

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

Complaint no.	:	1918 of 2025
Date of filing complaint:		15.04.2025
Date of order		10.10.2025

1. Amandeep Kaur 2. Davinder Singh Grewal Both R/O: House No. 730/1, Ward No. 59, Punjab Mata Nagar, Pakhowal Road, Ludhiana, Punjab - 141002	Complainants
Versus	
M/S Neo Developers Pvt. Ltd. Regd. Office: 32- B, Pusa Road, New Delhi-110005 Corporate Office: Unit no. 1205, 12 th floor, Tower B, Signature Tower, South City – I, Gurugram, Haryana	Respondent
CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Sh. Hemant Phogat (Advocate)	Complainants
Sh. Dushyant (Advocate)	Respondent

ORDER

1. This complaint has been filed by the complainants/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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	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.	Food court (page no. 25 of complaint)
7.	Unit area admeasuring	200 sq. ft. (page no. 25 of complaint)
8.	Date of buyer's agreement	07.10.2015 (page no. 20 of complaint)
9.	Date of MoU	07.10.2015 (page no. 49 of complaint)
10.	Due date of possession	07.10.2018
11.	Assured return Clause	4. The Company shall pay a monthly assured return of Rs. 18,000/- on the total amount received with effect from 07.10.2015 after deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the

		<i>effective date.</i>
12.	Basic sale consideration	Rs. 10,00,000/- (as per MOU on page no. 51 of complaint) Rs. 11,81,000/- (as per payment plan on page no. 46 of complaint) Rs. 14,66,140/- (as per SOA at page 63 of complaint)
13.	Amount paid by the complainants	Rs. 11,81,800/- (as per SOA at page 63 of complaint)
14.	Occupation certificate	14.08.2024 (page no. 42 of complaint)
15.	Offer of possession	09.12.2024 (page no. 61 of complaint)
16.	Reminders for payment	03.01.2025, 27.01.2025, 01.03.2025,
17.	Leasing of unit	28.02.2025 (page no. 67 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That after going through the advertisement published by respondent in the newspaper and as per the brochure provided by it, the complainants booked a commercial space in the area designated for food court having its super area 200 sq. ft. in the upcoming project of the respondent named "neo square" situated in sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 10,00,000/- and total sale price of Rs. 11,81,800/- and the complainants have paid a sum of Rs. 11,91,540/- in respect of their space /unit.
- II. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainants on 07.10.2015.
- III. That the complainants have abided by all the terms of MOU and builder buyer agreement dated 07.10.2015 and has made all the payments/ instalments in a timely manner, as and when demanded

by the respondent and there are no dues pending in respect of the total sale price of the unit as per the payment schedule of the builder buyers agreement.

- IV. That, as per clause 4 of the MOU dated 07.10.2015, the respondent is under legal obligation and was bound to pay the monthly assured return of Rs. 18,000/- on the total amount receipt w.e.f. 07.10.2015 until the commencement of first lease on the said unit.
- V. That the respondent has failed to honour its own commitment of paying the monthly assured returns and has paid monthly assured returns till June 2019 and are due since July 2019. The complainants have been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns via email communications and by visiting the respondent personally but the respondent has not paid any heed.
- VI. That upon communication with the respondent the complainants were given verbal assurances. The respondent vide their letters dated 18.12.2019 and 01.02.2022 assured the complainants that the assured returns shall be adjusted at the time of possession, the respondent has been continuously raising demands in respect of VAT charges to the tune of Rs. 76,500/-. The complainants have confronted the respondent vide e-mail dated 17.11.2020 and have asked the respondent to adjust the demands towards VAT Charges against their pending assured returns, but the respondent has denied to adjust the same despite of its own commitment.
- VII. That the respondent in contravention to the terms of builder buyer agreement and mou dated 07.10.215 has raised unlawful demands via demand notice and offer of possession letter dated 09.12.2024, on account of development charges to the tune of Rs. 1,41,600/-, FTTH

charges to the tune of Rs. 6490/- , labour cess to the tune of Rs. 5,000/- and also imposed a penalty of Rs. 1,70,854/- on account of delayed payment, despite of the fact that the complainants have paid all their instalments well time as and when demanded by the respondent. The demands raised by the respondent in the said demand notice are not part and parcel of the payment schedule of the buyer's agreement.

- VIII. That the respondent is acting in arbitrary manner by not accepting the just and genuine requests of the complainants and is further pressurizing the complainants to pay the demands raised in the demand notice and offer of possession letter dated 09.12.2024 and is further threatening the complainants to cancel/terminate their unit by raising reminder-1 letter dated 03.01.2025, reminder-2 letter dated 27.01.2025 and final reminder dated 01.03.2025. The complainants upon receiving the reminder letters has been regularly confronting the respondent by visiting personally at their office, but the respondent is not willing to listen to the request of the complainants.
- IX. That the respondent has also raised a unlawful demand towards the fit out charges amounting of Rs. 8,26,000/- vide letter dated 28.02.2025. The demand for the fit out charges are completely bogus and are not part of the buyer's agreement or the MOU and neither the payment schedule mentioned in the buyers agreement and MOU dated 07.10.2015.
- X. That the complainants have taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyers agreement and to pay him the assured returns

as per the terms of MOU dated 07.10.2015 but the respondent has completely ignored the just and genuine demands of the complainants.

- XI. That, till today the complainants have not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter dated 09.12.2024 & letter of fit out charges dated 28.02.2025 and therefore, the complainants are suffering from harassment and are going through a lot of mental and financial agony.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay due monthly assured returns until the commencement of first lease of unit as per the clause-4 of MOU dated 07.10.2015.
 - ii. Direct the respondent to withdraw and waive off the demands towards fit out charges raised in letter dated 28.02.2025.
 - iii. Direct the respondent withdraw and waive off the demands in respect development charges, FTTH charges, Labour Cess charges raised in letter dated 09.12.2024.
 - iv. Direct the respondent not to charge anything which is not the part of payment schedule (Annexure-1) of buyer's agreement dated 07.10.2015.
 - v. Direct the respondent to offer the possession of the unit and get the conveyance deed /sale deed executed in favour of complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been

committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply dated 15.09.2025 on the following grounds: -
 - I. That the RERA Act was passed with the sole intention of regularisation of real estate projects and the dispute resolution between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of RERA Act. That the complainants herein have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.
 - II. That the complainants with the intent to invest in the Real Estate sector as an investor, approached the respondent and inquired about the project i.e., "Neo Square", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 05/10/2015, whereby seeking allotment of unit no. 16, admeasuring 200 sq. ft. super area on the 3rd floor of the project having a basic sale price of Rs. 5000/-. The complainants, considering the future speculative gains also opted for the investment return plan being floated by the respondent for the instant project.
 - III. That since the complainants had opted for the investment return plan and a memorandum of understanding dated 07/10/2015 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing

- of the unit/space thereof. As per terms of the "MOU", the returns were to be paid from 07/10/2015 till commencement of first lease.
- IV. That by no stretch of imagination it can be concluded that the complainants herein are "Allottee/Consumer." That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income.
- V. That the MOU executed between the parties was in the form of an "Investment Agreement." The complainants had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainants along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.
- VI. That the complainants voluntarily also executed the buyer agreement dated 07.10.2015 for shop no. 66 on 3rd floor admeasuring 200 sq. ft. super area in the project
- VII. That as the complainants in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act.
- VIII. 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.
- IX. That the complainants in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the parties. As per the provisions of the RERA Act, 2016, the Ld. Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of

failure of either party to fulfil the terms and conditions of the agreement for sale (Buyer's Agreement). However, in the present matter the complainant is relying upon the terms of MOU which is a distinct agreement than the buyer's agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainants are raising their grievance.

- X. That the respondent cannot pay "Assured Returns" to the complainants by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. None of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the respondent had no other alternative but to stop the payment of any return etc.
- XI. 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.
- XII. 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/Complainants due above said prevailing confusion/anomaly.

- XIII. 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.
- XIV. That as per clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.
- XV. That as per clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made. Accordingly, as per clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.

- XVI. That complainants are trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 3500/- per sq. ft. to the complainants which is a sum of Rs. 8,26,000/- for getting the said unit fit out which is essential for getting the said unit leased out. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.
- XVII. That time was essence in respect to the complainants obligation for making the respective payment and as per the agreement so signed and acknowledged the complainants was bound to make the outstanding payment as and when demanded by the respondent.
- XVIII. That the respondent herein had been running behind the complainants for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainants herein has failed to pay the outstanding dues on time. The complainants failed to clear the outstanding dues of Rs. 4,55,194/- payable against the unit.
- XIX. That the complainants have not obliged its duties as per the MOU & buyer's agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainants are estopped from raising any allegations against the respondent as the complainants are at fault. The complainants herein have clearly violated the duties of an Allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the Allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the Allottee and the builder/promoter.
- XX. That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act

2003. Accordingly, the VAT amounts have been demanded from the complainants, as the same has been assessed and demanded by the competent authority.

- XXI. 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 substantiate 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.
- XXII. 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.
7. 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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent.

F. I. Objection regarding the complainants being investors.

12. The respondent has taken a stand that the complainants are the investors and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an

introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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 "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent to pay due monthly assured returns until the commencement of first lease of unit as per the clause-4 of MOU dated 07.10.2015.**

14. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 07.10.2015 at the rates mentioned therein.

It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

15. The respondent has submitted that the complainants in the present complaint are 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 complainants are raising her grievance.
16. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*
- (i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
 - (ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*
17. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the

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

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

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

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.

22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 07.10.2015, which is reproduced below for the ready reference:

4.

*The Company shall pay a monthly assured return of Rs. 18,000/- on the total amount received with effect from 07.10.2015 after deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. **The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.***

23. Thus, as per the abovementioned clause the assured return was payable @Rs.18,000/- per month w.e.f. 07.10.2015, till commencement of first lease.
24. In light of the above, the Authority is of the view that as per the MoU dated 07.10.2015, it was obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered for possession on 09.12.2024 and thereafter unit was put on lease on

28.02.2025. Accordingly, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.18,000/- from the date i.e., 07.10.2015 till 28.02.2025.

G.II Direct the respondent to withdraw and waive off the demands towards fit out charges raised in letter dated 28.02.2025.

G.III Direct the respondent withdraw and waive off the demands in respect development charges, FTTH charges, Labour Cess charges raised in letter dated 09.12.2024.

G.IV Direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 07.10.2015.

25. In the present complaint, the complainants have raised objection towards the fit out charges raised by the respondent vide letter dated 28.02.2025 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The respondent in its reply has submitted that as per the Clause 8 of the MoU executed between the parties the complainants have agreed to pay such charges. The Authority observes that there is no clause w.r.t the Fit out charges in the buyer's agreement or MOU executed between the parties. The Authority shall proceed strictly in accordance with the terms of the builder buyer agreement and MOU. Therefore, the respondent is not entitled to levy any such charges.

- **Labour cess**

26. 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 complainants are completely arbitrary and the complainants 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**

27. 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"

28. 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**

29. The respondent 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 complainants. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

30. 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.
31. 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-

"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."

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

G.V Direct the respondent to offer the possession of the unit and get the conveyance deed /sale deed executed in favour of complainants.

33. 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 complainants. 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.
34. 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

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent/promoter is directed to pay assured return to the complainants at the agreed rate i.e., @ Rs.18,000/- per month from the date i.e., 07.10.2015 till the commencement of first lease on the

said unit i.e., 28.02.2025 as per the memorandum of understanding dated 07.10.2015, after deducting the amount, if any already paid on account of assured return to the complainants.

- 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 @8.85% p.a. till the date of actual realization.
 - iii. The respondent/promoter is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
 - iv. The respondent/promoter shall not charge anything from the complainants which is not the part of the BBA/MoU.
 - v. The complainants are directed to pay outstanding dues, if any, after adjustment of payable assured returns.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 10.10.2025


(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram