BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4254 of 2024
Date of filing: 19.09.2024
Date of decision : 16.09.2025

Ajay Kumar and Anshu Jaiswal
Both RR/o: - Flat No. 316, Reserve Bank Apartment,
C block, Sector-62, Noida, UP-201309 **Complainant**

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32-B, Pusa Road, New Delhi-110005 **Respondent**

CORAM:
Shri Arun Kumar **Chairperson**
Shri. Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Vivek Kumar (Advocate) **Counsel for Complainant**
Shri Venkat Rao and Gunjan Kumar (Advocates) **Counsel for Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	Unit no.	Priority no. 87, 2nd Floor, 300 sq. ft. area (as per offer of possession letter dated 05.03.2025 on page no. 43 of reply)
5.	Date of MoU	19.07.2019 (As on page no. 50 of complaint)
6.	Date of execution of apartment buyer's agreement	19.07.2019 (As on page no. 63 of complaint)
7.	Possession clause	***3.*** *"The company shall complete the construction of the said building/complex within which the said space is located within* ***36 months from the date of execution of this agreement or from the start of construction whichever is later*** *and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues."* *(As on page no. 52 of complaint)*
8.	Assured return clause	***4*** *The company shall pay a penalty of ₹20,981 per month on the said unit on the total amount received with effect from 20th July 2020(effective date II) subject to TDS, taxes, cess or any other Levy which is due and payable by allottee and which shall be adjusted in total sale consideration the balance total sale consideration shall be payable by the allottee to the company in accordance with the payments schedule annexed at annexure-I. The penalty shall be*

		paid to the allottee from end of effective date II until the offer of possession letter date on pro rata basis.
9.	Lease rental Clause	***8(a)*** *That the responsibility of the assured returns to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottees shall be entitled to receive the lease rentals at assured lease of Rs. 81.75/- per sq. Ft. per month.* *(As on page no. 53 of complaint)*
10.	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.
11.	Due date of possession	19.01.2023 (Calculated from date of agreement being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
12.	Basic sale consideration	Rs.29,47,200/- (As on page no. 52 of complaint)
13.	Amount paid by the complainant	Rs.24,00,063/- (As on page no. 44 of complaint)
14.	Occupation certificate	14.08.2024 (as per DTCP website)
15.	Offer of possession	05.03.2025 (page 43 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

a. That the complainant is a self-employed person having his service-based work in Delhi/NCR and in order to have a unit for his living he got trapped in the assurances given by the opposite parties but to his utter dismay, to date that is, even passing of 5 years and 2 months since the booking of the unit, the possession has not been offered by the opposite parties.

b. That, as per the MOU, Neo Developer Pvt. Ltd. was required to make monthly payments of ₹20,981 starting from 20th July 2020. Despite this commitment, Neo Developer Pvt. Ltd. has not made any payments to date.

c. That, Neo Developer Pvt. Ltd. made wrongful demands for fit-out charges in May 2024 by sending demand letters, which are not stipulated in the builder-buyer agreement or MOU. These demands are considered illegal and have further exacerbated the grievances of the complainants.

d. That it is a matter of record that the complainant had paid all the instalments as per the demands raised by the opposite Parties, but the opposite parties failed to deliver the possession of the purchased unit till date.

e. That, the opposite party needs to remove the interest charges on delayed payments, as the imposition of these charges by NEO Developer is considered unethical. I have fulfilled all payment obligations promptly by the demand letter issued by NEO Developers.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

a. Direct the respondent to immediately provide possession of the commercial shop as per the terms of the BBA and MoU.

b. Direct the respondent to calculate and pay the total amount due for non-payment of monthly instalments of ₹20,981/- With interest at the rate of 18% per annum from 20th July 2020 to the dates of actual payments.

c. Direct the respondent to seize and desist from making any unlawful demands and delay payment charges including the fitout charges specified in their demand letter dated 15th of April 2024.

d. Direct the respondent to pay compensation of ₹10,00,000/- on account of harassment and mental agony.

e. Litigation Cost- ₹3,00,000/-.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.

a. That the complainant herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter considering the future speculative gains, also opted for the investment return plan being floated by the Respondent for the instant project.

b. That the complainants have filed this present complaint by concealing the material fact about the demand being raised by the respondent company with respect to the fit out of the unit allotted to the complainant. That by way of filing the present complaint the complainant is trying to negotiate on the fit-out demand being raised by the respondent and also to gain some more time to make the payment.

c. That the respondent after making the dues of the DTCP and other formalities of the department which also includes the completion of construction have obtained the completion certificate/occupancy Certificate from the department of DTCP.

d. The respondent seeks to raise the following objections/submissions, each of which have been taken in the alternative and are without prejudice to the other. Nothing contained in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainant in the complaint.

e. That the complainants with the intent to invest in the Real Estate sector as an investor, approached the Respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the Project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 19/12/2019, whereby seeking allotment of Unit No. 12A06, admeasuring 742.72 Sq. Ft Super Area on the 13th Floor of the Project having a Basic Sale Price of Rs. 5000/- The complainants, considering the future speculative gains, also opted for the Investment Return Plan being floated by the Respondent for the instant Project.

f. That upon the request of the Complainants through the above said application form dated 19/12/2019, Respondent vide Welcome Letter dated 19.12.2019 as well as Allotment Letter allotted unit bearing no. 12A06 on 13th Floor as per the terms and conditions forming part of the application form & Buyer's Agreement.

g. That since the complainant had opted for the investment return plan, a Memorandum of Understanding dated:- 31/01/2020 was executed between the Parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the Complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 03/02/2021 till Offer of Possession. It is also submitted that as per terms of the MOU, the Complainants herein had duly authorised the Respondent to put the said unit on lease.

h. That by no stretch of imagination it can be concluded that the Complainants herein are "Allottee/Consumer." That the Complainants are simply investors who approached the respondent for investment Opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein. That at this stage, it is categorical to highlight that the complainant is trying to mislead this Hon'ble Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "Investment Agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities.

i. Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

j. That in any case whatsoever, the aspect of leasing of the unit and the investment of the Complainants cannot be dealt with by this Hon'ble Authority. Without prejudice to the rights of the Respondent, at the utmost bonafide, the Hon'ble Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it. That the complainant voluntarily also executed the Buyer Agreement dated 31.01.2020 for Shop No. 12A06 on 13th Floor admeasuring 742.72 Sq. Ft Super Area in the Project.

k. That the Complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the Parties. It is submitted that the Ld. Authority is exercising its power and jurisdiction

as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA Act, 2016, the Ld. Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the Agreement for Sale (Buyer's Agreement). However, in the present matter the Complainant is relying upon the terms of MOU which is a distinct agreement than the Buyer's Agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said Complaint is not maintainable on this basis that there exists no relationship of Builder-Allottee in terms of the MOU, by virtue of which the Complainant is raising their grievance.

l. That the respondent cannot pay "Assured Returns" to the Complainant by any stretch of Imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the Respondent had no other alternative but to stop the payment of any return etc.

m. That the grievances of the complainant are all arising from the MOU which is not within the jurisdiction of the Ld. Authority, therefore, there arise no grounds that can be adjudicated by this forum and thus, present Complaint deserves to be dismissed at the very outset for want of jurisdiction. That the respondent was obligated to complete the construction of the said complex within 36 months from the date of

execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.

n. That the respondent herein had been running behind the complainant for the timely payment of dues towards the Unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. That though the Complainant may have cleared the Basic Sale Price of the said Commercial Property, however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various Clauses of the Buyer Agreement and MoU.

o. That the complainant failed to clear the outstanding dues of Rs. 20,62,905/- payable against the unit. That in the present case, the complainant has not obliged its duties as per the MOU & Buyer's Agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault.

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

q. That the respondent has not availed the Amnesty Scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest,

penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

r. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the Respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the Respondent was entitled for extension of time period for completion.

s. That from the facts indicated above and documents appended, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement.

t. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the said project in all aspect and obtained the completion certificate from the office of DTCP. That the respondent for the reason best known to him have filed the present complaint. That

present complainant has created a parallel group with a malafide intention of stalling the project.

7. 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.

12. 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 BBA, 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"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the BBA 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 BBA dated 19.07.2019. 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. Direct the respondent to immediately provide possession of the commercial shop as per the terms of the BBA and MoU.

G.II. Direct the respondent to calculate and pay the total amount due for non-payment of monthly instalments of ₹20,981/- With interest at the rate of 18% per annum from 20th July 2020 to the dates of actual payments.

14. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 19.07.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

16. 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.*

17. 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;*

18. 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.

19. 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.

20. 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.

21. 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.

22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 19.07.2019, which is reproduced below for the ready reference:

4.

The company shall pay a penalty of ₹20,981 per month on the said unit on the total amount received with effect from 20th July 2020(effective date II) subject to TDS, taxes, cess or any other Levy which is due and payable by allottee and which shall be adjusted in total sale consideration the balance total sale consideration shall be payable by the allottee to the company in accordance with the payments schedule annexed at annexure-I. The penalty shall be paid to the allottee from end of effective date II until the offer of possession letter date on pro rata basis.

23. Thus, as per the abovementioned clause the assured return was payable @₹20,981/- per month w.e.f. 20.07.2020, till the offer of possession.

24. In light of the above, the Authority is of the view that as per the MoU dated 19.07.2019, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 05.03.2025. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @₹20,981/- from the effective date as per clause 4 of the MoU i.e., 20.07.2020 till 05.03.2025.

25. With regard to the relief sought concerning possession, the Authority notes that the MoU executed between the parties does not contain any clause stipulating the handing over of possession of the said unit to the complainant. Instead, the agreement reflects a leasing arrangement between the parties, as is evident from Clause 8(a) of the MoU.

G.III. Direct the respondent to seize and desist from making any unlawful demands and delay payment charges including the fitout charges specified in their demand letter dated 15th of April 2024

26. The complainant has raised objection towards the fitout charges raised by the respondent vide letter dated 05.03.2025 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. Vide proceedings dated 16.09.2025 the counsel for the

respondent submitted that as per the Clause 8 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

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

27. 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.

28. 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.

G.IV. Direct the respondent to pay compensation of ₹10,00,000/- on account of harassment and mental agony.

G.V. Litigation Cost- ₹3,00,000/-.

29. The complainants are 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 complainants may approach the adjudicating officer.

H. Directions of the authority

30. 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):

a. The respondent/promoter is directed to pay the assured return to the complainants at the agreed rate i.e., @₹20,981/- from the effective date as per clause 4 of the MoU i.e., 20.07.2020 till offer of possession i.e., 05.03.2025.

b. The respondent/promoter is directed to pay the outstanding accrued assured return amount 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.

c. 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.

31. Complaint stands disposed of.

32. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.09.2025