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/1103/2025	Smriti Kona Dutta and Pratik Dutta V/S NEO Developers Private Limited
2.	CR/148/2025	Yogesh Yadav V/S NEO Developers Private Limited

CORAM:

Shri Arun Kumar — **Chairman**

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

Shri Garvit Gupta (Advocate) — **Complainants**

Shri Venkat Rao and Gunjan Kumar (Advocates) — **Respondent**

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, New Square situated at Sector 109, Gurugram being developed by the same respondent/promoter i.e., M/s Neo Developers Pvt. Ltd. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges, assured return, VAT Charges, assured rentals and other reliefs.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

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

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Assured Return Clause	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession /Date of lease Deed
1.	**CR/1103/2025** Smritikona Dutta and Pratik Dutta V/S NEO Developers Private Limited	Unit – No. 68, Third floor 500 sq ft (as per pg.45 of the complaint)	**BBA-** 04.05.2016 (As per pg. 40 of the complaint) **MOU-** 04.05.2016	*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 04-*	**TSC –** Rs.25,00,000/- (As per assured return plan on page no. 71 of the complaint)	**O.O.P:** 28.02.2025 (page no. 95 of complaint) **Lease Out letter:** 28.02.2025 (page no. 95 of complaint)

	DOF: 13.03.2025 Reply: 27.08.2025	45	(As per pg. 69 of the complaint)	***05- 2016**.... 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.*	**AP –** Rs. 33,17,489/- (as per SOA on pg. no. 65 of the reply)	
2.	**CR/148/2025** Yogesh Yadav V/S NEO Developers Private Limited DOF: 21.01.2025 RR: 27.08.2025	Priority no. 71, 5th Floor 300 sq ft. (As per pg no. 45 of the complaint)	BBA: 18.12.2017 (as per page no. 41 of the complaint) **MOU-** 18.12.2017 (As per pg. 30 of the complaint)	*"**4. The Company shall pay a monthly assured return of Rs. 19,500/- (Rupees Nineteen Thousand Five Hundred Only) on the total amount received with effect from 18-Dec- 2017**....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."*	**TSC –** Rs.18,45,000/- (As per assured return plan on page no. 32 of the complaint) **AP** - Rs.22,25,664/- (as per SOA on pg. no. 65 of the reply)	**O.O.P:** 09.10.2024 (page no. 69 of complaint) **Lease Out letter:** NA

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

1. Respondent be held liable to make payment towards the assured return from April, 2020 onwards.
2. Respondent is liable to make payment of delayed interest as per the prevailing rate of interest as per the provisions of RERA Act, 2016 on the amount paid by the Complainants from the due date i.e 04.05.2019 till the date of actual handing over of possession
3. Without prejudice to the rights of the complainants, if this Hon'ble Authority is of the opinion that the Complainants are not entitled to the possession of the unit then a direction be passed to the Respondent to make payment towards the balance assured return amount. Furthermore, the Respondent be held responsible and be directed to lease the unit in question and make payment toward the committed lease rentals to the Complainants.
4. To direct the Respondent not to charge/demand any amount towards the Fitout

	charges and revoke the letter dated 28.02.2025 to the extent that the Respondent has demanded Rs. 20,65,000/- as fitout charges from the Complainants. 5. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment. 6. To direct the Respondent to handover the possession of the same in a habitable condition. 7. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016 8. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space
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, VAT, assured rentals 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/1103/2025 Smritikona Dutta and Pratik Dutta V/S NEO Developers Private Limited*** 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/1103/2025 Smritikona Dutta and Pratik Dutta V/S NEO Developers Private Limited. Ltd.

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 Valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
8.	Unit and Floor no.	Priority no.68 at 3rd floor (As mentioned in BBA page no.45 of the complaint)
9.	Unit area admeasuring	500 sq. ft. (Super Area) (As mentioned in BBA page no.45 of the complaint)
10.	Welcome letter	02.05.2016 (As per page no. 31 of the complaint)
11.	Date of execution of buyer's agreement	04.05.2016 (as mentioned in NOC at page 67-68 of the complaint)
12.	Date of execution of MoU's	04.05.2016 (As per page no.69-78 of the complaint)
13.	Possession Clause as per MOU dated 04.05.2016	Clause 3 of MOU ...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. The Company on grant of occupancy.

		Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues. **[Emphasis supplied]** (As per page no. 71 of complaint)
14.	Assured return clause as per MOU dated 04.05.2016	***Clause 4*** *... The company shall pay a monthly return of* ***Rs.45,000/- (Rupees Forty-Five Thousand Only) on the total amount deposited till the signing of this MOU, with effect from 04.05.2016*** *before deduction of Tax at Source...* *... The* ***monthly assured return shall be paid to the allottee(s) until the commencement of the first lease*** *on the said unit.* ***[Emphasis supplied]*** (As per page no. 72 of complaint)
15.	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.
16.	Due date of possession (as per MOU dated 04.05.2016)	04.05.2019 (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 04.05.2016, being later)
17.	Total sale consideration **[BSP + GST]**	Rs.29,58,250/- (As mentioned in payment schedule on page no.66 of the complaint)
18.	Basic Sale Consideration	Rs.25,00,000/- (As mentioned in BBA at page no.15 and clause 4 of MoU at page 71 of the complaint)

19.	Amount paid by the complainant	Rs.33,61,994/- (as per account statement dated 08.10.2020 at page 89 of complaint) **And** Rs.29,70,750/- (As per receipts at page 32-38 & 81-83 of the complaint)
20.	Assured return paid by the respondent	Rs.18,57,600/- (till March, 2020) (as per account statement dated 08.10.2020 at page 89 of complaint)
21.	Payment Plan	Assured return plan (As per payment schedule on page no.66 of the complaint)
22.	Occupation certificate /Completion certificate	14.08.2024 (As per page 42-44 of reply)
23.	Offer of possession	Not offered
24.	Letter for leasing of space on 3rd floor	Rs.20,65,000/- (for Fit-out charges) Dated 28.02.2025 (As per page 95 of complaint)

B. Facts of the complaint

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

i. That the present complaint has been filed by the Complainants under Section 31 of the Real Estate (Regulations and Development) Act, 2016 read with Rule 28 Haryana Real Estate (Regulation & Development) Rules, 2017 seeking relief in respect of the lapses, defaults and unjust and unfair trade practices on the part of the Respondent.

ii. That the Respondent is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The Respondent is comprised of

several clever and shrewd types of persons. The Respondent now does not enjoy good reputation at all and has cheated many innocent people like the Complainants.

iii. That the Respondent offered for sale units in a Commercial Complex known as 'NEO Square' which claimed to comprise of several facilities on a piece and parcel of land situated in Sector-109, Gurugram, Haryana. The Respondent stated that it is well established in the business of real estate development and has significant expertise in developing and marketing of commercial complexes in various parts of India. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 102 of 2008 dated 15.05.2008 on a land area of about 3.06 acres in Village Pawala, Khusropur, District Gurugram for development of the Commercial Complex in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976/-.

iv. That the respondent demanded VAT from complainant, several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to Rs. 27,370/- on 30.03.2017 for unit no.06 . The said demand was duly fulfilled by the complainant by making the cumulative payment of Rs. 5,54,188/- for the EDC, IDC and VAT payment of unit no- 06.

v. That On the basis of the representations made by the Respondent and on its demand, the Complainants made the payment of the entire basic sale price of the unit amounting to Rs. 26,08,750/ in the months of March and April, 2016. The Respondent vide letter dated 02.05.2016 admitted to have received the entire basic sale consideration towards the unit and thus accordingly issued a welcome letter dated 02.05.2016 favouring the complainants.

vi. Later Complainants made vocal their objections to the arbitrary and unilateral clauses of the Agreement to the respondent. The Complainants repeatedly requested the Respondent for execution of an Agreement with balanced terms. During such discussions, the Respondent assured the complainants that no illegality whatsoever, would be committed by them at that the interest payable by the Respondent to the Complainants would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The Respondent/Promoter refused to amend or change any term of the pre-printed Agreement and further threatened the complainants to forfeit the previous amount paid towards the unit if the Agreement was not signed and submitted. The Complainants were left with no other option but to sign the one-sided Agreement for an allotment of a unit having super area of 500 sq.ft. unit and located at 3rd floor of the project in question. The Respondent vide the said agreement provided the unit with priority number 68. Importantly, as per Annexure-I of the said Agreement, the basic sale consideration of the unit was Rs. 25,00,000/- and the total consideration of the unit was Rs.29,58,250/-. Even in the agreement, it was acknowledged by the Respondent that the Complainants had, till then, made the payment of Rs. 26,08,750/- to the Respondent against the said unit.

vii. That Respondent continued to demand further payments from the Complainants and the Complainants without any default or delay continued to make the said payments as and when demanded by the Respondent. The Respondent vide its demand letter dated 30.03.2017 demanded an amount of Rs.1,25,000/- towards the payment of VAT and the said payment of the said demanded amount was made by the Complainants. The Respondent vide receipt dated 08.05.2017 acknowledged the said payment made by the Complainant. Very importantly, the Respondent for the first time informed

the Complainants that a specific unit number bearing 368 on third floor of the project was allotted to the Complainants.

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

ix. That Subsequently, the Respondent vide its demand letter dated 09.05.2017 further demanded a sum of Rs.2,37,000/-. The said demand was also paid by the Complainants on 20.05.2017 vide cheque no. 005192. The Respondent issued a receipt dated 24.05.2017 confirming the receipt of the said payment.

x. That That as per Clause 3 of the MOU, the construction of the said allotted unit was to be completed and possession of the unit was to be handed over by the respondent within a maximum period of 36 months from the date of execution of the Agreement. The same is part of Clause 3 of the said MOU and the relevant portion thereof is reproduced hereunder: -

> *"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 start of construction whichever is later and apply for grant of completion/Occupancy certificate....."*

xi. Thus, the due date to hand over the possession as per the terms of the MOU was 04.05.2019. The Complainants visited the office of respondent in July, 2019 to enquire about the date of possession and pending payment of the monthly assured returns. It was informed that the Possession of the unit would soon be handed over along with adjustment of the delayed payment interest and monthly assured rentals. The representatives of Respondent assured the Complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over and that it

would keep on making payment towards the monthly assured return as per its obligations as stated in the MOU.

xii. That the Complainants have paid a sum of Rs.33,61,994/- out of the total sale consideration of Rs.29,58,250/-. The said fact is evident from the account statement issued by the Respondent on 08.10.2020.

xiii. That instead of handing over the possession of the unit to the Complainants, the Respondent vide its letter dated 10.12.2020 offered to lease out the unit. The said letter came as a shock to the Complainants as the intention of the Complainants from the very inception was to get the physical possession of a demarcated unit to the Complainants and that is a reason that a specific unit number was also allotted to them by the Respondent. Furthermore, the fact that the said letter dated 10.12.2020 offering to lease the unit was bad in the eyes of law and was thus illegal and void is evident from the fact that till that stage, the Respondent had not even received the copy of the Occupation certificate from the concerned authorities. The Occupation certificate for the project in question has been obtained only on 14.08.2024. In the absence of the said Occupation certificate, the Respondent could not have leased out the said allotted unit to a third party nor could have executed a lease agreement with respect to the said allotted unit prior to obtaining the Occupancy Certificate of the said project.

xiv. That, the Complainants were in complete shock and were surprised to note that the Respondent vide letter dated 28.02.2025 illegally demanded an additional amount of Rs.20,65,000/- towards fitout charges. The Complainants were never informed that the Respondent had any right to demand any such fitout charges from the Complainants. The parameter of fitout charges never found mentioned in Agreement or in the MOU and the Complainants were informed about the same for the first time at the time of

receipt of the letter dated 28.02.2025 only. The Respondent cannot be allowed to charge any additional amount only because it deems fit to do so. The demand against the said charges is against the terms of the contract and even as per the provisions laid down by law. The Respondent cannot demand such charges and the Complainants are not legally liable to make any payment against the same.

xv. That Importantly, vide letter dated 28.02.2025, the Respondent has admitted that the Respondent would offer the possession of the unit to the Complainants only after the Complainants makes the payment towards the said illegal charges.

C. Relief sought by the complainants

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

I. Respondent be held liable to make payment towards the assured return from April, 2020 onwards.

II. Respondent is liable to make payment of delayed interest as per the prevailing rate of interest as per the provisions of RERA Act, 2016 on the amount paid by the Complainants from the due date i.e 04.05.2019 till the date of actual handing over of possession.

III. Without prejudice to the rights of the complainants, if this Hon'ble Authority is of the opinion that the Complainants are not entitled to the possession of the unit then a direction be passed to the Respondent to make payment towards the balance assured return amount. Furthermore, the Respondent be held responsible and be directed to lease the unit in question and make payment toward the committed lease rentals to the Complainants.

IV. To direct the Respondent not to charge/demand any amount towards the Fitout charges and revoke the letter dated 28.02.2025 to the extent that the Respondent has demanded Rs. 20,65,000/- as fitout charges from the Complainants.

V. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

VI. To direct the Respondent to handover the possession of the same in a habitable condition.

VII. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016

VIII. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space

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 have approached this Hon'ble Authority with unclean hands by concealing material facts and making false, misleading, and unsubstantiated allegations with the sole intent of extracting unlawful gains.

II. That the complainants have concealed the fact regarding the demand raised by the Respondent towards fit-out charges in respect of the allotted unit. By filing the present complaint, the complainants are merely attempting to negotiate upon the legitimate demand raised and delay the payment of lawful dues.

III. That the respondent has duly completed the construction of the project in accordance with statutory norms and has obtained the requisite Completion/Occupancy Certificate from the Department of Town and Country Planning (DTCP), Haryana, vide letter dated 14.08.2024. Hence, there is no deficiency in service on the part of the respondent.

IV. That the respondent raises the present objections without prejudice to each other and denies all allegations unless specifically admitted herein. The complainants have grossly misconstrued the provisions of the act 2016 in filing the present Complaint.

V. That the complainants are investors and not genuine allottees. They had booked the unit in the project "NEO Square" at Sector 109, Gurugram, by submitting a booking application dated 16.05.2016, solely with the intention of earning speculative profits under the Investment Return Plan floated by the Respondent.

VI. That the relief of assured return sought by the Complainants is not maintainable under the RERA Act, 2016. The RERA framework does not contemplate examination or enforcement of "assured return" agreements, which are independent commercial arrangements between the parties.

VII. That section 13 of the RERA Act mandates execution of an Agreement for Sale, which must specify development particulars, payment schedule, possession timelines, etc. However, assured returns are not part of such agreements, nor are they within the scope of RERA.

VIII. That the concept of assured returns arises from a separate MOU or commercial arrangement and not from the Builder Buyer Agreement (BBA). Therefore, the Hon'ble Authority lacks jurisdiction to adjudicate upon claims relating to assured returns, which fall outside the statutory mandate of RERA.

IX. That the issue of assured returns is already sub judice before the Hon'ble Punjab & Haryana High Court in Vatika Ltd. vs UOI (CWP-26740-2022) and NEO Developers Pvt. Ltd. vs UOI (CWP-16896/2023). In both cases, directions have been issued not to take coercive steps with respect to such claims, thereby indicating that the matter requires adjudication by higher judicial forums.

X. That various judicial precedents have also recognized that assured returns are independent commercial arrangements. The Uttar Pradesh Real Estate Appellate Tribunal in Meena Gupta vs One Place Infrastructure Pvt Ltd (Appeal No. 211/2022) categorically held that there is no provision under

the RERA Act, 2016 for examining or enforcing issues relating to assured returns.

XI. That as per Clause 11 of the MOU executed with the Complainants, the Respondent was obligated to complete the construction within 36 months from 01.11.2016, and accordingly, the due date of possession was 01.11.2019. The Respondent duly applied for the Occupancy Certificate and fulfilled its obligations under the MOU.

XII. That it is the Complainants who have failed to honour their contractual obligations. Against the total due amount of ₹36,90,471/-, they have only paid ₹33,17,481/-. An outstanding sum of ₹5,39,838/- still remains unpaid despite repeated demands, the last being vide Demand Letter dated 27.03.2025.

XIII. That the demands raised towards VAT are strictly as per the Haryana VAT Act, 2003, and in terms of Clause 11 of the Buyer's Agreement, which obligates the allottee to pay all statutory taxes, levies, and charges as applicable. The Respondent has not availed any amnesty scheme, and hence, the Complainants are liable to discharge the VAT dues along with applicable interest.

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 04.05.2016. 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 Respondent be held liable to make payment towards the assured return from April, 2020 onwards.

G.II Respondent is liable to make payment of delayed interest as per the prevailing rate of interest as per the provisions of RERA Act, 2016 on the amount paid by the Complainants from the due date i.e 04.05.2019 till the date of actual handing over of possession

G.III Without prejudice to the rights of the complainants, if this Hon'ble Authority is of the opinion that the Complainants are not entitled to the possession of the unit then a direction be passed to the Respondent to make payment towards the balance assured return amount. Furthermore, the Respondent be held responsible and be directed to lease the unit in question and make payment toward the committed lease rentals to the Complainants.

G.IV To direct the Respondent not to charge/demand any amount towards the Fitout charges and revoke the letter dated 28.02.2025 to the extent that the Respondent has demanded Rs. 20,65,000/- as fitout charges from the Complainants.

G.V Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

G.IV To direct the Respondent to handover the possession of the same in a habitable condition.

G.VI Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016

G.VII Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space

- **Assured return.**

19. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 04.05.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

21. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable 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 she 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 04 of the MoU dated 04.05.2016, which is reproduced below for the ready reference:

> *4.*
> ***The company shall pay a monthly assured return of Rs.45,000/- on the total amount received w.e.f. 04.05.2016*** *after deduction of tax at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the alloottee(s) to the company in accordance with the payment schedule annex as Annexure I.* ***the monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.***

28. Thus, the assured return was payable @Rs.45,000/-per month w.e.f. 04.05.2016, till commencement of first lease.

29. In light of the above, the Authority is of the view that as per the MoU dated 04.05.2016, 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 28.02.2025. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.45,000/- from the date i.e., 04.05.2016 till 28.02.2025 after deducting the amount already paid on account of assured return to the complainant.

30. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 04.05.2016, it was obligation on part of the respondent to pay the assured return. The occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, and accordingly the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.45,000/-from the date i.e., 04.05.2016 till the obtaining of

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

31. However, in other matter CR/148/2025 no document has been placed on record by respondent to show that the respective units have been leased out. Accordingly, in such case, the respondent continues to remain liable to pay assured return until the commencement of the first lease of the concerned unit in accordance with the MoU dated 04.05.2016.

- **Delay possession charges.**

32. In the present complaints, the complainants intend to continue with the project and are both seeking delay possession charges and assured return with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which reads as under:

> ***"Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

33. As per the documents available on record, that as per Clause 3 of the MOU, the construction of the said allotted unit was to be completed and possession of the unit was to be handed over by the respondent within a maximum period of 36 months from the date of execution of the Agreement. The same is part of Clause 3 of the said MOU and the relevant portion thereof is reproduced hereunder:

> *"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 start of construction whichever is later and apply for grant of completion/Occupancy certificate....."*

34. Thus, the due date to hand over the possession as per the terms of the MOU is 04.05.2019.

35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. ibid. Rule 15 has been reproduced as under:

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

36. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e.,10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

39. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 04.05.2019. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to pay the assured return and delay possession charge till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement/MoU.

40. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

41. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.45,000/-. p.m. on the total amount received till the commencement of first lease. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured

return in this case is payable at Rs.45,000/-per month till the commencement of first lease whereas the delayed possession charges are payable approximately Rs.30,398/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount in terms of MoU. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

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

- **Lease rentals**

43. Accordingly, the Respondent is directed to make payment towards the balance assured return amount as well as to ensure that the unit in question is leased out in terms of the said MOU and the committed lease rentals are duly paid to the Complainants without any delay.

G.IV To direct the Respondent not to charge/demand any amount towards the Fitout charges and revoke the letter dated 28.02.2025 to the extent that the Respondent has demanded Rs. 20,65,000/- as fitout charges from the Complainants.

G.V Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

44. In the complainant in CR/1103/2025 has raised objection towards the fit out charges raised by the respondent vide letter dated 28.02.2024 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(d) of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference :

> ***8(d) The allottee confirms that he shall not be entitled to revoke, cancel, extend, terminate, neither shall be authorised to negotiate on terms of lease. The decision taken and terms of lease.*** *The decision taken and terms negotiated by the company shall be final and biding on 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.*

45. 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.
46. 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.

47. Further, in CR/148/2025 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.

48. Further, the respondent shall not charge anything which does not form a part of buyer's agreement or MoU.

G.VI To direct the Respondent to handover the possession of the same in a habitable condition.

G.VII Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016

G.VIII Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space

49. Since the subject units form part of a commercial project, individual physical possession cannot be granted to the allottees. However, the Respondent is directed to hand over virtual possession of the subject unit to the Complainant and is further restrained from creating any third-party rights or interests in respect of the said unit.

50. 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.

51. 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

52. 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 04.05.2016 till 28.02.2025 i.e. the date of leasing out of unit after deducting the amount already paid on account of assured return to the complainants. In Complaint CR/148/2025 the respondent/promoter is directed to pay assured return to the complainant at the agreed rate per month as per the MoU until the commencement of the valid first lease of the concerned unit effective from the 18.12.2017.

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.

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

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

55. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated:16.09.2025