BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : **4867 of 2022**
Date of Order : **22.07.2025**

1. Rajesh Banbah and
2. Dr. Lt. Col. Binny Kohli
Both R/o: - Flat No. 705, Gloriosa, Nyati Exotica, Near Delhi Public School, Mohemmadwadi, Pune.

Complainants

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 1205-B, 12th Floor, Tower-B, Signature Tower, South City-1, NH-8, Gurugram - 122001.

Respondent

CORAM:

Shri Arun Kumar — **Chairman**
Shri Ashok Sangwan — **Member**

APPEARANCE:

Ms. Sapna Malik (Advocate) — (Complainants)
Sh. Venkat Rao (Advocate) — (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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	2.71 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	RERA Extension	109 of 2017/ 7(3)/33/2023/10 Valid up to 22.02.2024
8.	Unit and Floor no.	Shop No. 221 (Second Floor) (As mentioned in BBA at page no. 45 of the reply)
9.	Unit area admeasuring	503 sq. ft. (As mentioned in BBA at page no. 45 of the reply)
10.	Date of Application form for allotment of Unit	24.12.2012 (As per pg. 27 of the reply)

11.	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. CR/1329/2019 It was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Date of execution of Buyer's agreement	04.06.2018 (As per page no.42 of the reply)
13.	Date of Memorandum of Understanding containing AR clause	26.12.2012 (As per page no. 30 of the reply)
14.	Date of Memorandum of Understanding containing Buy back clause.	09.05.2019 (As per page no. 83 of the complaint)
15.	Possession clause	***NA***
16.	Assured Returns (AR) Clause	***Clause 3 of MoU*** *The company hereby has agreed to allot to the Allottee(s) premises measuring **503 Sq Ft** super built-up area on the second floor of tower of the said project. The allottee(s) has opted for the "Investment Return Plan" and has agreed that the basic consideration for allotment of the premises is to be determined at **Rs. 6000/- per Sq. Ft. taking into consideration a return of Rs. 85.0/- per sq ft. per month**, subject to the terms of this MoU. Return is provided till possession is offered to the customer.* (As per MoU at page no. 32 of reply)

17.	Due date of possession	15.12.2018 (3 years from the calculated from date of start of construction)
18.	Total Sale Consideration	Rs.30,18,000/- (As per account BBA at page no.45 of complaint)
19.	Amount paid against the unit	Rs. 35,35,875/- (As per account statement at page no.101 of complaint)
20.	Assured Returns Paid by the respondent	Rs. 32,13,751/- (As per account statement at page no.101 of complaint)
21.	Occupation certificate	14.08.2024 (As per the DTCP site)
22.	Offer of possession	Not offered
23.	Cancellation letter	06.07.2021 (page 86 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That on 24.12.2012, the complainants applied for booking of commercial Unit No. 221, admeasuring 503 sq. ft., in the said project by paying the entire basic sale price of Rs.30,18,000/- along with taxes and charges (EDC/IDC/VAT/GST), partly from their accounts. The respondent thereafter executed a Memorandum of Understanding (MoU) with the complainants in December, 2012.

II. That the said MoU was based on an "Investment Return Plan", under which the complainants were entitled to a monthly assured return of Rs.42,755/-

(503 sq. ft. * 85.0/-) till possession is offered to the customer as per clause 3 of the MoU.

III. That complainant and her husband collectively paid a total sum of Rs.35,35,875/- towards Unit No. 221, which included basic sale price and applicable charge. All the payments were made as demanded and have committed no default.

IV. That due to delay in completion of the project and financial difficulties faced by the complainant, the respondent persuaded them to surrender Unit No.221 and certain other units owned by them. Accordingly, on 09.05.2019, a fresh MoU was executed under which the respondent agreed to purchase seven units including Unit No. 221, all admeasuring 3503 sq. ft., at Rs.7,500/- per sq. ft., amounting to Rs.2,62,72,500/-. The transaction was to be completed by 30.10.2019.

V. That pursuant to the said MoU dated 09.05.2019, the complainants surrendered the original Buyer's Agreements, MoU, allotment letters, receipts and other original documents to the respondent at its corporate office. However, the respondent did not honour its obligation and refunded only Rs.30,00,000/- by two cheques dated 31.08.2019 and 06.12.2019.

VI. That despite repeated follow-ups through emails, whatsapp messages and personal visits, the respondent failed to pay the balance purchase consideration. On 12.08.2020, the complainants submitted an application to cancel the buyback deal and reinstate their original allotments, which the respondent initially assured to accept and to return original documents within 10 days.

VII. That complainants sent further reminders, including emails dated 26.09.2020 and 23.10.2020, requesting reinstatement of Unit No.221 and other units, which were acknowledged verbally by the respondent but no action was taken.

VIII. However, instead of restoring the complainant's allotment, the respondent issued a cancellation notice dated 06.07.2021, alleging default of Rs.3,00,419/- by the complainants. The said notice also referred to forfeiture clauses under the BBA, though no such demand had ever been raised prior to cancellation.

IX. That complainants contend that the alleged adjustment of assured returns, brokerage and earnest money in the respondent's account statement is arbitrary and not supported by any clause of the MoU and BBA. Also, the respondent did not comply with Regulation 11 of 2018 of HARERA, which requires refund after deduction of only 10% of sale consideration as earnest money.

X. That complainants also issued a legal notice dated 21.09.2021 demanding payment of the balance amount of Rs.2,32,72,500/- with interest @24% p.a., or in the alternative, possession of the units along with original documents and assured returns. The respondent neither replied to the notice nor complied with the demand.

XI. Thereafter, the complainants lodged a complaint with the Economic Offences Wing, Delhi, which resulted in registration of FIR No.0046 dated 16.03.2022 for offences of cheating, criminal breach of trust, conspiracy and misappropriation of fund.

XII. That the complainants submit that the respondent's conduct amounts to unfair trade practice, cheating and breach of trust, as despite surrendering all original documents under the MoU dated 09.05.2019, neither consideration was paid nor the original allotment reinstated.

XIII. That the respondent acted with mala fide intention to grab funds of the complainants and arbitrarily cancelled their unit without lawful authority, thereby causing financial loss, mental agony and harassment to the complainant.

C. Relief sought by the complainant:

4. The complainantshas sought following relief(s):

I. Direct the Respondent to Reinstate and handover the possession of the commercial shop No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram to the Complainants along with return back of original MOU, original Buyer's Agreement, original Allotment Letter, original payment receipts and other original documents towards the aforesaid commercial unit/shop No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram.

II. Direct the Respondent to give or allot another unit/shop on the same sq. ft. i.e. 503 sq. ft. to the Complainantsin the Neo Square, Sector-109, Dwarka Expressway, Gurugram, in case the Respondent already sold out of the aforesaid unit before filing the present complaint.

III. Amount paid till now Rs.35,35,875/- (Including EDC/IDC, Service Tax/GST, VAT) till date. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date

of possession i.e. 15.06.2019 till the date of actual handing over of complete and valid physical possession of the Unit No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram.

IV. Direct the Respondent to pay the assured Return of Rs.42,755/- per month to till the date of offer of the possession with interest for every month of delay at Prevailing rate of interest on the unpaid amount.

V. Declare the Notice of Cancellation dated 06.07.2021 along with Account Statement except column of paid amount by the Complainants and Assured Return Amount of the Respondent as illegal and void against the eyes of law and Set Aside the same.

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.

5. That the reply on behalf of respondent had been filed on 17.01.2023. The brief facts of reply filed by the respondent are given below: -

a) That the complainants have applied for allotment of unit no. 221, admeasuring 503 sq. ft. in the commercial project "Neo Square", Sector-109, Gurugram through application dated 24.12.2012 for a consideration of Rs.30,18,000/-. Subsequently, a Memorandum of Understanding (MOU) dated 26.12.2012 was executed between the parties whereby the respondent agreed to pay the complainants assured return of Rs.42,755/- per month till commencement of the first lease of the said unit.

b) It is further noted that in terms of the said MoU, the respondent commenced assured return payments from 26.12.2012 and continued till 08.04.2019, amounting to Rs.32,13,751/- (including TDS), which was almost equivalent to the amount paid by the complainants towards the said unit.

c) That vide letter dated 09.05.2019, the complainants requested cancellation of allotment of Unit No. 221 in the project "Neo Square" along with six other units (Nos. 27, 28, 29, 37, 38 and 212), citing personal reasons. In the said surrender request, the complainants further confirmed that they would have no right, title, lien, or claim over the surrendered units and sought refund without interest.

d) Pursuant thereto, the respondent refunded a sum of Rs.5,79,168/- after deductions towards 10% earnest money, assured returns already paid, and brokerage, in terms of Clauses 4.2 and 4.5 of the Builder Buyer Agreement and MoU. The respondent has placed on record a calculation showing that against a refundable sum of Rs.6,86,896/-, Rs.5,79,168/- was paid.

e) That the allegation of "buy-back" of units for a consideration of Rs.30,00,000/- is misconceived. The said amount was refunded partly towards the surrendered seven units of "Neo Square" (Rs.5,79,168/-) and partly towards refund of amounts paid for two units booked by the complainants in another proposed project of the Respondent, namely "Capital Residency" (Rs.24,20,832/-), which did not materialize. The refunds were made vide two cheques of Rs.15,00,000/- each dated

31.08.2019 and 16.12.2019 respectively, the receipt of which was duly acknowledged by the complainants through email communications.

f) That after surrendering the allotted units and receiving refund as per agreed terms, the complainant, vide letter dated 12.08.2020, requested reinstatement of the surrendered units. As a goodwill gesture, the respondent reinstated the allotment and called upon the complainants to clear outstanding and statutory dues.

g) However, despite repeated demands, the complainants failed to pay the outstanding dues. Instead, a police complaint was filed against the respondent, whereupon the respondent submitted a detailed reply clarifying the sequence of surrender, refund, and reinstatement, and apprising that the issue was civil in nature falling under the jurisdiction of this authority.

h) In view of continued default in payment, the respondent cancelled the allotment vide notice dated 06.07.2021, in terms of the Builder Buyer Agreement and MoU, while expressing readiness to refund any balance amount after permissible deductions.

i) That the complainants failed to make timely payments in terms of the agreed payment plan, despite being aware of their obligations under the Buyer's Agreement.

j) That the complainants, having already received assured returns exceeding their investments, have indulged in filing frivolous complaints to harass the respondent and unjustly enrich themselves.

k) As per the agreement, possession was to be deemed complete upon application for occupation certificate. However, since the complainants themselves withdrew and surrendered their units in 2019, coupled with refund being made thereafter, the project was delayed and their allotments stood cancelled for non-payment of dues.

l) That even if the units had not been surrendered, after the enactment of the *Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act)*, it became impermissible to continue assured return schemes. Under the BUDS Act, such assured return arrangements are treated as unregulated deposits and hence prohibited. Consequently, the respondent lawfully ceased payment of assured returns post-2019. Reliance is placed on the interim order of the Hon'ble Punjab & Haryana High Court in *Vatika Ltd. v. Union of India* (CWP-26740-2022), where coercive recovery under assured return schemes was stayed.

m) That enforcement of assured return agreements does not fall within the ambit of the RERA Act, 2016. Section 13 mandates agreements for sale of immovable property and specifies the particulars therein, which do not include investment return schemes. Similarly, Section 4, dealing with project registration, requires filing of the sale agreement but not assured return contracts. Thus, assured return agreements are independent commercial arrangements, outside the scheme and jurisdiction of RERA.

n) That under Section 31 of the Act, 2016, complaints may only be entertained for contraventions of the provisions of the Act or rules/regulations framed thereunder. A conjoint reading of Sections 11,

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

o) Reliance is placed on the decision of the Hon'ble Real Estate Regulatory Authority, Punjab in *Daldeej Kaur Gill v. M/s Sushma Buildtech Limited* (Complaint No. 1417 of 2019, decided on 30.06.2020), wherein it was held that assured return does not fall within the ambit of RERA. The Authority further directed that amounts already paid towards assured return be set off against any claim of interest for delay in handing over possession. It is accordingly contended that, if at all any delay interest is awarded in the present case, the sums paid towards assured return ought to be duly adjusted.

p) That VAT has been demanded strictly in accordance with statutory provisions under the Haryana VAT Act, 2003, and Clause 11 of the Buyer's Agreement, which obligates the allottee to pay all applicable taxes, cesses, and statutory charges, along with interest in case of delay. The respondent has not availed any amnesty or lump sum scheme under the HVAT Rules, 2003. Therefore, the complainants remain liable to discharge VAT obligations as demanded.

q) That the claims raised by the complainants are misconceived, untenable in law, and beyond the jurisdiction of this Authority. The complaint amounts to abuse of process and deserves dismissal with costs.

r) All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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.

G. Findings on the relief sought by the complainant

1) Direct the Respondent to Reinstate and handover the possession of the commercial shop No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram to the Complainants along with return back of original MOU, original Buyer's Agreement, original Allotment Letter, original payment receipts and other original documents towards the aforesaid commercial unit/shop No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram.
2) Direct the Respondent to give or allot another unit/shop on the same sq. ft. i.e. 503 sq. ft. to the Complainants in the Neo Square, Sector-109, Dwarka Expressway, Gurugram, in case the Respondent already sold out of the aforesaid unit before filing the present complaint.
3) Amount paid till now Rs.35,35,875/- (Including EDC/IDC, Service Tax/GST, VAT) till date. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession i.e. 15.06.2019 till the date of actual handing over of complete and valid physical possession of the Unit No. Unit No. 221, Neo Square, Sector-109, Dwarka Expressway, Gurugram.

4) Direct the Respondent to pay the assured Return of Rs.42,755/- per month to till the date of offer of the possession with interest for every month of delay at Prevailing rate of interest on the unpaid amount

5) Declare the Notice of Cancellation dated 06.07.2021 along with Account Statement except column of paid amount by the Complainants and Assured Return Amount of the Respondent as illegal and void against the eyes of law and Set Aside the same.

11. The complainants in the present complaint are seeking reliefs w.r.t payment of assured return and possession as per the terms of the MoU dated 26.12.2012 and BBA dated 04.06.2018. As per the statement of accounts dated 06.07.2021, it is evident that the complainants have already paid an amount exceeding the total sale consideration of the allotted unit.

12. It is to be noted that as per clause 03 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.42,755/- with effect from 26.12.2012. Further, it was also agreed vide clause 3 of the said MoU that the responsibility of assured returns to be paid by the respondent till possession is offered to the customer.

13. That on 09.05.2019, the complainants had surrendered the allotted units in the project "Neo Square" through a Memorandum of Understanding (MoU) executed with the respondent. Under the said MoU, the respondent undertook to purchase afresh the units measuring 3503 sq. ft. at the rate of Rs.7,500/- per sq. ft., amounting to a total consideration of Rs.2,62,72,500/-, with the transaction to be completed on or before 30.10.2019.

14. However, the respondent failed to honour the said commitment and refunded only Rs.30,00,000/- to the complainant, leaving the balance

amount unpaid. Consequently, the complainants moved an application for reinstatement on 12.08.2020, which was duly accepted by the respondent, as is evident from their own notice of cancellation dated 06.07.2021 acknowledging the said reinstatement. The relevant paragraph of the notice of cancellation letter is reiterated below –

"This is with reference to your request letter dated 12th August 2020, to reinstate the booking of unit no. 221. The company had favorably considered your request but you have continuously defaulted to pay the outstanding dues amounting to Rs. 3,00,413/-. The default in making the timely payment is the breach in terms of BBA & MOU executed between the parties."

15. It is to be noted that the respondent has not placed on record any demand letters or documentary evidence showing when such demands were raised and whether the complainant failed to comply with the same. In the absence of such proof, the demands of such outstanding dues are unsustainable Therefore, the cancellation of the unit cannot be sustained and is set aside.

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

17. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot,

apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

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

18. Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainants are an allottee.

19. The MoU dated 26.12.2012 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the MoU and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held

by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of india & Ors.,*** (Writ Petition No. 2737 of 2017) decided on 06.12.2017. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

20. 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;*

21. 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.
22. 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.
23. 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.

24. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

25. In the present complaint, the assured return was payable as per clause 3 of the MoU dated 26.12.2012, which is reproduced below for the ready reference:

> *Clause 3 - The company hereby has agreed to allot to the Allottee(s) premises measuring 503 Sq. Ft. super built-up area on the second floor of tower of the said project. The allottee(s) has opted for the "Investment Return Plan" and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 6000/- per Sq. Ft. taking into consideration a return of Rs. 85.0/- per sq ft. per month, subject to the terms of this MoU. Return is provided till possession is offered to the customer.*

26. Thus, the assured return was payable @Rs.42,755/- per month w.e.f. 26.12.2012, till possession is offered to the customer.

27. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 26.12.2012, it was obligation on part of the respondent to

pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 26.12.2012. Further, the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, whereas the possession of the subject unit has not been offered till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.42,755/- per month from the date i.e., 26.12.2012 till possession is offered to the customer on the said unit as per the MoU after deducting the amount already paid on account of assured return to the complainant.

G.II Delay Possession Charges:

28. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

29. **Due date of possession:** It is pertinent to note that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed in the MOU dated 26.12.2012 and BBA dated 04.06.2018. Therefore, in the case of ***"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors." (12.03.2018 SC); MANU/SC/0253/2018,*** *the*

Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."

Herein, in the peculiar facts and circumstances of the present case, the due date of possession has to be calculated three years from the date of Start of the construction of the project i.e., 15.12.2015. Thus, the due date of possession shall be 15.12.2018.

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

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

31. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

32. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

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

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

35. 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 occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to handover possession of the subject shop/unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

36. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

> To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is @Rs.42,755/- per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 26.12.2012 till the date of offer of the possession of the said unit. Accordingly, the interest of the allottees

is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as 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 delay possession charges whichever is higher.

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

38. In the present complaint, as per clause 3 of the MoU dated 26.12.2012, the amount on account of assured return was payable from 26.12.2012 till possession is offered to the customer. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.42,755/- per month from the date i.e., 26.12.2012 as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant till the possession is offered to the customer.

39. The Authority observes that as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other

information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Further, as per Section 11(4)(a) of the Act, 2016, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or rules and regulations made thereunder or the agreement for sale. Therefore, in view of the above, the respondent/promoter is directed to provide specifications regarding unit in question to the complainant-allottee within a period of 1 month from the date of this order.

40. Furthermore, as the occupation certificate for the project in question has already been obtained by the respondent on 14.08.2024, the respondent is directed to offer possession of the subject unit to the complainants within a period of 60 days from the date of this order. In case third party rights have been created on the aforesaid unit, then the promoter shall allot another unit admeasuring same area at the same price and terms to the allottee.

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

    i. The cancellation of unit by the respondent vide letter dated 06.07.2021 is set aside. The respondent/promoter is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.42,755/- per month from the date i.e., 26.12.2012 till the offer of possession issued to the complainants as per the clause 3 memorandum of understanding dated 26.12.2012 after deducting

the amount already paid on account of assured return to the complainant.

ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.90% p.a. till the date of actual realization.

iii. The respondent/promoter is directed to offer possession of the subject unit to the complainants within a period of 60 days from the date of this order. In case the third-party rights have been created on the aforesaid unit, then the promoter shall allot another unit admeasuring same area at the same price and terms to the allottees.

iv. The respondent/promoter shall not charge anything from the complainants which is not the part of the BBA.

v. The complainants are directed to pay outstanding dues, if any, after adjustment of payable assured returns.

42. Complaint stands disposed of.

43. File be consigned to registry.

Ashok Sangwan
Member

Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.07.2025