

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

Date of Order: 11.11.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		New Square	
S. No.	Case No.	Case title	Appearance
1.	CR/515/2025	Anuradha Gulati and Suhail Gulati Vs. M/s Neo Developers Private Limited	Mr. Rit Arora (Complainants) Mr. Venkat Rao (Respondent)
2.	CR/516/2025	Ashok Kumar Gulati and Kany Gulati Vs. M/s Neo Developers Private Limited	Mr. Rit Arora (Complainants) Mr. Venkat Rao (Respondent)

CORAM:

Shri Ashok Sangwan	Member
Shri Phool Singh Saini	Member

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 Colony				
Project area		2.71 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	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession /Date of lease Deed
1	CR/515/2025 Anuradha Gulati and Suhail Gulati Vs. (page 34 of	15, 3 rd floor 500 sq. ft. (page 34 of	BBA: 17.04.2018 (page 20 of complaint) MOU:	4. <i>The Company shall pay a monthly assured return of Rs. 45,000/- on the total amount received with effect from 17.04.2020</i>	B.S.C: Rs.23,52,500/- (as per payment plan on page no. 49 of complaint)	0.O.P: 24.12.2024 (page no. 77 of complaint)

	M/s Neo Developers Pvt. Ltd. DOF: 06.02.2025	complaint 17.04.2018 (page 64 of complaint)	before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall 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.	A.P.: - Rs. 22,39,998/- (as per SOA on page no. 79 of complaint)	
2	CR/516/2025 Ashok Kumar Gulati and Kanv Gulati Vs. M/s Neo Developers Pvt. Ltd. DOF: 20.02.2025 Reply: 27.08.2025	16, 3 rd floor 500 sq. ft. (page 35 of complaint) BBA: 17.04.2018 (page 32 of complaint) MOU: 17.04.2018 (page 66 of complaint)	4. <i>The Company shall pay a monthly assured return of Rs. 45,000/- on the total amount received with effect from 17.04.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This</i>	B.S.C: Rs. 23,52,500/- (as per payment plan on page no. 51 of complaint) A.P.: Rs. 22,40,000/- (as per receipts attached at pg. no. 75 to 78 in the complaint)	O.O.P: 03.01.2025 (page no. 79 of complaint)

			<i>shall be paid from the effective date.</i>	
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Relief sought by the complainant(s) in abovementioned complaints: -

1. Pass an order directing the respondent company to deliver immediate possession to the Complainants, of the unit bearing no. /priority bearing no. 16 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana, along with all the amenities, promises and facilities as mentioned in the Buyers' Agreement dated 17th April 2018, as executed by and between the parties, and other representations made by the Respondent Company, including but not limited to Memorandum of Understanding dated 17th April 2018, allotment letters, brochures, emails and letters, etc. to the satisfaction of the Complainants; and
2. Pass an order directing the respondent company to execute the conveyance deed/sale deed with the respect of the unit bearing no. /priority bearing no. 16 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana in favour of the Complainants; and
3. Pass an order directing the respondent company to pay compensation for delay in the delivery of possession of the unit (as mentioned above) in the form of interest at prescribed rate, on the amount already paid by the complainants from the promised date of delivery i.e., 17.04.2021 till the actual/physical delivery of the possession of the unit to the Complainants; and
4. Direct the respondent company not to demand/raise from the Complainants any other charges, penalties, rates, monies, etc. whatsoever which do not form part of the Buyers Agreement dated 17th April 2018 or the MOU dated 17th April 2018; and
5. Pass an order directing the Respondent Company to pay to the Complainants, assured return from the effective date, i.e., 17.04.2018, in terms of the MOU dated 17th April 2018 "until the commencement of the first lease with respect to the said unit", and Assured Lease Amount, from the date of commencement of the first lease, continuously and in-perpetuity until the subsistence of such lease(s), and in the absence of a lease agreement, assured return be paid to the Complainant in terms of the MOU dated 17.04.2018 until perpetuity; and
6. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

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
BSC	Basic 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, assured return and other charges.
5. The facts of all the complaints filed by the complainants-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/515/2025**

titled as Anuradha Gulati and Suhail Gulati Vs. M/s Neo Developers Pvt. Ltd.
 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/515/2025 titled as Anuradha Gulati and Suhail Gulati
 Vs. M/s Neo Developers Pvt. Ltd.***

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.	Buyer's agreement	17.04.2018 (page no. 20 of complaint)
7.	Unit no.	15, 3 rd floor (page no. 34 of complaint)
8.	Unit area admeasuring	500 sq. ft. (page no. 34 of complaint)
9.	Date of MoU	17.04.2018 (page no. 64 of complaint)
10.	Assured return Clause of MOU	4. <i>The company shall pay a monthly return of Rs. 45,000/- on the total amount received with effect from 17.04.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be</i>

		<p><i>payable by the Allottees to the Company in accordance with the 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.</i></p>
11.	Possession from MoU	<p><i>Clause 3</i></p> <p><i>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</i></p>
12.	Due date of possession	<p>17.10.2021</p> <p>(36 months from the date of MOU + 6 Months of HARERA Grace period)</p>
13.	Sale consideration	<p>Rs. 23,52,500/- (as per payment plan on page no. 49 of complaint)</p> <p>Rs. 27,25,488/- (as per SOA on page no. 79 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 22,39,998/-</p> <p>(as per SOA on page no. 79 of complaint)</p>
15.	Occupation certificate	<p>14.08.2024</p> <p>(As per DTCP site)</p>
16.	Offer of possession	<p>24.12.2024</p> <p>(page no. 77 of complaint)</p>

B. Facts of the complaint.

7. The complainants have made following submissions in the complaint:

- i. That the respondent company, i.e., M/s Neo Developers Private Limited, is a company incorporated under the Companies Act, 2013 is having its registered office at the above-mentioned address (herein after referred as the "Respondent/ Respondent Company").
- ii. That the complainants were looking for a commercial project in the Delhi-NCR, to secure a steady income, and during such time, the representatives of respondent approached them and informed them about the project and boasted about the project and made various false and incorrect representations about the construction and delivery of possession. The complainants were informed that since this is an assured return scheme, the onus is upon the respondent/builder to complete the project and lease out the commercial/undivided space at the earliest. The representatives assured the complainants that respondent had obtained all the requisite sanctions and approvals from all competent authorities for starting constructions at the project site and the construction at the project site shall start soon and the possession will be delivered in promised time-frame, i.e., 36 months from the date of execution of the agreement.
- iii. That, the complainants and the respondent entered into 2 (two) agreements, while one is the buyer's agreement, the other is the MOU, both dated 17.04.2018. It was specified by the respondent that in case of the contradiction of terms between both agreements, the terms of the MOU shall prevail, else both have to be read in conformity and harmony with each other.
- iv. That, it is submitted that the agreement drawn by the respondent was unfair, arbitrary and one-sided agreement with all the provisions favouring the Developer and provided nothing for the Complainants in the eventuality of

delay in the delivery of the unit. In the agreement, the complainants were denied fair scope of compensation, in case of delay of possession, and were supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the buyer agreement can be derived from the Clauses 4.5 & 4.6. As per the clause 4.5, the respondent had the right to terminate the agreement and forfeit the earnest money in case of delay in payment of instalments and had the right to accept the delay payment with an interest @ 18% p.a. (compounded) whereas, in case of delay in the delivery of the project, no compensation is provided under the agreement to the Complainants.

- v. That as per clause 3 of the Memorandum of Understanding dated 17.04.2018, the possession of the space was to be delivered within 36 months from the date of execution of the agreement. The MoU was executed on 17.04.2018 and therefore, the respondent was supposed to hand over the possession of the commercial space latest by 17.04.2021 (i.e., 36 months from date of execution of Agreement).
- vi. It is submitted that no force majeure circumstances have been communicated by the respondent company to the complainants till date, which lead to the delay in the completion and development of the project. That no such circumstances have occurred which could justify the delay in the completion of the present project, rather, the delay is on account of the deliberate inaction, negligence and unfair practices on the part of the respondent company.
- vii. The complainants have paid a total sum of Rs. 22,40,000/- (Rupees Twenty-Two Lakhs Forty Thousand Only) against the unit which is the majority of the total consideration. The entire amount was collected by the respondent at the time of the allotment/execution of the buyer's agreement itself.

viii. The actual date for offering possession was 17.04.2021, however, there is a delay of almost 4 years in delivering the possession.

ix. That for these years, the respondent has not paid any delayed compensation to the complainants. Thus, in the present the circumstances, the complainants are left with no other option than to file the present complaint for directing the respondent to deliver immediate peaceful possession of the unit/space, complete in all aspects to the complainant and with all the amenities and facilities as promised and charged for and also pay compensation for delay. Further, the complainants, in terms of the MOU dated 17.04.2018 are also entitled to the payment of the assured return at the rate of Rs 45,000.00 (Rupees Forty-Five Thousand Only).

x. *"The Company shall pay a monthly assured return of Rs.45,000/- (Rupees Forty Five Thousand Only) on the total amount received with effect from 17.04.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure -l. 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."*

xi. That in order to extract money from the complainants, the respondent company continued to raise illegal and arbitrary demands and never gave any answer regarding the completion of the project, or the payment of the assured return. In this regard, a letter 24.12.2024 issued by the respondent company to the complainants is relevant, wherein, the respondent company is raising the demand for the payment of Rs.5,10,882/- which is undue, beyond the terms of the MOU and the buyers' agreement and illegal and arbitrary in nature. The complainant was offered possession of the unit but the same was

illegal in nature, since the Respondent has failed to offer to the complainants any compensation for delay in completion of the project or the payment of the assured returns. Any acceptance of such demand would mean waiver of their rights by the complainants. On the top of that, there is a demand which does not find any mention in the agreement between the parties. The demand raised by the respondent company qua development and other charges do not form part of the arrangement between the parties, further, there is no mention of the payment of prescribed delay penalty and assured return to the complainant anywhere in the communications issued by the respondent. the complainants are aghast at the conduct of the respondent.

xii. The complainants have approached the respondent company for the resolution of disputes several times, but to no avail. The respondent company has reneged on their assurances and promises made at the time of the booking of the unit. The complainants requested that they were promised assured returns and lease amount at the time of entering the booking, and they were assured again vide letter dated 15.10.2020 that the same shall be paid at the time of possession. The respondent blatantly refused to honor their liabilities and promises, and thus the present complaint. It is relevant to point out here that somewhere in the year 2020, the Respondents also got the complainants to execute lease agreement with the lessee of the choice of the Respondents, with lease amount at the rate of Rs 150/- per sq ft per month of the super area (Rs 150 X 500= Rs 75000 per month). The complainants till date have neither received the copy of the lease agreement, despite demands, nor any lease amount. On the contrary, the complainants continue to suffer till date being devoid of their hard-earned money, usage of their commercial space and the assured returns.

xiii. That the respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyer's agreement, which is immoral, illegal and amounts to unfair trade practice.

C. Relief sought by the complainants

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

- I. Pass an order directing the respondent company to deliver immediate possession to the Complainants, of the unit bearing no. /priority bearing no. 15 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana, along with all the amenities, promises and facilities as mentioned in the Buyers' Agreement dated 17th April 2018, as executed by and between the parties, and other representations made by the Respondent Company, including but not limited to Memorandum of Understanding dated 17th April 2018, allotment letters, brochures, emails and letters, etc. to the satisfaction of the Complainants; and.
- II. Pass an order directing the respondent company to execute the conveyance deed/sale deed with the respect of the unit bearing no. /priority bearing no. 15 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana in favour of the Complainants; and.
- III. Pass an order directing the respondent company to pay compensation for delay in the delivery of possession of the unit (*as mentioned above*) in the form of interest at prescribed rate, on the amount already paid by the complainants from the promised date of delivery i.e., 17.04.2021 till the

actual/physical delivery of the possession of the unit to the Complainants; and.

IV. Direct the respondent company not to demand/raise from the complainants any other charges, penalties, rates, monies, etc. whatsoever which do not form part of the buyer's agreement dated 17th April 2018 or the MOU dated 17th April 2018.

V. Pass an order directing the respondent company to pay to the complainants, assured return from the effective date, i.e., 17.04.2018, in terms of the MOU dated 17th April 2018 "until the commencement of the first lease with respect to the said unit", and assured lease amount, from the date of commencement of the first lease, continuously and in-perpetuity until the subsistence of such lease(s), and in the absence of a lease agreement, assured return be paid to the complainant in terms of the MOU dated 17.04.2018 until perpetuity: and

VI. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

9. The respondent-promoter were given various opportunity for filing of reply, the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 19.08.2025, the respondent proceeded ex-parte. Despite due service of notice through speed post as well as through email, none has put in appearance on behalf of respondent nor reply has been filed on its behalf before the Authority till 09.09.2025. In view of the above, the respondent is hereby proceeded ex-parte. Subsequently, on 14.10.2025, the counsel for the respondent appeared and was granted an opportunity to file written submissions. However, the same was not availed by the respondent. Hence, in view of the same, the Authority is deciding

the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.

D. Jurisdiction of the Authority

10. 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

11. 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

12. 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.

13. 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.

E. Findings on the relief sought by the complainants.

- I. Pass an order directing the Respondent Company to pay to the Complainants, assured return from the effective date, i.e., 17.04.2018, in terms of the MOU dated 17th April 2018 "until the commencement of the first lease with respect to the said unit", and Assured Lease Amount, from the date of commencement of the first lease, continuously and in-perpetuity until the subsistence of such lease(s), and in the absence of a lease agreement, assured return be paid to the Complainant in terms of the MOU dated 17.04.2018 until perpetuity; and**
- II. Pass an order directing the respondent company to pay compensation for delay in the delivery of possession of the unit in the form of interest at prescribed rate, on the amount already paid by the complainants from the promised date of delivery i.e., 17.04.2021 till the actual/physical delivery of the possession of the unit to the Complainants; and**

E.I) Assured Returns

14. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 17.04.2018 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 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.
16. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for

assured returns between the promoter and allottee arises out of the same relationship and is marked by the addendum agreement.

17. 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.
18. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 17.04.2018, which is reproduced below for the ready reference:

4.

The Company shall pay a monthly assured return of 45,000/- on the total amount received with effect from 17.04.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall 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.

19. Thus, as per the abovementioned clause the assured return was payable @Rs.45,000/- per month w.e.f. 17.04.2018, till the commencement of first lease.
20. In light of the above, the Authority is of the view that as per the MoU dated 17.04.2018, 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. Accordingly, the respondent/promoter is liable to pay assured

return to the complainant at the agreed rate i.e., @Rs.45,000/- from the date i.e., 17.04.2018 till obtaining of Occupancy Certificate of the concerned project.

E.II) Delay Possession Charges:

21. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”

22. The subject unit was allotted to the complainants vide MOU dated 17.04.2018. 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., 17.04.2018 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 17.10.2021.

23. Admissibility of delay possession charges at prescribed rate of interest:

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

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

25. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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 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—

- (i) *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;*
- (ii) *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;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the

same as is being liable to be paid to the complainant in case of delay in possession charges.

27. 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 17.10.2021.
28. 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?
29. 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 17.04.2018. 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 Rs.45,000/- on the total amount received with effect from 17.04.2018 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 Rs.45,000/- per month whereas the delayed possession charges are payable approximately Rs.20,253/- 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.

30. 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.
31. In the present complaint, as per clause 4 of the MOU dated 17.04.2018, the amount on account of assured returns was payable from 17.04.2018 upto the commencement of the first lease which was executed on 24.07.2020. The first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 24.12.2024. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainants at the agreed rate i.e., @Rs.45,000/- per month from the date i.e., 17.04.2018 till obtaining the Occupancy Certificate after deducting the amount already paid on account of assured return to the complainants
32. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

III. Direct the respondent company not to demand/raise from the Complainants any other charges, penalties, rates, monies, etc. whatsoever which do not form part of the Buyers Agreement dated 17th April 2018 or the MOU dated 17th April 2018; and

33. The complainants have further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated 17.04.2018 or the MoU executed on the same date. The impugned demand letter dated 24.12.2024 reflects components such as IFMS, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainants. The authority of the view that:

- **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.

34. The letter dated 28.02.2025, demands Fit-out charges which amounting Rs. 20,65,000/-, The complainant has filed Miscellaneous Application No. 338/2025, wherein two letters have been annexed one being the reminder letter No. 2 for demand notice payment and offer of possession, and the other pertaining to the leasing-out communication issued by the respondent on 02.04.2025. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.12,39,000/- and has directed the complainant to make the said payment in favour of a third party, namely *H5 Hospitality LLP*, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties.

35. In view of the above, and considering that the respondent has also failed to furnish the bifurcation or justification of the said fit-out charges. In the absence of any documentary proof demonstrating transparency, disclosure or lease agreement at the time of leasing between the parties, the arbitrary imposition of fit-outs charges by the respondent cannot be sustained in the eyes of law, hence the same is set-aside.

IV. Pass an order directing the respondent company to deliver immediate possession to the Complainants, of the unit bearing no. /priority bearing no. 16 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana, along with all the amenities, promises and facilities as mentioned in the Buyers' Agreement dated 17th April 2018, as executed by and between the parties, and other representations made by the Respondent Company, including but not limited to Memorandum of Understanding dated 17th April 2018, allotment letters, brochures, emails and letters, etc. to the satisfaction of the Complainants; and

V. Pass an order directing the respondent company to execute the conveyance deed/sale deed with the respect of the unit bearing no. /priority bearing no. 16 admeasuring 500 sq. ft. situated/located in the project of the Respondent Company, namely, "Neo Square", at 3rd Floor, on the land situated in Sector 109 Dwarka Expressway, Gurugram, Haryana in favour of the Complainants.

36. The Authority observes that the Occupancy Certificate of the project has already been received by the respondent on 14.08.2024 and the offer of possession of the unit to the complainants by the respondent is already on record. As per 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.

37. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

F. Directions of the Authority

38. 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 to the complainants at the agreed rate of @Rs.45,000/- per month as per the MoU dated 17.04.2018 till obtaining of Occupancy Certificate of the project i.e., 14.08.2024 after deducting the amount 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, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- III. The Fit-out charges demanded by the respondent are set-aside for the reasons discussed in paragraphs 34 and 35 of this order.
- IV. 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 and Labour cess 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.***
- V. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- VI. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.

VII. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.

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

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

41. Files be consigned to registry.



(Phool Singh Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.11.2025