

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

Complaint no. : 426 of 2024
Date of filing: 13.02.2024
Date of decision : 16.09.2025

Swati Poddar

R/o: - Plot no. 19, Lower Ground Floor, Hemkunt
Colony, Greater Kailash-I

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Regd. Office at: - 32-B, Pusa Road, New Delhi-110005

Respondent

CORAM:

Shri Arun Kumar

Shri. Vijay Kumar Goyal

**Chairperson
Member**

APPEARANCE:

Shri Shivam Bakshi (Advocate)

Shri Venkat Rao and Gunjan Kumar
(Advocates)

Counsel for Complainant

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.	Retail Shop bearing Unit No. 42, first floor 200 sq. ft. area (on page no. 31 of complaint)
5.	Date of MoU	18.10.2017 (As on page no. 50 of complaint)
6.	Date of execution of apartment buyer's agreement	18.10.2017 (As on page no. 55 of complaint)
7.	Possession clause in the MoU.	12. "The company shall complete the construction of the said building/complex within which the said space is located within 48 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. 58 of complaint)
8.	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.
9.	Assured return Clause	4. The Company shall pay a monthly assured return of Rs. 44,000/- on the total amount received with effect from 18.10.2017 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall

		<i>be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.</i>
10.	Due date of possession	18.04.2022 (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)
11.	Total sale consideration	Rs.43,02,560/- (As on page no. 79 of complaint)
12.	Amount paid by the complainant	Rs.43,01,440/- (As on page no. 87 of the Reply)
13.	Total Assured returns paid	1,32,000/- (As per page no. 87 of the Reply)
14.	Occupation certificate	14.08.2024 (as per DTCP website)
15.	Offer of possession added in the reply via application of the respondent on 08.09.2025.	11.03.2025

B. Facts of the complaint

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

- That the Respondent, in August 2017, promoted the Project namely "NEO SQUARE" (hereinafter referred to as "the Project") situated at Sector 109, Dwarka Expressway, Gurugram, Haryana.
- That Respondent approached the Complainant vide email dated 19.08.2017, showcasing the benefits of the investment, if made, in the said Project, the offerings and highlights of the Project. The Respondent also attached a Brochure, a Map of the Location of the Project and Costing, which made the innocent Complainant believe and invest in the Project.
- That The Complainant, believing the fake promises and filmsy assurances made in favor of the Project, by the Respondent, booked a Retail Shop bearing Unit No. 42, Commercial Complex, First Floor, admeasuring super area of 400 Sq. Ft. (approx.) and covered area of about 200 Sq. Ft. at the



rate of Rs. 9,155/- Per Sq. Ft. and the Total Basic Sale Price of Rs. 36,62,000/- (Rupees Thirty-Six Lakh Sixty-Two Thousand only) and Total Sale Consideration of Rs. 43,02,560/- (Rupees Forty-Three Lakh Two Thousand Five Hundred Sixty only), after including all the other charges. The Complainant paid Rs. 5,00,000/- (Rupees Five Lakh only) vide Cheque no. 339414, dated 23.08.2017, as the booking amount of the said premises. The said payment was acknowledged by the Respondent vide receipt dated 29.08.2017.

- d. That the Complainant received the blank draft copies of "Final Assured Return MoU" and "First Floor BBA" vide email dated 14.09.2017, from the Respondent, to be checked and signed by the Complainant after full and final gratification.
- e. That That a Buyer's Agreement and MoU dated 18.10.2017 was signed and executed between the Complainant and the Respondent, in furtherance to the booking of the said Unit No. 42 on First Floor, with a Total Basic Sale Price of Rs. 36,62,000/- (Rupees Thirty-Six Lakh Sixty-Two Thousand only) and the Total Sale Consideration of Rs. 43,02,560/- (Rupees Forty-Three Lakh Two Thousand Five Hundred Sixty only), after including all the other charges.
- f. That That the Complainant paid another amount to the tune of Rs. 31,62,000/- (Rupees Thirty-One Lakh Sixty-Two Thousand only) on 17.10.2017 vide Cheque bearing no. 000000339416, towards the Basic Selling Price, in favor of the Respondent. The copy of Statement of Account dated 17.01.2024.
- g. That That the Respondent sent an illegal Demand Letter dated 09.04.2018, to the Complainant, acknowledging the payment of Rs. 36,62,000/- (Rupees Thirty-Six Lakh Sixty-Two Thousand) as the BSP received on application for booking and further asking for the payment



- of Rs. 4,39,440/- (Rupees Four Lakh Thirty-Nine Thousand Four Hundred Forty only), as the GST which was payable @12% of the Total BSP and the due date for making the said payment was 24.04.2018. That the Complainant made the payment as asked in the Demand Letter dated 09.04.2018, which was acknowledged by the Respondent vide receipt dated 20.04.2018.
- h. That the Complainant reverted back to the aforementioned email via email dated 11.04.2018 stating that the said payment along with other charges was to be made at the time of possession, to which no satisfactory reply was provided by the Respondent and the Complainant, afraid of getting the allotted unit cancelled, made the payment of Rs. 2,00,000/- (Rupees Two Lakh only) vide Cheque bearing no. 000249327040, dated 18.09.2019, as per the above-mentioned demand letter. An acknowledgement/payment receipt dated 18.09.2019 for the above-stated sent to the Complainant.
- i. That the Complainant opted for "Investment Return Plan" in which the Respondent was obligated to pay a monthly Assured Return of Rs. 44,000/- (Rupees Forty-Four Thousand only) from the date of executing the MoU, i.e., 18.10.2017, till the date of possession (as per Clause 3, Clause 8 and Clause 19 of the MoU), which the Respondent intentionally and deliberately omitted, making default as per the agreed terms and conditions of the BBA and MoU and also violating the rights and duties of the Allottee as mentioned the RERA, 2016.
- j. That, as per the Clause 5.2 of the BBA and Clause 12 of the MoU dated 18.10.2017, the construction completion date shall be the date when application for OC will be made before the concerned Authorities. Also, the deemed date of possession shall be within 48 months from the date

of execution of the Agreement or from the start of construction, which, after calculation, comes out to be 18.10.2021.

- k. That again, via email dated 15.01.2020, the Complainant received another Demand Letter for the payment of Rs. 6,16,627/- (Rupees Six Lakh Sixteen Thousand Six Hundred Twenty-Seven only), as the due EDC/IDC, PLC and GST (12%). The Complainant reverted to the said email asking the details of the said demand and further, via email dated 16.01.2020, informed the Respondent that the said charges were payable at the time of possession. But the Respondent reverted to the trailing mail via email dated 20.01.2020, that the said charges are payable as and when demanded by the Company. It is submitted that the said Demand Letter is unlawful and illegal as the payment of the above-mentioned charges was to be made at the time of possession, as per the agreed Payment Plan.
- l. That the Complainant further followed-up the Respondent several times, through emails dated 27.01.2020 and 17.02.2020, and raised the concern of Assured Returns, to which the Respondent reverted back via email dated 20.02.2020, informing the Complainant that the Project is in process of applying the 'Occupancy Certificate' with the concerned authorities, and will soon start offering possession to the Allottee(s), of the respective units. The Respondent, further informed the Complainant that as per RERA Act and Guidelines, 70% of the amount received from the sale of real estate project from the buyers, which shall only be used to cover the construction and the land cost. Further, the Respondent apprised that the auditors are refusing to approve the withdrawals from the project account for the purpose of payment of interest and hence they are bound to adjust the payment of Assured Returns at the time of possession, whereby, the approximate possession time is August-September 2020.

- m. That another letter of "Cheques for Assured Return", dated 07.12.2020, along with 03 (three) post-dated cheques i.e., 05.02.2021, 05.03.2021 & 05.04.2021, respectively, was received by the Complainant from the Respondent, as against the payment of Assured Return, with a total amount to the tune of Rs. 1,22,100/- (Rupees One Lakh Twenty-Two Thousand One Hundred only).
- n. That the Complainant has received only the above-stated 03 (three) cheques with a payment to the tune of Rs. 1,22,100/- (Rupees One Lakh Twenty-Two Thousand One Hundred only) as Assured Return, whereas the Respondent was obligated to make the payment of Rs. 44,000/- (Rupees Forty-Four Thousand only) per month, from the date of execution of MoU, i.e., 18.10.2017, till the date of possession, to which the Respondent has continuously defaulted.
- o. That That the Complainant is ready to make the further payments due, if any, as per the agreed terms and conditions of the executed BBA and MoU and the Payment Plan, and further seeks the possession of the said unit, along with the payment of Assured Returns @Rs. 44,000/- per month (Rupees Forty-Four Thousand only) from the effective date i.e., 18.10.2017, till the date of grant of possession which amounts to be Rs. 30,11,800/- (Rupees Thirty Lakh Eleven Thousand Eight Hundred only) (calculated till 31.12.2023) and also seeks the Delayed Possession Charges @10.75% p.a. from the date of default till date of actual realisation. That the Complainant has followed-up the Respondent several times, raising the above-stated concerns, but to no avail. Hence, the present Complaint.

C. Relief sought by the complainant:

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

- a. Direct the Respondent to make the payment of Assured Returns @Rs. 44,000/- per month (Rupees Forty-Four Thousand only) from the effective date i.e., 18.10.2017, till the date of grant of possession, as agreed in the MoU dated 18.10.2017.
 - b. Direct the Respondent to make the payment of the Delayed Possession Charges @10.75% p.a. from the date of default, i.e., 01.03.2020, till date of its actual realization.
 - c. Direct the respondent to deliver the possession of the allotted unit in the said project.
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. At the outset, the Complainant have erred gravely in filing the present Complaint and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act"). It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularization of real estate projects, and the dispute resolution between Builders and Buyers and the reliefs sought by the Complainant cannot be construed to fall within the ambit of RERA Act. 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.
 - b. It is submitted that the Complainant 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", (hereinafter referred to as the



"Project") situated at Sector-109, Gurugram, Haryana being developed by the Respondent. That after being fully satisfied with the Project and the approvals thereof, the Complainant decided to apply to the Respondent by submitting a booking application form dated 23.08.2017, whereby seeking allotment of Unit No. 42, First Floor, admeasuring 400 sq. ft. super area of the Project having a Basic Sale Price of Rs. 36,62,000/- (Rupees Thirty Six Lakhs Sixty Two Thousand Only) (hereinafter referred to as the "Unit"). The Complainant, considering the future speculative gains, also opted for the Investment Return Plan being floated by the Respondent for the instant Project.

- c. That upon the request of the Complainant through the above said application form dated 23.08.2017, Respondent vide Welcome Letter dated 31.08.2017 provisionally allotted unit bearing no. 42 on First Floor as per the terms and conditions forming part of the Application Form and Buyer's Agreement.
- d. That since the Complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 18.10.2017 (hereinafter referred to as "MOU") 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 Complainant in the said project and leasing of the unit/space thereof. It is also relevant to mention that a total of Rs. 1,32,000/- (Rupees One Lakh Thirty Two Thousand Only) has been paid in the form of Assured Returns by the Respondent to the Complainant. It is pertinent to mention herein that as per Clause 19 of the MOU, the returns were to be paid from 18.10.2017 and as per Clause 8 of the MOU, the returns were to be paid till the Notice of Possession. It is also submitted that as per Clause 13 of the MOU, the

Complainant herein had duly authorized the Respondent to put the said unit on lease.

- e. It is also pertinent to mention that the Complainant voluntarily further executed the Buyer Agreement dated 18.10.2017 for Shop No. 42 on First Floor admeasuring 400 Sq. Ft Super Area in the Project against the Basic Sale Consideration of Rs. 36,62,000/- (Rupees Thirty Six Lakhs Sixty Two Thousand Only), after having full knowledge and being well satisfied and conversant with the terms and conditions of the Buyer Agreement.
- 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 it is a matter of fact, that time is always an essence in respect to the Allottee's obligation for making payment with respect to the allotted Unit. That under the said Agreement dated 18.10.2017 the Complainant was bound to make timely payment of instalments in accordance with the demands raised by the Respondent. It is to be noted, that the Complainant has only paid Rs. 43,01,440/- (Rupees Forty Three Lakhs One Thousand Four Hundred and Forty Only) against the dues of Rs. 47,18,283/- (Rupees Forty Seven Lakhs Eii8ighteen Thousand Two Hundred and Eighty Three Only), and are in default of an outstanding due of Rs. 4,16,843/- (Rupees Four Lakh Sixteen Thousand Eight Hundred and Forty Three Only) after making repetitive reminders to the Complainant and the same can be perused from a plain reading of the Statement of Accounts. It is further pertinent to note that the Respondent has already paid Rs. 1,32,000/- (One Lakh Thirty Two Thousand Only) as Assured Return to the Complainant.

- h. That as the Complainant in the present complaint is seeking the relief of Assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- i. 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.
- j. That the Complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the Parties. 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.
- k. That 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.

- l. It is also pertinent to mention herein that recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.
 - m. It is submitted that the as per Clause 12 of the 'MOU', the Respondent was obligated to complete the construction of the said complex within 48 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. It is pertinent to mention herein that since inception the Respondent herein was committed to complete the project, however, the development was delayed due to 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 is committed to compete the said project in all aspect at the earliest.
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.

F.II. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

14. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.
15. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:
"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"
16. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainants.

G.I. Direct the Respondent to make the payment of Assured Returns @Rs. 44,000/- per month (Rupees Forty-Four Thousand only) from the effective date i.e., 18.10.2017, till the date of grant of possession, as agreed in the MoU dated 18.10.2017.

17. The complainants are seeking unpaid assured returns on monthly basis as per the MoU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.
18. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain

period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

19. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement 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 addendum agreement.
20. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 18.10.2017.

G.II. Direct the Respondent to make the payment of the Delayed Possession Charges @10.75% p.a. from the date of default, i.e., 01.03.2020, till date of its actual realization

G.III. Direct the respondent to deliver the possession of the allotted unit in the said project.

21. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges 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"

22. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within **48 months** from the date of execution of this agreement or from the start of construction whichever is later. The period of 48 months is calculated from the date of BBA i.e., 18.10.2017 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 18.04.2022.

23. **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. 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"

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules 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%.

25. 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 delivered within stipulated time i.e., by 18.04.2022.
26. 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?
27. 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 MoU dated 18.07.2017. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of ₹44,000/- on the total amount received with effect from 18.10.2017 till the commencement of the first lease on the said unit. 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 as ₹44,000/- per month whereas the delayed possession charges are payable approximately ₹38,892/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. 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 allottees 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.

28. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
29. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 18.10.2017, the promoter had agreed to pay to the complainants allottee ₹44,000/- with effect from 18.10.2017 till the said unit is put on lease. It is matter of record that ₹1,32,000/- has been paid as an assured return by the respondent promoter but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
30. In light of the above, the Authority is of the view that as per the MoU dated 18.10.2017, 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 but the respondent has not yet leased out the said unit of the complainant.

31. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹44,000/- with effect from 18.10.2017 till the said unit is put on lease.
32. Accordingly, the respondent 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, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
33. 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 20 of the MoU.
34. It is pertinent to note that prior to the filing of the present complaint, no demand towards fit-out charges had been raised by the Respondent nor any relief sought has been asked by the complainant. However, during the pendency of the proceedings, the respondent issued an offer of possession on 08.09.2025, wherein the demand for fit-out charges as well as development charges was raised, which is on record. The view of the Authority in this regard is that 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.

- **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.

H. Directions of the authority

35. 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., @₹44,000/- with effect from 18.10.2017 till the said unit is put on lease.
 - 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.*
36. Complaint stands disposed of.
37. File be consigned to registry.


(Vijay Kumar Goyal)
Member
(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.09.2025