

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

**Date of Order: 25.11.2025**

<b>NAME OF THE BUILDER</b>		<b>M/s Neo Developers Private Limited.</b>	
<b>PROJECT NAME</b>		<b>“Neo Square”</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/4056/2024	Harbinder Singh Sahni V/s NEO Developers Private Limited & Ashish Anand	Vikas Kakkar (Counsel for the complainant) Venkat Rao (Counsel for the Respondent)
2.	CR/4057/2024	Harbinder Singh Sahni V/s NEO Developers Private Limited & Ashish Anand	Vikas Kakkar (Counsel for the complainant) Venkat Rao (Counsel for the Respondent)
3.	CR/4058/2024	Harbinder Singh Sahni V/s NEO Developers Private Limited & Ashish Anand	Vikas Kakkar (Counsel for the complainant) Venkat Rao (Counsel for the Respondent)
4.	CR/4059/2024	Harbinder Singh Sahni V/s NEO Developers Private Limited & Ashish Anand	Vikas Kakkar (Counsel for the complainant) Venkat Rao (Counsel for the Respondent)

**CORAM:**

Shri Ashok Sangwan  
Shri Phool Singh Saini

**Member**  
**Member**

## ORDER

1. This order shall dispose of the aforesaid 4 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, "**Neo 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 and other reliefs.
3. The details of the complaints, reply status, unit no. & unit size, date of execution of the BBA and MoU, assured return clause, Basic sale consideration, total paid amount by the complainants, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Neo Square", Sector 109, Gurugram, Haryana		
<b>Nature of the project</b>	Commercial Colony		
<b>Project area</b>	3.08 acres		
<b>Occupation certificate</b>	14.08.2024		

Sr. No	Complaint No., Case Title, and Date of filing of complaint and reply	Unit no. & size	Date of execution of BBA /MoU	Assured Return Clause	Basic Sale Consideration / Total Amount paid by the complainants

<b>1</b>	<b>CR/4056/2024</b>  Harbinder Singh Sahni Vs. M/s Neo Developers Pvt. Ltd.  DOF: 10.09.2024  Reply: 13.02.2025	Unit no. 57 at Ground floor And 473 sq. ft. (page 15 of complaint)	<b>BBA:</b> 10.09.2018  <b>MOU:</b> 10.09.2018  (page 33 of complaint)	<p><b>Clause 18 of MoU</b></p> <p><i>The company shall pay a monthly return of Rs.61,490/- (Rupees Sixty-One Thousand Four Hundred and Ninety Only) on the total amount deposited till the signing of this MOU, with effect from 10.09.2018 before deduction of Tax at Source...</i></p> <p><b>Clause 8 of MoU</b></p> <p><i>That the responsibility of paying assured returns to be paid by the company to the allottee till possession.</i></p> <p>(as per MOU at page 35 of complaint)</p>	<b>B.S.C:</b> Rs.23,65,000/- (as per assured return plan on page no. 37 of complaint)
					<b>A.P.:</b> - Rs.26,48,800/- (as per MOU at page 48 of complaint)
<b>2</b>	<b>CR/4057/2024</b>  Harbinder Singh Sahni Vs. M/s Neo Developers Pvt. Ltd.  DOF: 10.09.2024  Reply: 13.02.2025	Unit no. 58 at Ground floor And 548 sq. ft. (page 17 of complaint)	<b>BBA:</b> 12.09.2018  <b>MOU:</b> 12.09.2018  (page 35 of complaint)	<p><b>Clause 18 of MoU</b></p> <p><i>The company shall pay a monthly return of Rs.71,240/- (Rupees Seventy-One Thousand Two Hundred and forty Only) on the total amount deposited till the signing of this MOU, with effect from 10.09.2018 before deduction of Tax at Source...</i></p> <p><b>Clause 8 of MoU</b></p> <p><i>That the responsibility of paying assured returns to be paid by the company to the allottee till possession.</i></p> <p>(as per MOU at page 39 of complaint)</p>	<b>B.S.C:</b> Rs.27,40,000/- (as per assured return plan on page no. 39 of complaint)
					<b>A.P.:</b> - Rs.30,68,800/- (as per page no. 62 of reply)
<b>3</b>	<b>CR/4058/2024</b>	Unit no. 64 at Ground floor	<b>BBA:</b> 11.09.2018	<b>Clause 18 of MoU</b>	<b>B.S.C:</b> Rs.30,10,000/-

	<p>Harbinder Singh Sahni Vs. M/s Neo Developers Pvt. Ltd.</p> <p><b>DOF:</b> 10.09.2024</p> <p><b>Reply:</b> 13.02.2025</p>	<p>And 602 sq. ft.</p> <p>(page 17 of complaint)</p>	<p>(page 13 of complaint)</p> <p><b>MOU:</b> 11.09.2018 (page 35 of complaint)</p>	<p><i>The company shall pay a monthly return of Rs.78,260/- (Rupees Sixty-One Thousand Four Hundred and Nanty Only) on the total amount deposited till the signing of this MOU, with effect from 10.09.2018 before deduction of Tax at Source...</i></p> <p><b>Clause 8 of MoU</b></p> <p><i>That the responsibility of paying assured returns to be paid by the company to the allottee till possession.</i></p> <p>(as per MOU at page 38 of complaint)</p>	<p>(as per assured return plan on page no. 39 of complaint)</p> <p><b>A.P.:</b> - Rs.44,57,600/- (as per MOU at page 62 of reply)</p>
4	<p><b>CR/4059/2024</b></p> <p>Harbinder Singh Sahni Vs. M/s Neo Developers Pvt. Ltd.</p> <p><b>DOF:</b> 10.09.2024</p> <p><b>Reply:</b> 13.02.2025</p>	<p>Unit no. 63 at Ground floor</p> <p>And 796 sq. ft.</p> <p>(page 18 of complaint)</p>	<p><b>BBA:</b> 14.09.2018 (page 14 of complaint)</p> <p><b>MOU:</b> 14.09.2018 (page 36 of complaint)</p>	<p><b>Clause 18 of MoU</b></p> <p><i>The company shall pay a monthly return of Rs.1,03,480/- (Rupees One Lac and three Thousand Four Hundred and Eighty-one Only) on the total amount deposited till the signing of this MOU, with effect from 10.09.2018 before deduction of Tax at Source...</i></p> <p><b>Clause 8 of MoU</b></p> <p><i>That the responsibility of paying assured returns to be paid by the company to the allottee till possession.</i></p> <p>(as per MOU at page 38 of complaint)</p>	<p><b>B.S.C.:</b> Rs.39,80,000/- (as per assured return plan on page no. 39 of complaint)</p> <p><b>A.P.:</b> - Rs.33,71,200/- (as per page no. 62 of reply)</p>

Relief sought by the complainants –

1. To direct the respondent to pay Unpaid Assured Return as on 31-05-2024.

2. Interest claimed as per the provisions of Act till 31-05-2024 and other future interest till actual date of Realization of entire unpaid assured return.
3. Direct the respondent to pay interest for causing delay for non-payment of Assured Return at prescribed rate of interest for every month of delay, till the date of actual handing over the possession of the unit.
4. Direct the respondent to update the status of completion of construction as well as status of issuance of completion certificate, if so applied.
5. Direct the respondent to pay the outstanding balance amount of assured returns and interest till date as prayed and may deduct any amount thereof if same is legitimately due and payable as per Agreement.
6. Direct the respondent to not illegally charge excess VAT, EDC etc. from complainant.
7. Litigation Cost.

**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
AP	Amount paid by the allottee/s
OOP	Offer of Possession

4. The aforesaid complaints have been filed by the complainants against the promoter alleging violation of the builder buyer agreement (BBA) and memorandum of understanding (MoU) executed between the parties in respect of the subject units, inter alia, on account of failure to hand over possession within the stipulated due date of 48 months, non-payment of assured return and other allied charges.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/4056/2024 titled as Harbinder Singh Sahni 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/4056/2025 titled as Harbinder Singh Sahni Vs. M/s Neo Developers Pvt. Ltd.***

<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	“Neo Square”
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 Valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	<b>Registered</b> 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
8.	Unit and Floor no.	57 at Ground floor (As per page no.15 of the complaint)
9.	Unit area admeasuring	473 sq. ft. (Super Area) (As per page no.15 of the complaint)
10.	Date of execution of buyer's agreement	10.09.2018 (As per page no.12 of the complaint)
11.	Date of execution of MoU's	10.09.2018 (As per page no.33 of the complaint)
12.	Possession Clause	<b><i>Clause 12 of MOU</i></b>  <b><i>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</i></b>

		<p><b><i>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, therefrom remit all dues.</i></b></p> <p><b><i>[Emphasis supplied]</i></b>  <i>(As on page no. 36 of complaint)</i></p>
13.	Assured return clause as per MOU dated 10.09.2018	<p><b><i>Clause 18 of MoU</i></b></p> <p><i>... The company shall pay a monthly return of Rs.61,490/- (Rupees Sixty-One Thousand Four Hundred and Nanty Only) on the total amount deposited till the signing of this MOU, with effect from 10.09.2018 before deduction of Tax at Source...</i></p> <p><b><i>Clause 8 of MoU</i></b></p> <p><i>That the responsibility of paying assured returns to be paid by the company to the allottee till possession.</i></p> <p><b><i>[Emphasis supplied]</i></b>  <i>(As on page no. 37 and 35 of complaint)</i></p>
14.	Lease clause	<p><b><i>Clause 19 Of MoU</i></b></p> <p><i>That the premises after completion shall be handed over to the perspective lessee subject to execution of the lease deed. The lessee after the tenure of the lease shall directly handover the possession to the lessee. The builder shall have no right title or interest except for rent sharing as mentioned in para 10 above.</i></p> <p><b><i>[Emphasis supplied]</i></b>  <i>(As on page no. 37 of complaint)</i></p>
15.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015

		which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
16.	Due date of possession (as per MOU dated 10.09.2018)	<b>10.03.2023</b> [10.09.2022 + 6 months] (Note: Due date to be calculated 4 years from the execution of buyer's agreement i.e., 10.09.2018, being later, plus grace period of 6 months)  <b>(Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)</b>
17.	Total sale consideration [BSP + GST]	Rs.26,48,800/-  (As per SOA dated 27.02.2021 at page 42 of the complaint)
18.	Basic Sale Consideration	Rs.23,65,000/-  (As mentioned in BBA at page no.15 of the complaint)
19.	Amount paid by the complainant	Rs.26,48,800/-  (As per SOA dated 27.02.2021 at page 42 of the complaint)
20.	Assured return paid by the respondent	Rs.4,91,920/-  (as per page 65 of reply)
21.	Payment Plan	Assured return plan (As per payment schedule on page no.28 of the complaint)
22.	Occupation certificate /Completion certificate	14.08.2024 (as per page 59 of reply)
23.	Offer of possession	Not Offered

24.	Legal Notice [for payment of pending assured return]	15.03.2024 (as per page 44 – 47 of complaint)
25.	Demand letter	09.02.2024 (as per page 62 of reply)
26.	Reminder letter	10.04.2024 (as per page 63 of reply)
27.	Final reminder cum cancellation letter by the respondent but not received by the complainant.	17.09.2024 (as per page 64 of reply)  (After filing of this present complaint)

### **B. Facts of the complaint**

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

- i. That the complainant booked commercial unit No. 57 admeasuring 473 sq. ft. in the project "Neo Square", Gurugram, on the basis of assurances made by the respondents regarding timely delivery of possession and payment of assured returns. A buyer's agreement dated 10.09.2018 was executed at a basic sale price of Rs.23,65,000/-, pursuant to which the complainant has paid a total sum of Rs.26,48,800/- including applicable charges.
- ii. That, on the same date i.e. 10.09.2018, the parties also executed an MOU whereby the respondents agreed to pay an assured return of Rs.130/- per sq. ft. per month, amounting to Rs.61,490/- per month, till the date of handing over possession.
- iii. That the complainant submits that the respondents widely advertised the project through newspapers, brochures and promotional material, projecting themselves as a credible and ethical developer assuring timely completion, assured returns and quality construction, which induced the complainant to invest.
- iv. That, as per clause 12 of the MoU, the respondents were obligated to complete construction and hand over possession within 48 months, i.e., on or before

31.08.2022. However, the project has not been completed till date, possession has not been offered and no Occupancy Certificate has been obtained.

- v. That, it is further alleged that all requisite licenses and permissions of the project have lapsed, as reflected on the official RERA website, and the project site presently reflects an abandoned and deteriorated condition.
- vi. That, as per the statement of account dated 27.02.2021, a sum of Rs.9,36,434/- had accrued towards assured returns, out of which only Rs.4,91,920/- was paid, leaving a balance of Rs.4,44,514/- unpaid. As on 31.05.2024, a total sum of Rs.37,34,493/- is stated to be due and payable towards unpaid assured returns.
- vii. That, despite repeated requests and follow-ups, the respondents failed to clear the outstanding assured return amount and allegedly avoided payment on one pretext or another, while simultaneously raising alleged false demands against the complainant.
- viii. That the complainant issued a legal demand notice dated 15.03.2024, calling upon the respondents to pay the outstanding assured return amount; however, the respondents neither replied to the notice nor made any payment.
- ix. That the complainant alleges that the respondents have committed gross deficiency in service, breach of contractual obligations under the Buyer's Agreement and MOU, and violations of the provisions of the Real Estate (Regulation and Development) Act, 2016.
- x. It is further alleged that the complainant has suffered substantial financial loss, mental agony and harassment due to false assurances, prolonged delay of more than six years, non-payment of assured returns and non-delivery of possession.

xi. That, respondent No.2, being the managing director/principal officer of respondent No.1 company, is stated to be responsible for the day-to-day affairs of the company and is thus jointly and severally liable for the acts and omissions complained of.

xii. That, the project falls within the territorial jurisdiction of this Hon'ble Authority, and the present complaint has been filed within the period of limitation through the complainant's duly appointed attorney.

xiii. That, the complainant affirms that no other complaint or proceedings on the same cause of action are pending before any other court or forum.

**C. Relief sought by the complainant:**

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

- I. To direct the respondent to pay Unpaid Assured Return as on 31-05-2024.
- II. Interest claimed as per the provisions of Act till 31-05-2024 and other future interest till actual date of Realization of entire unpaid assured return.
- III. Direct the respondent to pay interest for causing delay for non-payment of Assured Return at prescribed rate of interest for every month of delay, till the date of actual handing over the possession of the unit.
- IV. Direct the respondent to update the status of completion of construction as well as status of issuance of completion certificate, if so applied.
- V. Direct the respondent to pay the outstanding balance amount of assured returns and interest till date as prayed and may deduct any amount thereof if same is legitimately due and payable as per Agreement.
- VI. Direct the respondent to not illegally charge excess VAT, EDC etc. from complainant.
- VII. Litigation Cost.

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

**D. Reply by the respondent**

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

- I. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "*RERA Act*"). It is imperative to bring the attention of this Ld. Authority 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 complainant 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.
- III. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form, whereby seeking allotment of Shop/Unit No. 57, admeasuring 473 Sq. Ft super area having a basic sale price of Rs.23,65,000/- (Rupees Twenty-Three Lakhs Sixty-Five Thousand Only) (hereinafter referred to as the "Unit").
- IV. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 10.09.2018 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 complainant in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondent, the returns were to be paid from 15.09.2018 as per clause 2 of the MOU.

- V. That the complainant voluntarily also executed the buyer agreement dated 10.09.2018 for the unit no. 57 on ground floor of the project, after having full knowledge and being well satisfied and conversant with the terms and conditions of the buyer agreement.
- VI. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the Parties.
- VII. 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 complainant is raising their grievance.
- VIII. That the respondent cannot pay "Assured Returns" to the complainant by any stretch of imagination in the view of prevailing legal position.
- IX. 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.
- X. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act.
- XI. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- XII. It is submitted that the as per Clause 12 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 48 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. For the convenience of the Ld. Authority Clause 12 of MOU is reproduced hereunder for ready reference:

*"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"*

XIII. It is submitted 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. For the convenience of the Ld. authority clause 5.2 is produced for ready reference:

*"5.2. That the construction completion date shall be deemed to be the date when the application for grant of completion/occupancy certificate is made"*

XIV. Accordingly, the due date of delivery of possession in the present case is 48 months to be calculated from 10.09.2018 and the due date of possession in the instant case comes out to be 10.09.2022.

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

XVI. That the upon the application of the respondent to the directorate of town and country planning, Haryana (hereinafter referred to as the "Competent Authority"), vide application dated 23.01.2023 & 15.05.2024, the Competent Authority was pleased to issue Occupation Certified vide Memo No. ZP-484-Vol-A-1/JD(RD)/2024/26057 dated 14.08.2024 for the project.

XVII. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law.

XVIII. That the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons.

XIX. It is to be noted that the respondents from time to time issued payment request/reminders to the complainant to clear the outstanding dues against the unit, however the complainant failed to clear the same.

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

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

developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

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

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

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

XXV. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the

judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:

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

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

XXVII. 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.

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

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

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

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

XXXI. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act.

XXXII. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.

XXXIII. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as assured return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

XXXIV. 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.

XXXV. 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.

XXXVI. That an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee. Also, an Appeal bearing no. 647 of 2021, titled as *Vatika Limited vs Vinod Agarwal*, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 27.01.2021, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee.

XXXVII. That the 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.

XXXVIII. 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.

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

XL. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. N. o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19 <sup>th</sup> July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted	Till date the order in force and no relaxation	30 days	The directions of NGT were a big blow to the real estate sector as the



		<p>to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.</p>	has been given to this effect.		construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 <sup>th</sup> Nov, 2016	<p>National Green Tribunal had directed all brick kilns operating</p> <p>In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.</p>	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	<p>The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.</p>
4.	7 <sup>th</sup> Nov, 2017	<p>Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7<sup>th</sup> Nov 2017 till further notice.</p>	Till date the order has not been vacated	90 days	<p>The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21<sup>st</sup> Dec, 19 and 30<sup>th</sup> Jan, 20.</p>

5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 <sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 <sup>th</sup> October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 <sup>th</sup> Oct 2018. By virtue of order dated 29 <sup>th</sup> of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov 2018.	1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 <sup>th</sup> July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.

8.	11 <sup>th</sup> October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 mont hs Natio nwide lockd own)	Since the 3 <sup>rd</sup> week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was

		construction activity was banned in the State		imposed followed by weekend curfew and then complete curfew.
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XLI. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of *force majeure*.

XLII. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "*Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP*" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

XLIII. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent.

XLIV. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the said project in all aspect and obtained the completion certificate from the office of DTCP.

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

#### **E. Jurisdiction of the Authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject matter jurisdiction**

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

**Section 11**

.....

*(4) The promoter shall-*

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

**Section 34-Functions of the Authority:**

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

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

**F. Findings on the objections raised by the respondent:**

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

17. The respondent took a stand that the complainant is the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainants are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 10.09.2018. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainants.**

- I. To direct the respondent to pay Unpaid Assured Return as on 31-05-2024.**

- II. Interest claimed as per the provisions of Act till 31-05-2024 and other future interest till actual date of Realization of entire unpaid assured return.**
- III. Direct the respondent to pay interest for causing delay for non-payment of Assured Return at prescribed rate of interest for every month of delay, till the date of actual handing over the possession of the unit.**

**G.1 – Assured Returns**

- 19. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 10.09.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
- 20. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising his grievance.
- 21. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

22. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

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

23. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

24. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

25. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

26. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the addendum agreement.

27. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant 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 complainant-allottee in terms of the MoU dated 10.09.2018.

28. In the present complaint, the assured return was payable as per clause 18 and clause 08 of the MoU dated 10.09.2018, which is reproduced below for the ready reference:

***Clause 18***

***"The Company shall pay a monthly return of Rs.61,490/- (Rupees Sixty-One Thousand Four Hundred and Ninety Only) on the total amount deposited till the***

*signing of this MOU, with effect from 31st-July-2018 before deduction of Tax at Source."*

**Clause 8**

*"That the responsibility of paying assured returns to be paid by the company to the allottee till possession."*

29. Thus, as per the abovementioned clauses the assured returns were payable @Rs. 61,490/- per month w.e.f. 31.07.2018, till the possession.

30. In light of the above, the Authority is of the view that as per the MoU dated 10.09.2018, 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.61,490/- from the effective date i.e., 31.07.2018 until the possession of the unit after deducting the amount already paid on account of assured returns to the complainant.

**G.II Delay Possession Charges:**

31. 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 G.II as provided under the provisions of section 18(1) of the Act which reads as under:

***"Section 18: - Return of amount and compensation***

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

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

32. The subject unit was allotted to the complainants vide MOU dated 10.09.2018. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 48 months as per clause 12 of

the MoU 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., 10.09.2018 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 10.03.2023.

**33. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is 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"*

34. 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., 25.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

35. 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;"*

36. 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 possession charges.

37. 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 10.03.2023.

38. 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?

39. 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 10.09.2018. 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.61,490/- on the total amount received with effect from 31.07.2018 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.61,490/- per month whereas the delayed possession charges are payable approximately Rs.23,949/- 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.

40. 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.
41. 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.61,490/-with effect from 31.07.2018 till the possession of the concerned unit.
42. 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.

**IV. Direct the respondent to update the status of completion of construction as well as status of issuance of completion certificate, if so applied.**

43. The respondent is hereby directed to provide a comprehensive update regarding the project status, specifically including a detailed report on the current stage of construction for the specific unit in question, supported by recent photographs or a certified site progress report. Further, If the CC has been applied for, the respondent must produce the application receipt and date of filing. If it has already been issued, a copy of the completion certificate must be shared with the complainant. Such disclosures and documents must be provided to the complainant and submitted to this Authority within 30 days of this order.

**V. Direct the respondent to pay the outstanding balance amount of assured returns and interest till date as prayed and may deduct any amount thereof if same is legitimately due and payable as per Agreement.**

44. 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.

**VI. Direct the respondent to not illegally charge excess VAT, EDC etc. from complainant.**

45. The complainant has contended that the respondent has illegally charged amount from him towards VAT. But the version of respondent is otherwise and took a plea that respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. It is pertinent to mention 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. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable.

46. The Authority observes that External Development Charges (EDC) are statutory charges payable by the promoter to the State Government/competent authority for the purpose of providing external infrastructure facilities such as roads, sewerage, water supply, drainage and other civic amenities outside the project area.

47. In view thereof, the Authority holds that the respondent is legally entitled to recover EDC from the complainant to the extent of the complainant's proportionate share, provided the same has been duly levied by the competent authority and forms part of the cost payable for development of external infrastructure. Accordingly, the demand raised towards EDC on a pro-rata basis cannot be faulted with and is upheld.

## **VII. Litigation Cost.**

48. The complainant in the aforesaid relief is seeking relief w.r.t compensation. *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to

deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**H.Directions of the Authority:**

49. 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 complainant at the agreed rate i.e., @Rs.61,490/- with effective date as per clauses 08 and 18 of the MoU i.e., 31.07.2018 till the possession of the subject unit after obtaining occupancy certificate.
- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- iii. The respondent shall submit a detailed construction progress report with site photographs of the concerned and the current status of the completion certificate, if any, to the complainant within 30 days of this order.
- iv. The promoter shall charge actual VAT And EDC from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant's vis- à-vis the total area of the particular project. However, the complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the

aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

v. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement.

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 respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.

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

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

52. Files be consigned to registry.



**(Phool Singh Saini)**  
Member



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 25.11.2025