BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No: **1508 of 2023**
Date of Filing: **10.04.2023**
Date of Order: **04.11.2025**

Rajiv Sethi HUF
R/o: D-2/230 West Kidwai Nagar,
New Delhi.

Complainant

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32-B, Pusa Road, New Delhi-110005 **Respondent**

CORAM:

Shri Ashok Sangwan **Member**
Shri Phool Singh Saini **Member**

APPEARANCE:

Shri Hemant Phogat (Advocate) **Counsel for Complainant**
Shri E. Krishna Dass and Gunjan Kumar (Advocates) **Counsel for Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint 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.

A. Project and unit related details.

2. 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:

S. N.	Particulars	Details
1.	Name of the project	"Neo Square", Sector 109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
5.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021 plus 6 months of extension due to COVID-19 = 23.02.2022
6.	Unit no.	Unit No. 1-40 (At pg. 11 of the reply by the respondent on application u/s 36 of RERA)
7.	Unit area admeasuring	565 Sq. Ft. (As per pg. no. 19 of the complaint) 1130 Sq. Ft. (Super Area) (At pg. 11 of the reply by the respondent on application u/s 36 of RERA)
8.	Date of execution of agreement to sell	01.08.2017 (As per page no. 18 of complaint)

9.	Date of execution of MoU	01.08.2017 (as per page no. 45 of reply)
10.	Possession clause as per MoU	12. *That the company shall complete the construction of the said Building / Complex, within which the said space is located within **48 months** from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The Company on grant of Occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.* *(As per pg. no. 42 of the complaint)*
11.	Assured Return Clause as per MoU	*19.* *The Company shall pay a monthly return of **Rs.1,24,300/-** (Rupees One Lac Twenty-Four Thousand Three Hundred Only) on the total amount deposited till the signing of this MOU, with effect from **01-August-2017** before deduction of Tax at Source. Service tax on assured return, if any to be deposited, same shall be paid extra by the company.* *22.* *The builder in terms of its commitment to **pay the assured return till the possession** shall issue the post-dated*

		cheques for each financial year taking into consideration the expected period of possession. The post-dated cheques shall not be dishonoured for any of the reason. *(As per pg. no. 44 of the complaint)*
12.	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.
13.	Due date of possession	01.02.2022 (Calculated from date 48 Months from the date of execution of MoU, 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.)
14.	Total sale consideration	Rs 1,47,32,660/- (As per page no. 95 of reply)
15.	Amount paid by the complainant	Rs. 1,35,16,665/- (As per page no. 95 of reply)
16.	Assured Return paid till June 2019	Rs. 29,83,200/- (As per page no. 95 of reply)

17.	Payment Request for VAT Amount	22.01.20220 (At pg. no. 91 of the reply)
18.	Demand letter mainly for **development charges and Fit-out charges of Rs. 73,59,867/-**	10.04.2024 (At reminder letter 2 on pg. no. 3 of the application submitted by the complainant dated 15.07.2025)
19.	Occupation certificate /Completion certificate	14.08.2024 (As per the DTCP site)
20.	Offer of possession	N/A

B. Facts of the complaint.

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

i. That, the complainant booked a commercial unit/shop on the first floor in the upcoming project "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram.

ii. That the unit has a super area of 1130 Sq. ft. and a covered area of 565 Sq. ft. The total basic sale consideration was Rs. 1,09,61,000/- (Rupees One Crore Nine Lakhs Sixty-One Thousand only).

iii. That the complainant paid a sum of Rs. 1,35,16,665/- (Rupees One Crore Thirty-Five Lakhs Sixteen Thousand Six Hundred Sixty-Five only).

iv. That the respondent (developer) has the exclusive right to develop, construct, build commercial buildings, transfer/alienate the unit's floor space, and carry out sale deeds, agreements to sell, conveyance deeds, letters of allotment, etc.

v. That the Buyer's Agreement and Memorandum of Understanding (MOU) were executed between the respondent and the complainant on 01.08.2017.

vi. That, from the said proviso of RERA, 2016, it is clearly evident that the builder was /is under legal obligation to pay the assured return to the complainant in terms of the MOU dated 01.08.2017.

vii. That the complainant purchased the unit on an "Investment Return Plan". The developer assured a monthly Assured Return of Rs. 110/- per square ft., amounting to a total monthly return of Rs. 1,24,300/- (Rupees One Lakh Twenty-Four Thousand Three Hundred only) per month.

viii. This payment was to be effective from 01.08.2017 till the possession of the unit. This is evident from Clause - 19 of the MOU dated 01.08.2017.

ix. That as per clause-19 of the mou dated 01.08.2017, the respondent is under legal obligation and bound to pay the assured return of Rs. 1,24,300/- per month with effect from 01.08.2017 till possession of the unit.

x. That the respondent stopped paying the assured return to the complainant, and the returns are due from June 2019.

xi. That as per clause - 12 of the MOU dated 01.08.2017, the respondent was under a legal obligation to complete the project and offer possession within 48 months from the date of MOU.

xii. The committed date of possession was 01.08.2021, and the project has not been completed by the respondent till the date of the complaint.

xiii. That from the proviso of RERA, 2016, it is clearly evident that the builder was/is under a legal obligation to pay the assured return to the complainant in terms of the MOU dated 01.08.2017.

xiv. That the complainant made requests to the respondent to pay the monthly assured return, but the respondent miserably failed to do so and completely ignored the request.

xv. That the complainant has not received any satisfactory reply regarding the payment of monthly assured returns and possession of the unit and is suffering a lot of mental, physical & financial agony and harassment.

xvi. That the respondent has not paid the assured return despite promises, violating the terms and conditions of the Buyer's Agreement/MOU and promises made at the time of booking.

xvii. That the respondent has committed grave deficiency in services by not paying assured returns and not delivering possession on the committed date. This amounts to an unfair trade practice which is immoral and illegal.

xviii. That the respondent has also criminally misappropriated the money paid by the complainant by not paying the assured returns and not delivering possession.

xix. That the respondent is further accused of acting fraudulently and arbitrarily by inducing the complainant

xx. That the respondent has committed grave deficiency in services by not paying *Assured Returns* and by not delivering the possession of the unit on the committed date as was promised at the time of sale of the said Unit, which amounts to unfair trade practice which is immoral and illegal.

xxi. The cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said unit and it further arose when respondent failed/neglected to pay the assured returns and failed to handover the possession. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

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

I. To direct the respondent to pay the Assured Return as per the terms and conditions of the MOU dated 01.08.2017.

II. Direct the respondent to pay delay possession charges to the complainant till offer of possession.

III. To direct the respondent to withdraw the demands in demand letter dated 10.04.2024 which are not part of builder buyers' agreement dated 01.08.2017.

IV. To direct the respondent to not to charge anything from the applicant /complainant which is not part of buyer's agreement and MOU dated 01.08.2017.

V. To direct the respondent to waive off the interest on delay payment raised in letter dated 10.04.2024.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:

I. That post completion of project, M/s Neo Developers Pvt Ltd (hereinafter referred to as the *"Respondent"*) approached Directorate of Town and Country Planning, Haryana (hereinafter referred to as the *"DTCP"*), vide application dated 23.01.2023 & 15.05.2024 for grant of Occupation Certificate for Tower-C, in Project Neo Square.

II. That the upon the satisfaction of the DTCP with respect to public health services (internal & external) with respect to the building and site area, which included services such as water supply, sewerage, SWD, roads being operation and functional. Further upon the completion certificate issued by the architect with respect to supervision on workmanship, material used for the construction, the DTCP granted Occupation Certificate bearing Memo No. ZP-484-Vol-A-1/JD(RD)/2024/26057 dated 14.08.2024 in

favour of the respondent for tower -C (under joint development rights/marketing rights of Neo Developers Pvt Ltd) measuring 3.089 acres forming part of commercial colony over an area measuring 8.66964 acres (Licence No. 102 of 2008 dated 15.05.2008, 83 of 2014 dated 09.08.2014 & 25 of 2019 dated 26.02.2019) Sector – 109, Gurugram Manesar urban complex being developed by shri. maya buildcon pvt ltd & others c/o conscient infrastructure pvt ltd.

III. That the said above said demand letters were issued in consonance with the mutually agreed terms and conditions of the BBA dated 01.08.2017.

IV. That the demand letter dated 22.02.2024 & 10.04.2024 is issued in consonance with the mutually agreed terms and conditions of the BBA. Furthermore, it is well established principle of law that a person who signs a contract is bound by them. Therefore, in the present case, the complainants are bound to pay outstanding dues as intimated in the demand letter.

V. That the complainant has only made a payment of Rs.1,35,16,665.57/-, against the Total Dues of Rs. 2,08,90,707.71/- and are in deliberate default to clear the Outstanding dues to the tune of Rs. 73,74,042.14/-.

VI. That the complainants failed to clear the outstanding dues as per the agreed payment plan.

VII. That in case of any default on part of the complainant in making payments against the sale consideration of the unit, the complainant shall be liable to pay delayed interest on the said payment and therefore as per the agreed terms and conditions of the agreement the delayed interest has been levied on the complainants and the complainants are bound to pay the same. It is also to be noted that the respondent has already made

payment to the tune of Rs. 29,83,200/- as assured return to the complainants against the unit as per the terms of MOU.

VIII. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the parties. The said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

IX. That the respondent cannot pay "Assured Returns" to the Complainant by any stretch of Imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the Respondent had no other alternative but to stop the payment of any return etc.

X. 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.

XI. That since inception the Respondent herein was committed to complete the project, however, the development was delayed due to reasons beyond the control of the Respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the Respondent is committed to compete the said project in all aspect at the earliest.

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

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

E. Jurisdiction of the Authority

9. 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

10. 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

11. 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.*

12. 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 relief sought by the complainants.

I. To direct the respondent to pay the Assured Return as per the terms and conditions of the MOU dated 01.08.2017.

II. Direct the respondent to pay delay possession charges to the complainant till offer of possession.

F.I) Assured Returns

13. The complainant is seeking unpaid monthly assured returns on as per the terms of the MoU dated 01.08.2017 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

15. 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.*

16. 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;*

17. 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.
18. 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.
19. 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.
20. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an

agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the addendum agreement.

21. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 01.08.2017.

22. In the present complaint, the assured return was payable as per clause 19 and clause 22 of the MoU dated 01.08.2017, which is reproduced below for the ready reference:

> ***Clause 19.***
>
> *The Company shall pay a monthly return of* ***Rs.1,24,300/-*** *(Rupees One Lac Twenty-Four Thousand Three Hundred Only) on the total amount deposited till the signing of this MOU, with effect from 01-August-2017 before deduction of Tax at Source. Service tax on assured return, if any to be deposited, same shall be paid extra by the company.*
>
> ***Clause 22.***
>
> *The builder in terms of its commitment to* ***pay the assured return till the possession*** *shall issue the post-dated cheques for each financial year taking into*

consideration the expected period of possession. The post-dated cheques shall not be dishonored for any of the reason.

23. Thus, as per the abovementioned clauses the monthly assured returns were payable **@Rs.1,24,300/-** per month w.e.f. 01.08.2017, till the possession.

24. In light of the above, the Authority is of the view that as per the MoU dated 01.08.2017, it was obligation on part of the respondent to pay the monthly assured return till the possession. 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.1,24,300/-** from the date i.e., 01.08.2017 until the possession after deducting the amount already paid on account of assured returns to the complainant.

F.II) Delay Possession Charges:

25. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges in F.II as provided under the provisions of section 18(1) of the Act which reads as under:

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

26. The subject unit was allotted to the complainants vide MOU dated 01.08.2017. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within **48 months** from the date of execution of this agreement or from the start of construction whichever is later. The period of 48 months is calculated from the date of

BBA i.e., 01.08.2017 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 01.02.2022.

27. **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"*

28. 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., 04.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

29. 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;"*

30. 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 granted to the complainant in case of delay possession charges.

31. 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 01.02.2022.

32. 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?

33. 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 01.08.2017. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of Rs.1,24,300/- on the total amount received with effect from 01.08.2017 till the possession. 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.1,24,300/- per month whereas the delayed possession charges are payable approximately Rs.12,266/- 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.

34. 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.

35. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.1,24,300/- with effect from 01.08.2017 till the possession of the unit as mentioned in the MoU.

36. 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 complainant and

failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

III. **To direct the respondent to withdraw the demands in demand letter dated 10.04.2024 which are not part of builder buyers' agreement dated 01.08.2017.**

IV. **To direct the respondent to not to charge anything from the applicant /complainant which is not part of buyer's agreement and MOU dated 01.08.2017.**

37. The complainant has raised objection towards the fit-out charges, development charges, and delay payment charges raised by the respondent vide letter dated 10.04.2024, and has sought waiver of the same on the ground that such charges were not stipulated either under the builder buyer agreement and the memorandum of understanding dated (MoU) dated 01.08.2017 executed between the parties. The Authority has considered the contention of the respondent raised in its written submissions, wherein reliance has been placed upon clause 8(d) of the alleged MOU to justify the demand of fit-out charges from the complainant. However, on perusal of the entire record and the documents placed on file, including the BBA and MoU executed between the parties, this Authority finds that no such clause 8(d), as claimed by the respondent, exists in the said agreement. The respondent has failed to place on record any authenticated or executed document evidencing the existence of the aforesaid clause. Accordingly, the plea raised by the respondent on the basis of the alleged clause 8(d) is found to be factually incorrect, unsupported by the record, and is therefore rejected.

38. However, in reply by the respondent dated 27.08.2025 to the application filed by the complainant seeking additional relief and documents dated 16.09.2025, the respondent has categorically submitted that as per clause 28 of the MoU, the complainant was under an obligation to bear such expenses

which may arise towards infrastructural or other modifications necessary for leasing the unit to a prospective lessee. The respondent emphasized that these fit-out charges form a necessary and integral part of the leasing process, without which the unit cannot be made ready for commercial use by any lessee. The said clause is reiterated below for ready reference:

Clause 28 of the MoU,

"The allottee(s) hereby has granted his irrevocable rights to company to finalize the lease agreement with any lessee and all the terms agreed by the company shall be binding on the Allottee(s)"

39. Upon understanding of the said clause, it is clear that clause 28 of the MoU do mention that the company has complete power to lease out the unit and decide the lease terms, and the allottee must accept those terms without objection. However, this clause cannot be interpreted to give the respondent unrestricted authority to impose arbitrary or excessive demands. While the respondent may finalize leasing terms with a lessee, any financial liability arising therefrom must be reasonable, duly justified, and within the scope of the original understanding between the parties. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the MOU and the allottees is left with no option but to sign on the dotted lines. Therefore, the respondent cannot rely on this clause to unilaterally burden the complainant with additional charges without proper basis or prior intimation to the complainant.

40. It is also evident that no prior intimation letter or demand letter specifying the nature of such fit-outs charges has been shared with the complainant while signing the BBA and MoU. 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.

41. Further, complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges in terms of demands.

- **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 30.09.2025 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.

V. To direct the respondent to waive off the interest on delay payment raised in letter dated 10.04.2024.

42. The Authority has perused the reminder letter dated 10.04.2024 issued by the respondent in respect of the unit situated on the first floor in the project "Neo Square", wherein an amount of Rs.7,85,010/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs.1,35,16,665/-, which includes basic sale price (BSP), external development charges (EDC), internal development charges (IDC), preferential location charges (PLC), and service Tax/GST.

43. The Authority further observes that the total basic sale consideration of the said unit is Rs.1,09,61,000/-, as expressly mentioned in clause 19 of the MoU executed between the parties. Thus, it is evident on record that the amount paid by the complainant is substantially higher than the total basic sale consideration agreed between the parties.

44. In view of the above facts, the Authority is of the view that the levy of interest on delayed payment amounting to Rs.7,85,010/- as reflected in the reminder letter dated 10.04.2024 is unjustified, especially when the complainant has already made payments exceeding the agreed basic sale consideration, subject to reconciliation strictly in accordance with the terms of the MoU and the provisions of the Act.

G. Directions of the Authority

45. 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 monthly assured return to the complainant at the agreed rate i.e., @Rs.1,24,300/- (Rupees One Lac Twenty-Four Thousand Three Hundred Only) with effective date as per clauses 19 and 22 of the MoU i.e., 01.08.2017 till the possession of the unit.

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 the said amount would be payable with interest @8.85% p.a. till the date of actual realization.

iii. The respondent is hereby restrained from charging any fit-out charges from the complainant/allottee, as the imposition of such charges is not supported by any clause of the MoU executed between the parties. Accordingly, the fit-out charges are stands struck off.

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 FTTH charges, 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 shall not charge any interest on delayed payment from the complainant.

vii. 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.

viii. 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.

46. The complaint stand disposed of.

47. Files be consigned to registry.

(Phool Singh Saini)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.11.2025