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/2179/2025	Sangeeta Jindal Vs. M/s Neo Developers Private Limited
2.	CR/6365/2024	Manish Gupta and Priya Gupta Vs. M/s Neo Developers Private Limited

CORAM:

Shri Arun Kumar — **Chairman**

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

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

Shri Venket 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*** Sector 109, Gurugram being developed by the same respondent/promoter i.e., ***M/s Neo Developers Pvt. Ltd***. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return, waiver of fit out charges and other reliefs.

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

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

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Assured Return Clause of MoU	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession /Date of lease Deed
1	**CR/2179/2025** Sangeeta Jindal Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 09.05.2025 **Reply:** 06.08.2025	139, 3rd floor 400 sq. ft. (page no. 29 of complaint)	**BBA:** 25.09.2020 (page 29 of complaint) **MOU:** 25.09.2020 (page 29 of complaint)	*Clause 4- The Company shall pay one time penalty calculated at the rate of **Rs. 49,500/-** per month on the said Unit*	**T.S.C:** Rs. 23,30,000/- (as per page no. 30 of complaint) **A.P.: -** Rs. 10,30,000/-	**O.O.P:** 24.12.2024 (page no. 79 of complaint)

					(as per page 30 of complaint)	
2	**CR/6365/2025** Manish Gupta and Priya Gupta Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 07.01.2025 **Reply:** 27.08.2025	12A 06 13th Floor (page no. 24 of complaint)	**BBA:** 30.01.2020 (page 46 of complaint) **MOU:** 30.01.2020 (page 61 of complaint)	*Clause 4 - The Company shall pay a penalty calculated at the rate of Rs. **45,734/-** per month on the said Unit....*	**T.S.C:** Rs. 37,45,000/- (as per page no. 62 of complaint) **A.P.:** Rs. 28,55,548/- (as per SOA as per page 69 of complaint)	**O.O.P:** 03.10.2024 (as per page no. 67 of the complaint)

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

1. Respondent be directed to make payment towards the monthly penalty from 25.09.2021 onwards till valid offer of possession along with interest as per law.
2. Respondent be directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date i.e 25.09.2023 till the date of valid offer of possession.
3. In case the Respondent does not lease out the unit to any prospective allottee for 3 months from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of three months from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
4. Respondent be directed to lease the unit in question after the valid offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the lease rental as per the terms of the MOU.
5. Direct the Respondent to revoke the illegal charges demanded vide Demand Letter and Offer for Fit-out dated 15.04.2025 and not to demand any amount towards fitout charges from the Complainant
6. Direct the Respondent to revoke the offer of possession dated 24.12.2024 and issue a valid offer of possession of the unit (without any illegal demands) in a habitable condition, as per the specifications provided in the Buyer's Agreement.
7. The Respondent be directed not to charge the Labour Cess, and FTTH Charges. Further, the Respondent be directed not to charge Development charges of Rs. 3,10,812/- from the Complainant or any amount towards development charges from the Complainant.
8. Further, the Respondent be directed to provide an itemized breakdown of how the sum of Rs. 2,83,200/- under the head 'Development Charges' has been calculated.
9. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment.
10. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.

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, lease rental 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/2179/2025 titled as Sangeeta Jindal VS NEO Developers Private Limited.*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. 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/2179/2025 titled as Sangeeta Jindal VS NEO Developers Private Limited.

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.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	139, 3rd floor

		(page no. 29 of complaint)
7.	Unit area admeasuring	400 sq. ft. (page no. 29 of complaint)
8.	Date of buyer's agreement	25.09.2020 (page no. 29 of complaint)
9.	Date of MoU	25.09.2020 (page no. 29 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.	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 per pg. no. 42 of the complaint)*
12.	Due date of possession	25.03.2024 (36 months + 6 months grace period)
13.	Assured return Clause	*4. The company shall pay a penalty of* ***₹49,500*** *per month on the said unit on the total amount received with effect from* ***25th September 2021(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.
14.	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. 101.25/- per sq. Ft. per month.* *(As on page no. 65 of complaint)*
15.	Basic sale consideration	Rs. 23,30,000/- (as per page no. 30 of complaint)
16.	Amount paid by the complainant	Rs. 10,30,000/- (as per page 30 of complaint)
17.	Occupation certificate	14.08.2024 (As per the DTCP site)
18.	Offer of possession	24.12.2024 (page no. 78 of complaint)

B. Facts of the complaint.

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

i. That the present complaint has been filed by the complainant 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 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.

iii. That the complainant received a marketing call from the office of the Respondent in the month of May, 2020 for booking in the said project of the Respondent. The Complainant had also been attracted towards the aforesaid project on account of publicity done by the Respondent through various means like various brochures, posters, advertisements etc. The Complainant visited the sales gallery and consulted with the marketing staff of the Respondent. The marketing staff of the Respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the Respondent in its project. The marketing staff of the Respondent also assured timely completion of all the obligations of the allotment. It was specifically projected by the Respondent that the main USP of its said project is that it would diligently offer the allottees monthly penalty on the amount paid by the Complainant.

iv. That the Complainant induced by the assurances and representations made by the Respondent, decided to book a unit in the project of the Respondent as he required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the Respondent who confirmed that the possession of the unit to be allotted would be positively given within the agreed time frame. It was also agreed between the parties that the Complainant will opt for the 'Possession Link Payment Plan' for the unit in the said project of the Respondent. On the basis of the representations made by the Respondent, the Complainant made a booking in the said project of the Respondent by submitting a Booking Application Form and made a payment of Rs. 10,30,400/- towards the sale consideration of the said unit.

v. That, it is pertinent to mention herein that it was stated in the Buyer's Agreement that in the event of non-payment of instalment amount by the Complainant, the Complainant would be liable for penalty @ 18% per annum.

vi. On the other hand, it was stated that if the Respondent would fail to apply for grant of Occupancy/Completion certificate within the agreed time, then the Complainant would be entitled to a mere amount of Rs.10/- per sq.ft. per month for the super area.

vii. That the Complainant made vocal her objections to the arbitrary and unilateral clauses of the Buyer's Agreement to the Respondent. The Complainant repeatedly requested the Respondent for execution of a Buyer's Agreement with balanced terms. During such discussions, the Respondent assured the Complainant that no illegality whatsoever, would be committed by them and that the interest payable by the respondent to the Complainant 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 Buyer's Agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the Buyer's Agreement was not signed and submitted. Hence, the Complainant had no other option but to sign the Buyer's Agreement on 25.09.2020. As per Clause 2.1 of the Buyer's Agreement, the Complainant was allotted a unit bearing Priority No. 139, Third Floor admeasuring 400 sq. ft. in the said project. Furthermore, as per Annexure-I of the said Buyer's Agreement, the basic sale consideration including GST of the unit was Rs. 22,40,000/- and the total consideration of the unit was Rs.23,30,000 /-. inclusive of the taxes and IFMS. It was specifically stated in the said Annexure that no EDC/IDC would be payable by the Complainant to the Respondent.

viii. That on the said date, a Memorandum of Understanding (MOU) was executed between the Respondent and the Complainant. It was reiterated in Clause 4 of the MOU that the Complainant has paid an amount of Rs. 10,30,400/- towards the sale consideration of the unit. Furthermore, it was specifically mentioned in Annexure-I of the MOU that the External Development Charges (EDC) and the Internal Development Charges (IDC) are NIL. As per the terms of the MOU, it was agreed that the Respondent will make payment to the Complainant under the nomenclature of 'Penalty' of Rs. 49,500/- per month from 25.09.2021 (Effective date-II as per Clause 4 of MOU) onwards till offer of possession which shall be adjusted in the Total Sale consideration and after adjustment, the balance sale consideration shall be payable by the Complainant to the Respondent in accordance with the Payment plan. The Respondent had categorically assured at the time of the execution of the said MOU that it would be

diligent in making payment towards the penalty amount and in adhering to its contractual obligations. It is submitted that as per Clause 4 of the said MOU, it was agreed that the Respondent would pay a penalty of Rs. 49,500/- per month.

ix. Furthermore, it was agreed vide Clause 8(a) of the said MOU that the Respondent would make payment of lease rentals at assured lease @ Rs.101.25/- per sq. ft. per month rent to the Complainant from commencement of first lease. Furthermore, it was decided as per Clause 9(a) of the MOU that the Respondent was to finalize the terms for leasing the premises with a perspective lessee.

x. That as per Clause 3 of the MOU and 5.2 of the Buyer's Agreement, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of the MOU/Buyer's Agreement or the date of start of construction.

xi. That Since the MOU was executed between the Respondent and the Complainant on 25.09.2020, the due date to offer the possession as per the terms of the MOU was 25.09.2023. It is pertinent to mention herein that the Respondent was under an obligation as per the MOU executed between both the parties to make payment towards the penalty from 25.09.2021 till the offer of possession of the said unit in question. The Respondent failed to make any payment towards the monthly penalty. The Complainant inquired from the Respondent about the pending monthly penalty payable by the Respondent to the Complainant. The Respondent in response to concern raised by the Complainant informed the Complainant that the pending monthly penalty would be adjusted at the time of offer of possession. The Complainant in good faith believed the assurances made by the representatives of the Respondent with a hope

that the Respondent would adhere to its contractual obligations. However, the Respondent failed to make any further payment towards the monthly penalty.

xii. That That instead of offering the possession of the said unit within the agreed time frame, the Respondent sent a Demand Letter and Offer for Fit-out dated 15.04.2024 informing the Complainant that the major construction work of the said project is complete and the formal possession of the Unit will be offered on the receipt of the Occupation Certificate and completion of formalities. The Respondent vide the same letter informed the Complainant that the OC has already been applied and the same is expected to be received soon. The Respondent has illegally demanded an amount of Rs. 33,51,175/- vide the letter dated 15.04.2024. The Respondent vide the said letter has demanded an amount of Rs. 14,00,000/- towards the Fitout Charges from the Complainant. The Complainant was never informed that the Respondent had any right to demand any such fit-out charges from the Complainant. The parameter of fit-out charges never found mentioned in Buyer's Agreement or in the MOU and the Complainant was informed about the same for the first time at the time of receipt of the letter dated 15.04.2024.

xiii. That Hence, the Respondent cannot be allowed to charge any additional amount only because it deems fit to do so. Furthermore, the Respondent vide the said letter has demanded EDC and IDC of Rs. 1,89,600/- from the complainant. It is submitted that it was specifically mentioned in Annexure-I of the MOU dated 25.09.2020 that the amount towards EDC and IDC stands NIL. Thus, when the MOU executed between both the parties specifically mentioned the same and was thereby agreed and acknowledged by both the parties, then there was no basis with the

Respondent for demanding the amount towards EDC and IDC despite the agreed terms Thus, the Respondent cannot demand such charges and the Complainant is not legally liable to make any payment towards the same.

xiv. That the Complainant raised objections to the said illegal demands of the Respondent and sent an email dated 21.04.2024 to the Respondent seeking clarifications on the illegal charges demanded vide letter dated 15.04.2024. The Respondent reverted to the email of the Complainant vide an email dated 26.04.2024 and informed the Complainant that the said charges forms a part of the agreement and that the Fitout Charges are related to the interior cost of the unit as the unit is to be put on lease. The Complainant sent an email dated 03.05.2024 to the Respondent and clarified that Clause 11 nowhere mentions about the fitout charges and thus, the Respondent cannot demand such illegal charges.

xv. ThatThat the Respondent finally, after a considerable delay sent Demand Notice and Offer of Possession dated 24.12.2024 vide an email dated 28.12.2024 to the Respondent. The Respondent vide the said email intimated the Complainant that the Occupation Certificate has been received and the Respondent is ready to commence the possession process of the unit. On-going through the contents of the said Demand Notice and Offer of Possession, the Complainants realized that the Respondent had failed to adjust the amount of the monthly penalty as assured by the Respondent. As per Clause 4 of the MOU, it was agreed that the amount of penalty would be adjusted in the Total sale consideration. As per the terms of the MOU, the penalty amount from 25.09.2021 till 24.12.2024, calculated at the rate of Rs. 49,500/- per month is Rs. 19,30,500/-. The Respondent completely side-lined its own obligations and failed to adjust any such amount in the remaining sale consideration.

xvi. Furthermore, it is pertinent to mention herein that the Respondent vide the said Demand Notice and Offer of Possession has also demanded additional amounts against Labour Cess, FTTH and Development Charges. The Complainant was in complete shock and was surprised to note that the Respondent vide the said Demand Notice and Offer of Possession illegally demanded the amount of Rs. 15,99,290/-

xvii. Hence, the said offer of possession was in complete contrast to the terms of the MOU. It is submitted that the Complainant has already paid Rs. 10,30,400/- out of 23,30,000/-. The Respondent in a completely illegal manner had demanded Rs. 15,99,290/- vide the said offer of possession and the Respondent completely sidelined its own obligations and failed to adjust any amount towards the monthly penalty in the remaining sale consideration.

xviii. That That the Complainant was in complete shock and was surprised to note that the Respondent vide an email dated 03.03.2025 sent a Fit-out demand letter dated 28.02.2025 illegally demanding an additional amount of Rs. 16,52,000/- towards fitout charges. It is pertinent to mention herein that the Respondent had already illegally charged an amount of Rs. 14,00,000/- under the head fit-out charges in the Demand Letter & Offer for Fit-out dated 15.04.2024. The parameter of fitout charges never found mentioned in Buyer's Agreement or in the MOU and the Complainant was informed about the same for the first time at the time of receipt of the letter dated 15.04.2024 only. The Respondent vide letter dated 28.02.2025 has yet again illegally demanded an additional amount of Rs.12,39,000/- under the head Fit-out charge.

xix. That yet again the Respondent failed to respond to the said emails and letters sent by the Complainant and sent a final reminder letter dated

21.03.2025 vide an email dated 24.03.2025 to remit the outstanding payment at the earliest to avoid any further accrual of the interest. The Respondent vide the said email informed that the Complainant shall be liable to pay the holding charges at the rate of Rs.10/- per sq.ft. and also threatened the Complainant that in case they fail to pay and clear the outstanding amount, then the Respondent shall cancel and terminate the Allotment of the said unit. The Complainant was in complete shock to see the Final Reminder Letter and sent email dated 27.03.2025 to seek clarification from the Respondent and also requested the Respondent to give answers to the questions raised by the Complainant vide earlier emails.

xx. Furthermore, as per Clause 12 of the MOU and Clause 12 of the Buyer's Agreement dated 25.09.2020, the Sale Deed had to be executed and registered in favour of the allottee within 45 days from the date of receipt of occupation certificate. The Complainant requested the Respondent to proceed for Registration of the unit with regards to Stamp Duty and Conveyance Deed. It is submitted that even as per the terms of the Buyer's Agreement, the Respondent was duty bound and had a contractual obligation to execute the Conveyance deed of the unit in favour of the Complainants.

C. Relief sought by the complainants

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

I. Respondent be directed to make payment towards the monthly penalty from 25.09.2021 onwards till valid offer of possession along with interest as per law.

II. Respondent be directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on

the amount paid by the Complainant from the due date i.e 25.09.2023 till the date of valid offer of possession.

III. In case the Respondent does not lease out the unit to any prospective allottee for 3 months from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of three months from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.

IV. Respondent be directed to lease the unit in question after the valid offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the lease rental as per the terms of the MOU.

V. Direct the Respondent to revoke the illegal charges demanded vide Demand Letter and Offer for Fit-out dated 15.04.2025 and not to demand any amount towards fit-out charges from the Complainant.

VI. Direct the Respondent to revoke the offer of possession dated 24.12.2024 and issue a valid offer of possession of the unit (without any illegal demands) in a habitable condition, as per the specifications provided in the Buyer's Agreement.

VII. The Respondent be directed not to charge the Labour Cess, and FTTH Charges. Further, the Respondent be directed not to charge Development charges of Rs. 3,10,812/- from the Complainant or any amount towards development charges from the Complainant.

VIII. Further, the Respondent be directed to provide an itemized breakdown of how the sum of Rs. 2,83,200/- under the head 'Development Charges' has been calculated.

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

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

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 respondent is a reputed real estate company engaged in the business of development and construction of real estate projects and has acted strictly in accordance with the contractual terms executed between the parties. The allegations of arbitrariness and deficiency in service are wholly baseless.

II. That The complainants have suppressed material facts, made false and misleading allegations, and are attempting to derive unlawful gains by misusing the provisions of the Act. The complaint is not maintainable either on facts or in law and is liable to be dismissed in limine.

III. The Complainant has failed to fulfil her part of the contractual obligations under the Memorandum of Understanding (MoU) and Builder Buyer Agreement (BBA). As per Clauses 10, 11, and 12 of the BBA and Clause 13 of the MoU, the Complainant was bound to pay all lawful charges such as maintenance, upkeep, repairs, insurance, registration charges, development charges, taxes, levies, and other dues. Timely payment of these charges was the essence of the contract (Clause 4.4 of the BBA). Despite repeated reminders and demand letters dated 15.04.2024, 24.12.2024, and 02.04.2025, the Complainant persistently defaulted, resulting in outstanding dues of ₹33,51,175/.

IV. As per Clause 4.5 of the BBA, the Respondent was contractually entitled to terminate the allotment in the event of default and refund the balance amount after deduction of earnest money and other legitimate charges. The termination, therefore, was neither arbitrary nor illegal but strictly in terms of the agreed contract.

V. The Complainant has deliberately misrepresented that EDC/IDC charges were NIL as per Annexure-1 of the MoU, ignoring Note 2 appended to the same, which clearly stipulates that any future upward revision of EDC/IDC by the Government shall be payable by the Allottee. EDC and IDC are statutory charges recoverable from allottees, and the demand raised by the Respondent is fully justified and in compliance with law.

VI. The Complainant approached the Respondent as an investor seeking commercial gains and entered into an Investment Return Plan along with the MoU. The MoU itself contained a Lease Clause, empowering the Respondent to lease the unit as part of the project, and did not confer any right of physical possession. The Complaint has been filed as if the Complainant is a consumer under RERA, whereas in reality, she is an investor who opted for assured returns and speculative gains. RERA does not extend to disputes arising from pure investment arrangements.

VII. Without prejudice, it is submitted that the Respondent has duly honored its obligations in good faith and made payments of assured returns as per the contractual terms. The Complainant, by concealing these material facts, is attempting to mislead this Authority and misuse the benevolent provisions of the RERA Act

VIII. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

IX. That under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which

is separate from the agreement of sale or allotment, which grants right in immovable property.

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

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

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

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

XIV. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the

Promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.

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

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

XVII. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised'

under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

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

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

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

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

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

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

XXIII. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

XXIV. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the Respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees/Complainant due

above said prevailing confusion/anomaly. The preamble of the act reads as under:

> *"An Act to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto."*

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

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

XXVII. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.

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

XXIX. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold

against a certain consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

XXX. 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.

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

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

XXXII. That That as the Complainant in the present complaint is seeking the relief of *Assured Return/Penalty*, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the *Banning of Unregulated Deposit Schemes Act, 2019* ("BUDS Act"). Any direction for payment of *Assured Return/Penalty* would amount to violation of the provisions of the BUDS Act.

XXXIII. A bare reading of Section 13(2) demonstrates that *Assured Return/Penalty* is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.

XXXIV. That Moreover, the present Complaint is based on the terms of an *MOU* entered into between the parties, which is distinct from the Builder-Buyer Agreement. The jurisdiction of the Authority is confined to disputes arising from the Builder-Buyer Agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on *M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd.* (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.

XXXV. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by

the complainant then in that event the complainant shall bear the same from its own pocket.

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

XXXVII. 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.

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

XXXIX. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered

on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. No.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7th of April, 2015 to 6th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19th July 2016	National Green Tribunal in O.A No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had

		In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.			Completely Stopped Construction activity.
4.	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and	National Green Tribunal has passed the said order dated 9th		9 days	On account of passing of the

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

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

					authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

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

pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

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

11. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the Authority

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

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

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

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

17. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainants

are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) **"allottee"** in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 08.05.2015. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Respondent be directed to make payment towards the monthly penalty from 25.09.2021 onwards till valid offer of possession along with interest as per law.

G.II Respondent be directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date i.e 25.09.2023 till the date of valid offer of possession.

19. The complainant is seeking unpaid monthly penalty on as per the terms of the MoU dated 25.09.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

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

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement.*

22. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance

of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

> (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
>
> *(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

23. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
24. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.
25. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
26. The 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 allotee arises out of the same relationship and is marked by the addendum agreement.

27. 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 25.09.2020.

28. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges in G.II 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"*

29. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within **36 months** from the date of execution of this agreement or from the start of construction whichever is later. The period of 36 months is calculated from the date of BBA i.e., 25.09.2020 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 25.03.2024.

30. **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"*

31. 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%.

32. 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 25.03.2024.

33. 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?

34. 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 25.09.2020. 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 ₹49,500/- 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 ₹49,500/- per month whereas the delayed possession charges are payable approximately ₹9,312/- 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.

35. 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.

36. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 25.09.2020, which is reproduced below for the ready reference:

> *"4. ..The Company shall pay a Penalty of* ***Rs.49,500/-*** *(Rupees Forty Nine Thousand Five Hundred only) per month on the said Unit, On the total amount received with effect from* ***25-Sep-2021*** *(Effective Date-II) Subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The penalty shall be paid to the Allottee(s) from end of effective date II until the offer of possession letter date, on prorate basis"..*

37. Thus, as per the abovementioned clause the penalty was payable @Rs. 49,500/- per month w.e.f. 25.09.2021, till offer of possession.

38. In light of the above, the Authority is of the view that as per the MoU dated 25.09.2020, it was obligation on part of the respondent to pay the penalty till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and unit was leased out by the respondent on 24.07.2020. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @49,500/- from the date i.e., 25.09.2021 until the offer of possession i.e., 24.12.2024 after deducting the amount already paid on account of penalty to the complainant.

G.III & G.IV - Lease rentals.

39. 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 as per the agreed rate in the MoU executed between the parties from commencement of first lease.

G.V Direct the Respondent to revoke the illegal charges demanded vide Demand Letter and Offer for Fit-out dated 15.04.2025 and not to demand any amount towards fitout charges from the Complainant.

40. Specifically, in **CR/2179/2025** has raised objection towards the fit-out charges raised by the respondent vide letter dated 24.12.2024 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. Vide proceedings dated 16.09.2025 the counsel for the respondent submitted that as per the Clause 8 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

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

41. 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.

42. 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.VI. Direct the Respondent to revoke the offer of possession dated 24.12.2024 and issue a valid offer of possession of the unit (without any illegal demands) in a habitable condition, as per the specifications provided in the Buyer's Agreement.

G.VII. The Respondent be directed not to charge the Labour Cess, and FTTH Charges. Further, the Respondent be directed not to charge Development charges of Rs. 3,10,812/- from the Complainant or any amount towards development charges from the Complainant.

G. VIII. Further, the Respondent be directed to provide an itemized breakdown of how the sum of Rs. 2,83,200/- under the head 'Development Charges' has been calculated.

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

43. Further, in both the complaints, complainants are seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

- **Labour cess**

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

- **Development charges**

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

"11.

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

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

- **FTTH Charges**

The respondent during proceedings dated 16.09.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about

the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

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

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

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

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

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

44. 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.

45. 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

46. 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/penalty to the complainants at the agreed rate i.e., @Rs.49,500/- from the effective date as per clause 4 of the MoU i.e., 25.09.2021 till offer of possession i.e., 24.12.2024.

In CR/6365/2024, the respondent/promoter is directed to pay the assured return/penalty to the complainants at the agreed rate i.e., @Rs.45,734/- from the effective date as per clause 4 of the MoU i.e., 03.02.2021 till offer of possession i.e., 03.10.2024.

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.

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

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

49. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated:16.09.2025