

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Complaint No: 674 of 2025****Date of Filing: 18.02.2025****Date of Decision: 02.12.2025****Mohan Kumar Sharma and Ushma Sharma**

R/o: D-1004, Pragya C.G.H.S. Limited Plot No. – 1B

Sector-2, Dwarka, South West Delhi

New Delhi - 110075

Complainants**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 Dhruv Dutt Sharma (Advocate)

Counsel for Complainant

Shri Venkatesh (Advocate)

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	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no./shop	18, 2 nd floor (page no. 36 of complaint)
7.	Unit area admeasuring	287 sq. ft. (page no. 36 of complaint)
8.	Date of buyer's agreement	29.11.2018 (page no. 33 of complaint)
9.	Date of MoU	29.11.2018 (page no. 59 of complaint)
10.	Possession clause	12. "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 Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate." (As per pg. no. 61 of the complaint)



11.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Due date of possession	29.05.2023 (As per clause 12 of the MoU – 4 years plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
13.	Assured return Clause	<p>Clause 19:</p> <p><i>"The Company shall pay a monthly return of Rs.28,155/- (Rupees Twenty Eight Thousand One Hundred Fifty Five Only) on the total amount received, with effect from 29-Nov-2018 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Plan duly annexed as Annexure-II. The monthly assured return shall be paid to the Allottee(s) from the effective date."</i></p> <p>Clause 22:</p> <p><i>"The builder in terms of its commitment to pay the assured return till the Possession shall issue the post dated cheques for such monthly rent which also incorporates the expected period of possession. The postdated cheques shall not be dishonored for any of the reason."</i></p> <p>(As per page no. 63 of the complaint)</p>
14.	Basic sale consideration	Rs. 21,41,594/- (as per MOU on page no. 62 of complaint)
15.	Amount paid by the complainant	Rs. 18,00,000/- (as per MOU at page 62 of complaint)
16.	Occupation certificate	14.08.2024

		(As per the DTCP Site)
17.	Demand letter and Offer for fit outs of	15.04.2024 (page 69 of complaint)
18.	Offer of possession	03.12.2024 (page no. 73 of complaint)
19.	Reminders for payment	03.01.2025, 05.01.2025, 16.01.2025, 27.01.2025,
20.	Fit-out charges demand letter	24.03.2025 of Rs.10,66,124/-

B. Facts of the complaint.

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

- i. That the respondent represented to the complainants that it is planning to construct a commercial colony on land admeasuring about 2.71 acres of land at Village Pawala, Khusropur, District Gurgaon. The respondent further represented it has obtained licence bearing no. 102/2008 dated 15.05.2008 from the Director, Town and Country Planning, Chandigarh, Government of Haryana for the development of the commercial colony on the said land.
- ii. That the respondent launched the commercial complex known as "NEO Square" to be developed at Sector-109, Gurugram. The respondent had advertised the project through flyers, catalogues, magazines, brokers, newspapers etc. for persuading the public to invest in the project.
- iii. That the respondent induced the complainants with tall claims and believing their representations to be true and correct, the complainants applied for booking / allotment of a unit / space having super area of approximately 287 sq. ft. in the said project.
- iv. That a buyer's agreement dated 29.11.2018 was executed between the complainants and respondent with respect to unit no. 18, 2nd floor having super area of approximately 287 sq. ft. super area and covered area of about 143.5 sq. ft. in the said project. It is pertinent to mention here that

the said agreement contained various one-sided and arbitrary clauses, but yet the complainants could not negotiate on any of the clauses, since any disagreement would have led to forfeiture of the earnest money and cancellation of the allotment. it is submitted that prior to execution of the buyer's agreement, the complainants have already paid an amount of Rs. 18,00,000/- to the respondent.

- v. That the basic sale price of the unit was Rs. 21,41,594/- calculated at rate of Rs. 7,462/- per sq. ft as per clause 2.1 of the buyer's agreement. As per annexure i of the buyer's agreement, the total sale consideration of the unit was Rs. 30,74,539/- including EDC, IDC, IFMD, PLC and GST.
- vi. That a memorandum of understanding dated 29.11.2018 was also executed between the complainants and respondent wherein as per clause 3 and 19 of the MOU, respondent has agreed to pay an amount of Rs. 28,155/- per month including TDS @ Rs. 98.1/- per sq. ft. to the complainants towards assured return till possession and thereafter, as per clause 9 and 13 of the MOU, the respondent no. 1 was to pay a minimum amount of Rs. 25,615/- per month @ Rs. 89.25/- per sq. ft. to the complainants from possession till first lease. Further, as per clause 10 of the MOU it was agreed between the parties that in case of any increase in the monthly rental in excess of Rs. 89.25/- per sq. ft. per month, excess monthly rental shall be divided between the respondent and complainants in the ratio of 50:50.
- vii. That as agreed between the parties, the respondent duly paid the assured returns amounting to Rs. 1,79,069/- excluding TDS to the complainants for the period December, 2018 to June, 2019. However, respondent no. 1 has stopped making the payment of assured return w.e.f. July, 2019 despite the fact that the possession has been offered by the respondent in December,

2024. However, the said offer of possession cannot be termed as a valid offer of possession as the same was accompanied by illegal demands. It is pertinent to mention here that respondent issued a letter dated 18.12.2019 and 01.02.2022 to the complainants wherein it unilaterally changed the terms of MOU and deferred the payment of assured return and sought to adjust the same at the time of possession.

- viii. that the complainants have already paid a sum of Rs. 18,00,000/- towards the entire sale consideration which have been duly acknowledged by the respondent.
- ix. That on 15.04.2024 respondent sent an illegal demand letter and offer for fit out and also raised a demand of Rs. 26,20,546/-. The complainants were shocked to receive the said letter as the respondent did not adjust the payment of assured return from the balance sale consideration. Further, the respondent also raised an illegal demand of Rs. 10,04,500/- in the name of fitout charges which was not part of the buyer's agreement or MOU.
- x. That when the complainants objected against the demand raised by the respondent, the respondent issued a revised demand letter and offer of possession dated 03.12.2024 and demanded an amount of Rs. 18,00,372/- from the complainants. The complainants were shocked to see that the respondent had arbitrarily increased the super area of the unit from 287 sq. ft. to 315.86 sq. ft. It is pertinent to mention here that the respondent also unilaterally changed the unit of the complainants from 18 to 37. It is further pertinent to mention here that the unit initially booked by the complainants was two-side open, as can be seen from the floor plan of the project, for which the respondent has charged an additional amount of Rs.

4,09,836/-. However, the new unit allotted to the complainant is not preferentially located and opens only on one side.

- xi. That on 09.12.2024 when the complainants went on the site to measure the unit, the actual carpet area was found to be 258.14 sq. ft. and not 315.86 sq. ft. as alleged by the respondent in the letter dated 03.12.2024. The same was also acknowledged by the respondent and the respondent issued a revised demand letter dated 03.12.2024 and raised a demand for Rs. 12,74,349/-. However, the respondent did not adjust the payment of assured return amounting to Rs. 18,58,230/- calculated @ Rs. 98.1/- per sq. ft. from July, 2019 till December, 2024 from the balance sale consideration in the said demand and as such the said offer of possession is illegal and liable to be set aside.
- xii. That vide e-mail dated 05.01.2025, the respondent sent a reminder-1 dated 03.01.2025 for payment of Rs. 18,13,923/- as against the earlier demand of Rs. 12,74,349/-. Thereafter, the complainants visited the office of the respondent and requested the officials of the respondent to withdraw the said demand and provide revised statement of account after adjustment of payment of assured return due from the respondent towards the complainants.
- xiii. That vide e-mail dated 17.01.2025, the respondent again issued a demand notice and offer of possession dated 16.01.2025 and raised a demand of Rs. 12,87,900/-. However, the respondent again failed to adjust the payment of assured return from the balance sale consideration.
- xiv. That on 27.01.2025 the respondent sent a reminder-2 dated 27.01.2025 for payment of Rs. 12,87,900/-. However, the respondent again failed to adjust the payment of assured return from the balance sale consideration.

- xv. That even though there is no amount due from the complainants to the respondent after adjusting the payment of assured return from the balance sale consideration, however, still the complainants are ready to pay the balance amount, if any, to the respondent after adjusting the assured return payment which is to be paid by the respondent to the complainants from July, 2019 till date.
- xvi. That the act and conduct of the respondent in arbitrarily and unilaterally deferring the payment of assured return and also failure to adjust the same from the balance sale consideration is unjust, unfair, arbitrary and illegal and as such the said offer of possession and demands accompanied by it are liable to be set aside.
- xvii. That the complainants have requested the respondent numerous times through e-mails and personal visits to resolve the issue of payment of assured return and handover the possession of the unit. However, the respondent has refused to accede to the just and genuine request of the complainants and further threatened to cancel the allotment/booking of the complainants if the complainants do not pay the entire amount as per the letter dated 27.01.2025.
- xviii. That the acts of the respondent are causing great hardship and mental agony to the complainants and the complainants have no other option but to approach this Hon'ble Authority through a complaint for the possession of the unit and to redress their grievances.

C. Relief sought by the complainants

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

- i. Respondent is directed to set aside the alleged offer of possession / demand / reminders dated 03.12.2024 / 03.01.2025 / 16.01.2025 /

27.01.2025 and direct the respondent to provide revised statement of account after adjusting payment of assured return calculated @Rs.98.1/- per sq. ft. from July,2019 till date.

- ii. To direct the respondent to pay assured return calculated @ Rs. 98.1/- per sq. ft. after adjusting the same from balance sale consideration.
- iii. To direct the respondent to pay assured return at the rate of Rs. 89.25/- per sq. ft. per month to the complainants from valid offer of possession, or in the alternative, respondent may be directed to pay delay possession charges to the complainants at the prescribed rate of interest as per RERA Act, 2016 w.e.f. 28.11.2022 till the handing over of possession.
- iv. To direct the respondent not to charge PLC since the new unit allotted to the complainants has ceased to be preferentially located, or in the alternative, direct the respondent to allot another similar unit / space having area and location originally agreed between the parties in the same project.
- v. To direct the respondent to issue a valid offer of possession after adjusting payment of assured return calculated @Rs. 98.1/- per sq. ft. from July,2019 till date.
- vi. A direction be given to the respondents to handover the legal possession of the unit no. 2-37 on 2nd Floor at Project "NEO SQUARE" to the complainants with all the basic amenities after getting necessary approvals from the concerned authorities.
- vii. The respondent may also be directed to get the conveyance deed of the unit registered in favour of the complainants

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

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- i. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form in 16.11.2018, requesting the respondent to allot a unit/space, admeasuring 287 sq. ft. super area in the project "*NEO Square*".
 - ii. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 18, on 2nd floor, admeasuring 287 sq. ft. super area.
 - iii. Thereafter, a builder buyer's agreement was executed between the complainant and the respondent on 29.11.2018.
 - iv. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 29.11.2018 was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
 - v. It is noted herein that since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the Competent Authority shortly, and leased out the subject

- unit and *vide* letter dated 01.10.2020, requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- vi. The occupation certificate of the project was granted by the competent authority on 14.08.2024.
- vii. Thereafter, the respondent sent an offer of possession letter dated 03.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- viii. Despite receiving the offer of possession letter, the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated 03.12.2024, 03.01.2025, 16.01.2025, 27.01.25, 24.03.2025 requesting the complainant to do the needful.
- ix. That the respondent *vide* letter dated 24.03.2025, requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- x. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- xi. That the Complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the Parties. 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.
- xii. 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.

- xiii. It is also pertinent to mention herein that recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.
- xiv. It is pertinent to mention herein 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 objections raised by the respondent.

F. I. Objection regarding the complainants being investor.

13. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 29.11.2018, it is revealed that the complainants are buyers, and they have paid a total price of Rs.18,00,000 /- to the promoter towards purchase of a 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;"

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further,

the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants.

- I. Respondent is directed to set aside the alleged offer of possession / demand / reminders dated 03.12.2024 / 03.01.2025 / 16.01.2025 / 27.01.2025 and direct the respondent to provide revised statement of account after adjusting payment of assured return calculated @Rs.98.1/- per sq. ft. from July,2019 till date.**

15. Fit-out Charges - The Authority observes that under clause 28 of the MoU, 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 promoter 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 unilaterally burden the complainants with additional charges without proper basis or prior intimation to the complainants. 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 complainants 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 of Rs.10,04,500/-by the respondent in demand letter dated 15.04.2024 cannot be sustained in the eyes of law, hence the same is set-aside.

16. **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 promoter 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.

17. Accordingly, the Authority is deliberating its findings on the rest of the 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 complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent who is solely responsible for the disbursement of said amount.

- **FTTH**

The respondent letter dated 16.01.2025 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.

- II. To direct the respondent to pay assured return calculated @ Rs. 98.1/- per sq. ft. after adjusting the same from balance sale consideration.**
- III. To direct the respondent to pay assured return at the rate of Rs. 89.25/- per sq. ft. per month to the complainants from valid offer of possession, or in the alternative, respondent may be directed to pay delay possession charges to the complainants at the prescribed rate of interest as per RERA Act, 2016 w.e.f. 28.11.2022 till the handing over of possession.**
- IV. To direct the respondent to issue a valid offer of possession after adjusting payment of assured return calculated @Rs. 98.1/- per sq. ft. from July,2019 till date.**

18. The complainants are seeking unpaid monthly penalty on as per the terms of the MoU dated 29.11.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

19. 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.

20. 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.*

21. 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;*

22. 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.

23. 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.

24. 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.
25. 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.
26. 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 29.11.2018.

27. 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.28,155/-** (Rupees Twenty Eight Thousand One Hundred Fifty Five Only) on the total amount received, with effect from 29-Nov-2018 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Plan duly annexed as Annexure-II. The monthly assured return shall be paid to the Allottee(s) from the effective date."*

Clause 22:

"The builder in terms of its commitment to pay the assured return till the Possession shall issue the postdated cheques for such monthly rent which also incorporates the expected period of possession. The postdated cheques shall not be dishonored for any of the reason."

28. Thus, as per the abovementioned clause the penalty was payable @ Rs.28,155/- per month w.e.f. 29.11.2018, till the possession of the concerned unit.

29. In light of the above, the Authority is of the view that as per the MoU dated 29.11.2018, 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.28,155/- from the date i.e., 29.11.2018 until the possession after deducting the amount already paid on account of assured returns to the complainants.

V. To direct the respondent not to charge PLC since the new unit allotted to the complainants has ceased to be preferentially

located, or in the alternative, direct the respondent to allot another similar unit / space having area and location originally agreed between the parties in the same project.

30. The Authority observes that although the payment plan annexed with the Buyer's Agreement dated 29.11.2018 permits the respondent to charge PLC of Rs.4,09,836/- at the stage of notice of possession, it is an admitted position that the respondent has unilaterally altered the location of the allotted unit and reduced its area from 287 sq. ft. to 258.1400 sq. ft., which is a reduction exceeding 10% of the originally agreed area as there is no consent form or document submitted by the respondent. In such circumstances, the respondent is directed to levy PLC only upon placing on record cogent material, including proper demarcation and documentary proof, to establish that PLC is applicable to the newly allotted unit. Failing such compliance, the respondent shall not be entitled to charge PLC at this stage.

VI. A direction be given to the respondents to handover the legal possession of the unit no. 2-37 on 2nd Floor at Project "NEO SQUARE" to the complainants with all the basic amenities after getting necessary approvals from the concerned authorities.

VII. The respondent may also be directed to get the conveyance deed of the unit registered in favour of the complainants.

31. The Authority observes that occupation certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp

duty and registration charges as applicable within three months from the date of this order.

32. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

H.Directions of the Authority

33. 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.28,155/- (Rupees One Lac Twenty-Four Thousand Three Hundred Only) with effective date as per clauses 19 and 22 of the MoU i.e., 29.11.2018 till the possession of the concerned 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 that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- iii. The fit-out charges demanded by the respondent are set-aside for the reasons discussed in paragraph no. 15 of this order.
- iv. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge 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 is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.

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

viii. 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.

34. The complaint stand disposed of.

35. Files be consigned to registry.


(Phool Singh Saini)
Member
(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.12.2025