured Returns

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the allotment letter in respect of subject unit for not handing over the possession by the due date, seeking delayed possession charges along with the Assured returns with interest at the prescribed rate.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of the complaints filed by the complainant-allottee(s) are similar. Herein, the particulars of lead case **CR/4946/2022 Case titled as Dr. Lt. Col. Binny Kohli VS Neo Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Unit and project related details**

7. 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. N.	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	2.71 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	<b>Registered</b>



		109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	RERA Extension	109 of 2017/ 7(3)/33/2023/10 Valid up to 22.02.2024
8.	Unit and Floor no.	Unit No. 39 Food Court (500) (As mentioned in BBA at page no. 45 of the reply)
10.	Unit area admeasuring	500 sq. ft. (As mentioned in Account Statement at page no. 131 of the complaint)
11.	Date of Booking	25.05.2015 (As per 25 of the reply)
12.	Date of start of construction	The Authority has decided the date of start of construction as <b>15.12.2015</b> which was agreed to be taken as date of start of construction for the same project in other matters. CR/1329/2019  It was admitted by the respondent in his reply that the construction was started in the month of December 2015.
13.	Date of execution of Buyer's agreement	12.09.2015 (As per page no.40 of the reply)
14.	Possession clause	<b>Clause 3</b>  <i>That the company shall complete the construction of the said building/ complex within which the said space is located <b>within 36 months from the date of execution of this agreement or from the start of construction,</b></i>

		<p><b>whichever is later</b> and apply for grant of completion/ occupation certificate...</p> <p>(As per BBA at page no.71 of the complaint)</p>
15.	Assured Returns Clause	<p><b>Clause 4</b></p> <p><i>The company shall pay a monthly assured return of Rs. 45,000/- (Rupees Twenty-Two Thousand Five Hundred only) on the total amount received with effect from 12.09.2015 after deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company, and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule 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.</i></p> <p>(As per MOU at page no.31 of the reply)</p>
16.	Lease rental clause	<p><b>Clause 7</b></p> <p><i>(a) That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals.</i></p> <p><i>(b) In case of any increase in the monthly rental in excess of the Assured Return, the allotment consideration shall be enhanced by Rs. 54.55/- per sq. ft for each rupee increase in the monthly rental.</i></p>



		<p><i>Similarly, in case the monthly rental is reduced from the Assured Return, then for each decreased rupee, the allotment consideration shall stand decreased by Rs. 109.10/- per sq. ft. The Allottee agrees to settle the final sale consideration in terms of the present clause (b).</i></p> <p><i>(As per MOU at page no.31 of the reply)</i></p>
17.	Due date of possession	<p>15.06.2019</p> <p>(Calculated from date of start of construction being later)</p>
18.	Basic Sale Consideration	<p>Rs.22,50,000/-</p> <p>(As per account statement at page no.131 of complaint)</p>
19.	Amount paid against the unit	<p>Rs.27,04,743/-</p> <p>(As per account statement at page no.131 of complaint)</p>
20.	Assured Returns Paid by the respondent	<p>₹19,18,500/-</p> <p>(As per account statement at page no.131 of complaint)</p>
21.	Occupation certificate	<p>14.08.2024</p> <p>(As per the DTCP Site)</p>
22.	Offer of possession	Not offered
23.	Cancellation letter	<p>06.07.2021</p> <p>(page 86 of the reply)</p>

#### **B. Facts of the complaint**

8. The complainant has made the following submissions: -

- I. That on 25.05.2015, the complainant applied for booking of commercial Unit No. Priority No.39, admeasuring 500 sq. ft., in the said project by paying the entire basic sale price of Rs.22,50,000/- along with taxes and charges (EDC/IDC/VAT/GST), partly from her account and partly from her husband's account. The respondent thereafter executed a Memorandum of

Understanding (MoU) and Buyer's Agreement with the complainant in 2015.

- II. That the said MoU was based on an "Assured Return Plan", under which the complainant was entitled to a monthly assured return of Rs.45,000/- till the commencement of lease, and the respondent was obliged to complete construction within 36 months or from the start of construction, whichever was later.
- III. That complainant and her husband collectively paid a total sum of Rs.27,04,743/- towards Unit No.39, which included basic sale price and applicable charges. It is the complainant's case that she made all payments as demanded and committed no default.
- IV. That due to delay in completion of the project and financial difficulties faced by the complainant, the respondent persuaded her to surrender Unit No.39 and certain other units owned by her and her husband. Accordingly, on 09.05.2019, a fresh MoU was executed under which the respondent agreed to purchase **seven units** including Unit No.39, admeasuring 3503 sq. ft., at ₹7,500/- per sq. ft., amounting to Rs.2,62,72,500/-. The transaction was to be completed by 30.10.2019.
- V. That pursuant to the said MoU dated 09.05.2019, the complainant surrendered the original Buyer's Agreements, MoUs, allotment letters, receipts and other original documents to the respondent at its corporate office. However, the respondent did not honour its obligation and refunded only ₹30,00,000/- by two cheques dated 31.08.2019 and 06.12.2019.

- VI. That despite repeated follow-ups through emails, whatsapp messages and personal visits, the respondent failed to pay the balance purchase consideration. On 12.08.2020, the complainant and her husband submitted an application to cancel the buyback deal and reinstate their original allotments, which the respondent initially assured to accept and to return original documents within 10 days.
- VII. That complainant sent further reminders, including emails dated 26.09.2020 and 23.10.2020, requesting reinstatement of Unit No.39 and other units, which were acknowledged verbally by the respondent but no action was taken.
- VIII. However, instead of restoring the complainant's allotment, the respondent issued a cancellation notice dated 06.07.2021, alleging default of ₹2,83,765/- by the complainant. The said notice also referred to forfeiture clauses under the BBA, though no such demand had ever been raised prior to cancellation.
- IX. That complainant contends that the alleged adjustment of assured returns, brokerage and earnest money in the respondent's account statement is arbitrary and not supported by any clause of the MoU and BBA. The respondent did not comply with Regulation 11 of 2018 of HARERA, which requires refund after deduction of only 10% of sale consideration as earnest money.
- X. That complainant also issued a legal notice dated 21.09.2021 demanding payment of the balance amount of Rs.2,32,72,500/- with interest @24% p.a., or in the alternative, possession of the units along with original

documents and assured returns. The respondent neither replied to the notice nor complied with the demand.

- XI. Thereafter, the complainant and her husband lodged a complaint with the Economic Offences Wing, Delhi, which resulted in registration of FIR no.0046 dated 16.03.2022 for offences of cheating, criminal breach of trust, conspiracy and misappropriation of fund.
- XII. That the complainant submits that the respondent's conduct amounts to unfair trade practice, cheating and breach of trust, as despite surrendering all original documents under the MoU dated 09.05.2019, neither consideration was paid nor the original allotment reinstated.
- XIII. That it is alleged that the respondent acted with mala fide intention to grab funds of the complainant and arbitrarily cancelled her unit without lawful authority, thereby causing financial loss, mental agony and harassment to the complainant.
- XIV. That in view of the aforesaid, the complainant prays for setting aside of the cancellation notice dated 06.07.2021, reinstatement of her allotment as per MoU dated 09.05.2019, assured returns, compensation for harassment and litigation costs.

**C. Relief sought by the complainant:**

- 9. The complainant has sought following relief(s):
  - I. Direct the respondent to reinstate and handover the possession of the commercial unit/shop No. Priority No.39, Neo Square, Sector-109, Dwarka Expressway, Gurugram to the Complainant along with return back of original MOU, original Buyer's Agreement, original Allotment

Letter, original payment receipts and other original documents towards the aforesaid commercial unit/shop No. Priority No.39, Neo Square, Sector-109, Dwarka Expressway, Gurugram.

- II. Direct the respondent to give or allot another unit/shop on the same sq. ft. i.e. 500 sq. ft. to the Complainant in the Neo Square, Sector-109, Dwarka Expressway, Gurugram, in case the Respondent already sold out of the aforesaid unit before filing the present complaint.
- III. Amount paid till now Rs.27,04,743/- (Including EDC/IDC, Service Tax/GST, VAT) till date. Kindly allow delay possession charges Interest for every month of delay at prevailing rate of interest from the due date of possession i.e. 15.06.2019 till the date of actual handing over of complete and valid physical possession of the Unit No. priority No.39, Neo Square, Sector-109, Dwarka Expressway, Gurugram.
- IV. Direct the Respondent to pay the assured Return of Rs.45,000/- per month after deducting TDS of Rs.4,500/- i.e. balance Rs.40,500/- on amount paid to the Complainant from April, 2019 to till the date of offer of the possession with interest for every month of delay at Prevailing rate of interest on the unpaid amount.
- V. Declare the Notice of Cancellation dated 06.07.2021 along with Account Statement except column of paid amount of the Complainant and Assured Return Amount of the Respondent as illegal and void against the eyes of law and Set Aside the same.

- VI. To direct the respondent to provide the details of charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainant.
- VII. To direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainant as they were constrained to file the same because of the callous and indifferent attitude of the respondent.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

11. The respondent has contested the complaint on following grounds: -
- a) That the complainant applied for allotment of unit no. 39, admeasuring 500 sq. ft. in the commercial project "Neo Square", Sector-109, Gurugram through application dated 25.05.2015 for a consideration of Rs.22,50,000/-. Subsequently, a Memorandum of Understanding (MOU) dated 12.09.2015 was executed between the parties whereby the respondent agreed to pay the complainant assured return of Rs.45,000/- per month till commencement of the first lease of the said unit.
  - b) That in terms of the said MoU, the respondent commenced assured return payments from 12.09.2015 and continued till 08.04.2019, amounting to Rs.19,18,500/- (including TDS), which was almost equivalent to the amount paid by the Complainant towards the said unit.
  - c) That vide letter dated 09.05.2019, the complainant, through her husband, requested cancellation of allotment of Unit No. 39 in the project "Neo



Square" along with six other units (Nos. 27, 28, 29, 37, 38 and 212), citing personal reasons. In the said surrender request, the complainant further confirmed that she would have no right, title, lien, or claim over the surrendered units and sought refund without interest.

- d) Pursuant thereto, the respondent refunded a sum of Rs.5,79,168/- after deductions towards 10% earnest money, assured returns already paid, and brokerage, in terms of Clauses 4.2 and 4.5 of the Builder Buyer Agreement and MoU. The respondent has placed on record a calculation sheet showing that against a refundable sum of Rs.6,86,896/-, Rs.5,79,168/- was paid.
- e) That the allegation of "buy-back" of units for a consideration of Rs.30,00,000/- is misconceived. The said amount was refunded partly towards the surrendered seven units of "Neo Square" (Rs.5,79,168/-) and partly towards refund of amounts paid for two units booked by the complainant in another proposed project of the Respondent, namely "Capital Residency" (Rs.24,20,832/-), which did not materialize. The refunds were made vide two cheques of Rs.15,00,000/- each dated 31.08.2019 and 16.12.2019 respectively, the receipt of which was duly acknowledged by the complainant through email communications.
- f) That after surrendering the allotted units and receiving refund as per agreed terms, the complainant, vide letter dated 12.08.2020, requested reinstatement of the surrendered units. As a goodwill gesture, the respondent reinstated the allotment and called upon the complainant to clear outstanding and statutory dues.

- g) However, despite repeated demands, the complainant failed to pay the outstanding dues. Instead, a police complaint was filed against the respondent, whereupon the respondent submitted a detailed reply clarifying the sequence of surrender, refund, and reinstatement, and apprising that the issue was civil in nature falling under the jurisdiction of this Authority.
- h) In view of continued default in payment, the respondent cancelled the allotment vide notice dated 06.07.2021, in terms of the Builder Buyer Agreement and MoU, while expressing readiness to refund any balance amount after permissible deductions.
- i) The record establishes that the Complainant failed to make timely payments in terms of the agreed payment plan, despite being aware of their obligations under the Buyer's Agreement. As per Clause 4.4 and 4.5 of the Agreement, time was of the essence, and non-payment entitled the respondent to cancel the allotment after permissible deductions. The complainant also violated Section 19(6) of the Act, 2016, which mandates that allottees make due payments within stipulated timelines. While the complainant may have paid the Basic Sale Price, they remained liable for statutory dues, including EDC/IDC, GST, IFMS, and other charges, which were not paid.
- j) That the complainant, having already received assured returns exceeding their investments, have indulged in filing frivolous complaints to harass the respondent and unjustly enrich themselves.

- k) As per the agreement, possession was to be deemed complete upon application for occupation certificate. However, since the complainant themselves withdrew and surrendered their units in 2019, coupled with refund being made thereafter, the project was delayed and their allotments stood cancelled for non-payment of dues.
- l) That even if the units had not been surrendered, after the enactment of the *Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act)*, it became impermissible to continue assured return schemes. Under the BUDS Act, such assured return arrangements are treated as unregulated deposits and hence prohibited. Consequently, the respondent lawfully ceased payment of assured returns post-2019. Reliance is placed on the interim order of the Hon'ble Punjab & Haryana High Court in *Vatika Ltd. v. Union of India* (CWP-26740-2022), where coercive recovery under assured return schemes was stayed.
- m) That enforcement of assured return agreements does not fall within the ambit of the Act, 2016. Section 13 mandates agreements for sale of immovable property and specifies the particulars therein, which do not include investment return schemes. Similarly, Section 4, dealing with project registration, requires filing of the sale agreement but not assured return contracts. Thus, assured return agreements are independent commercial arrangements, outside the scheme and jurisdiction of RERA.
- n) That under Section 31 of the Act, 2016, complaints may only be entertained for contraventions of the provisions of the Act or rules/regulations framed thereunder. A conjoint reading of Sections 11,

31, and 34, as well as the Rules, 2017, shows that assured return agreements are not contemplated within the statutory framework. Rule 8 of the 2017 Rules further clarifies that the form of the agreement of sale does not cover assured returns. Thus, matters pertaining to assured return fall outside the jurisdiction of this Authority.

- o) Reliance is placed on the decision of the Hon'ble Real Estate Regulatory Authority, Punjab in *Daldeep Kaur Gill v. M/s Sushma Buildtech Limited* (Complaint No. 1417 of 2019, decided on 30.06.2020), wherein it was held that assured return does not fall within the ambit of RERA. The Authority further directed that amounts already paid towards assured return be set off against any claim of interest for delay in handing over possession. It is accordingly contended that, if at all any delay interest is awarded in the present case, the sums paid towards assured return ought to be duly adjusted.
- p) That VAT has been demanded strictly in accordance with statutory provisions under the Haryana VAT Act, 2003, and Clause 11 of the Buyer's Agreement, which obligates the allottee to pay all applicable taxes, cesses, and statutory charges, along with interest in case of delay. The respondent has not availed any amnesty or lump sum scheme under the HVAT Rules, 2003. Therefore, the complainants remain liable to discharge VAT obligations as demanded.
- q) That the claims raised by the complainants are misconceived, untenable in law, and beyond the jurisdiction of this Authority. The complaint amounts to abuse of process and deserves dismissal with costs.

12. All other averments made in the complaint were denied in toto.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

14. 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**

15. 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**

16. 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.*

17. 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 complainant at a later stage.

**G. Findings on the relief sought by the complainant**

- 1) Direct the Respondent to pay the Assured Returns of Rs.45,000/- per month.
- 2) Direct the respondent to give or allot another unit/shop on the same sq. ft. i.e. 500 sq. ft. to the Complainant in the Neo Square, Sector-109, Dwarka Expressway, Gurugram, in case the Respondent already sold out of the aforesaid unit before filing the present complaint.
- 3) Amount paid till now Rs.27,04,743/- (Including EDC/IDC, Service Tax/GST, VAT) till date. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession i.e. 15.06.2019 till the date of actual handing over of complete and valid physical possession of the Unit No. Priority No.39, Neo Square, Sector-109, Dwarka Expressway, Gurugram.
- 4) Direct the Respondent to give possession of the said Unit.
- 5) Declare the Notice of Cancellation dated 06.07.2021 invalid.
- 6) To direct the respondent to provide the details of charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainant.



18. All the reliefs mentioned above are taken together being interconnected except G.7 as the complainant in the present complaint is seeking reliefs w.r.t payment of assured return, delay possession charges and possession as per the terms of the BBA & MoU dated 12.09.2015. The complainant herein contends submitted that as per clause 04 of the said MoU dated 12.09.2015, it was agreed that the respondent would pay monthly assured return of Rs.45,000/- with effect from 12.09.2015. Further, vide clause 4 of the said MoU of assured returns was to be paid by the respondent till the commencement of the first lease. The complainant is seeking unpaid assured returns on monthly basis as per the MoU dated 12.09.2015.
19. It is to be noted that on 09.05.2019, the complainant had surrendered the allotted units in the project "Neo Square" through a Memorandum of Understanding dated 09.05.2019 executed with the respondent. Under the said MoU, the respondent undertook to purchase afresh the units measuring 3503 sq. ft. at the rate of Rs. 7,500/- per sq. ft., amounting to a total consideration of Rs. 2,62,72,500/-, with the transaction to be completed on or before 30.10.2019. The relevant part of the MoU which is reproduced below for the ready reference –

*"This MOU is made on 9th of October 2019 at New Delhi between Neo Developers Pvt Ltd being the first party as in buyer and Lt. Col. Binny Kohli & Rajesh Bansah being the second party as in seller. The purchaser Neo developers Pvt. Ltd. is buying the Units at the rate of ₹500/- per Sq Ft, all inclusive. The total area is 3503 Sq. Ft. The above mentioned transaction is to be completed by 30th Oct. 2019."*

20. However, the respondent failed to honour the said commitment and refunded only Rs.30,00,000/- to the complainant, leaving the balance amount unpaid. Consequently, the complainant moved an application for reinstatement on 12.08.2020, which was duly accepted by the respondent, as is evident from their own notice of cancellation dated 06.07.2021 acknowledging the said reinstatement. Therefore, the cancellation of the unit cannot be sustained and is set aside.
21. 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 BBA 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.
22. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced 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;"*

23. Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.
24. The MoU dated 12.09.2015 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the MoU and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. 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.*

25. 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;*

26. 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.

27. 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.
28. 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.
29. 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.

30. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 12.09.2015, which is reproduced below for the ready reference:

**Clause 4** – “The company shall pay a monthly assured return of Rs. 45,000/- (Rupees Forty-Five Thousand only) on the total amount received with effect from 12.09.2015 after deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company, and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule 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.”

31. Thus, the assured return was payable @Rs.45,000/- per month w.e.f. 12.09.2015, until the commencement of the first lease on the said unit.
32. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 12.09.2015, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 12.09.2015. Further, it is to be noted that the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, whereas the possession of the subject unit has not been offered till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.45,000/- per month from the date i.e., 12.09.2015 until the commencement of the first lease on the said unit as per the MoU after deducting the amount already paid



on account of assured return to the complainant as per account statement attached in the complaint and as well as with the reply.

**G.II Delay Possession Charges:**

33. 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."*

34. Clause 3 of the MoU dated 12.09.2015 provides for handing over of possession and is reproduced below.

***Clause 3 - The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the execution of this agreement or from the start of the construction, whichever is later...***

35. **Due date of possession:** As per clause 3 of the MoU dated 12.09.2015, the possession of the allotted unit was supposed to be offered within a stipulated time frame of 36 months from the date of execution of agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CR/1328/2019) whichever is later plus 6 months of grace period. Therefore, the due date has been calculated as 36 months from the date of start of construction of the project being later. Further a grace period of 6 months is allowed to the respondent being unqualified. Thus, the due date of possession come out to be **15.06.2019**.
36. **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]*

*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.*

37. 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.
38. 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., 22.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
39. 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—  
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal  
to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;  
the interest payable by the promoter to the allottee shall be from the date the promoter received  
the amount or any part thereof till the date the amount or part thereof and interest thereon is  
refunded, and the interest payable by the allottee to the promoter shall be from the date the  
allottee defaults in payment to the promoter till the date it is paid;*

40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
41. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3 of the MoU dated 12.09.2015, the possession of the subject unit was to be delivered by **15.06.2019**. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to handover possession of the subject shop/unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
42. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a

provision in the in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is @Rs.45,000/- per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that she will be entitled for this specific amount from 12.09.2015 up to the commencement of the first lease on the said unit. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay 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 her money is continued to be used by the promoter even after the promised due date and in return, she is to be paid either the assured return or delay possession charges whichever is higher.

43. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

44. In the present complaint, as per clause 4 of the MoU dated 12.09.2015, the amount on account of assured return was payable from 12.09.2015 up to the commencement of the first lease on the said unit. 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.45,000/- per month from the date i.e., 12.09.2015 as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.
45. Furthermore, as the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, the respondent is directed to offer possession of the subject unit to the complainant within a period of 60 days from the date of this order. In case third party rights have been created on the aforesaid unit, then the promoter shall allot another unit admeasuring same area at the same price and terms to the allottee.

**G.7. To direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainant as they were constrained to file the same because of the callous and indifferent attitude of the respondent.**

46. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating



officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant may approach the adjudicating officer.

#### **H. Directions of the authority**

47. 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 cancellation of unit by the respondent vide letter dated 06.07.2021 is set aside. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.45,000/- per month from the date i.e., 12.09.2015 till the commencement of the first lease is issued to the complainant as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.
- 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, from the complainant and failing which that amount would be payable with interest @8.90% p.a. till the date of actual realization.
- iii. The respondent/promoter is directed to offer possession of the subject unit to the complainant within a period of 30 days from the date of this order. In case the third-party rights have been created



- on the aforesaid unit, then the promoter shall allot another unit admeasuring same area at the same price and terms to the allottee.
- iv. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA and MoU dated 12.09.2015.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of payable assured returns.
- vi. The respondent/promoter is directed to provide specifications regarding the unit in question to the complainant-allottee within a period of 1 month from the date of this order.
48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
49. Complaints stand disposed of.
50. File be consigned to registry.

  
**Ashok Sangwan**  
Member  
**Arun Kumar**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated : 22.07.2025**