

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

Order pronounced on: 02.12.2025

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/6291/2024	Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)
2.	CR/6292/2024	Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)
3.	CR/6317/2024	Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)
4.	CR/6318/2024	Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)
5.	CR/6319/2024	Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)
6.	CR/6340/2024	Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd.	Garvit Gupta (Complainant) Venkatesh Dubey (Respondent)

CORAM:

Ashok Sangwan

Member

Phool Singh Saini

Member

ORDER

1. This order shall dispose of all the 6 complaints titled as above filed before this Authority in form CRA 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 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**" being developed by the same respondent/promoter i.e., **NEO Developers Private Limited**. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram
Clause-3 "That the company shall complete the construction of the said building/complex within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction whichever is later and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues."
1. Completion certificate- 14.08.2024
2. DTCP License no. 102 of 2008 dated 15.05.2008 valid upto 14.05.2025 - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.
3. Nature of Project- Commercial Colony
4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024



Sr. No.	Complaint no./title/ date of filing complaint	Assured return clause	Unit No. and area admeasuring	Date of execution of agreement for sale	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/6291/2024 Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.55,055/- on the total amount received with effect from 17 August 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1112, 11 th floor, 847 sq. ft. (page no. 34 of complaint)	17.08.2018 (page no. 31 of complaint)	Due date- 17.02.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of Possession- 02.09.2024	BSP: Rs.25,71,000/- (as per payment plan at page 49 of complaint) AP: Rs.38,81,492/- (as per SOA at page 75 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD.
2.	CR/6292/2024 Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.55,705/- on the total amount received with effect from 17 August 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1114, 11 th floor, 847 sq. ft. (page no. 31 of complaint)	17.08.2018 (page no. 29 of complaint)	Due date- 17.02.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of possession- 02.09.2024	BSP: Rs.25,71,000/- (as per payment plan at page 39 of complaint) AP: Rs.39,20,401/- (as per SOA at page 61 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD.

3.	CR/6317/2024 Vijay Kumar Wahi and Rachna Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.55,965/- on the total amount received with effect from 29 August 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1115, 11 th floor, 861 sq.ft. (page no. 33 of complaint)	29.08.2018 (page no. 30 of complaint)	Due date- 29.02.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of possession- 02.09.2024	BSP: Rs.25,83,000/- (As on page no. 48 of complaint) AP: Rs.39,35,965/- (as per SOA at page 73 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD
4.	CR/6318/2024 Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.55,185/- on the total amount received with effect from 13 December 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1116, 11 th floor, 849 sq. ft. (page no. 31 of complaint)	13.12.2018 (page no. 29 of complaint)	Due date- 13.06.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of possession- 02.09.2024	BSP: Rs.25,47,000/- (as per payment plan on page no. 47 of complaint) AP: Rs.38,89,275/- (as per SOA at page no. 73 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD



5.	CR/6319/2024 Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.53,820/- on the total amount received with effect from 20 December 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1118, 11 th floor, 828 sq. ft. (page no. 31 of complaint)	20.12.2018 (page no. 29 of complaint)	Due date- 20.06.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of possession- 02.09.2024	BSP: Rs.24,84,000/- (as per payment plan on page no. 47 of complaint) AP: Rs.38,07,566/- (as per SOA at page no. 73 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD
6.	CR/6340/2024 Rachna Wahi and Vijay Kumar Wahi V/s M/s Neo Developers Pvt. Ltd. DOF- 31.12.2024 RR- 11.04.2025	4. The Company shall pay a monthly assured return of Rs.54,990/- on the total amount received with effect from 18 December 2018..... The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit.	1117, 11 th floor, 846 sq. ft. (page no. 32 of complaint)	18.12.2018 (page no. 29 of complaint)	Due date- 18.06.2022 (Calculated from date of agreement being later + 6 months on account of covid-19) Offer of possession- 02.09.2024	BSP: Rs.25,38,000/- (as per payment plan on page no. 47 of complaint) AP: Rs.38,77,601/- (as per SOA at page no. 73 of complaint)	Set-aside Cancellation, Assured Return, leasing of unit, payment of lease rental, DPC, CD

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

RR- Reply Received on

DOF- Date of filing complaint

BSP- Basic Sale Price

AP- Amount paid by the allottee(s)

➤ Inadvertently, vide proceedings dated 02.12.2025, the grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 was left to be added while calculating the due date of possession.

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6291/2024 titled as Vijay Kumar Wahi and Rachna Wahi V/s Neo Developers Pvt. Ltd.** are being taken into consideration for determining the reliefs of the allottee(s) qua setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.
- A. Project and unit related details.**
7. 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. No.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
	Project area	2.71 acres
1.	Nature of the project	Commercial colony
2.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
3.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
4.	Unit no.	1112, 11 th floor (page no. 34 of complaint)
5.	Unit area admeasuring	847 sq. ft. (page no. 34 of complaint)

6.	Date of buyer's agreement	17.08.2018 (page no. 31 of complaint)
7.	Date of MoU	17.08.2018 (page 57 of complaint)
8.	Possession clause	3. <i>The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate.</i>
9.	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.
10.	Due date of possession	17.08.2021 (Calculated from date of agreement being later + 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)
11.	Assured return Clause	4. <i>The Company shall pay a monthly assured return of Rs. 55,055/- on the total amount received with effect from 17 August 2018 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.</i>
12.	Basic sale consideration	Rs. 25,41,000/- (as per payment plan at page 49 of complaint)
13.	Amount paid by the complainant	Rs. 38,81,492/- (as per SOA at page 75 of complaint)
14.	Occupation certificate	14.08.2024 (as per DTCP website)

		(page 73 of complaint)
16.	Reminders for payment	11.10.2024, 26.10.2024, 20.11.2024 (page 81 to 83 of complaint)
17.	Final notice of cancellation	19.12.2024 (page 88 of complaint)

B. Facts of the complaint.

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

- I. That the respondent offered for sale units in a commercial complex known as 'NEO Square' in Sector-109, Gurugram, Haryana. The complainants induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent. On the basis of the representations made by the respondent and on its demand, the complainants made the payment of more than the total basic price of the unit amounting to Rs.29,50,000/-. The complainants on the assurances of the respondent had further made additional 5 bookings with the respondent.
- II. That the respondent provided the complainants with a copy of the agreement. After going through the agreement, the complainants realized that the provisions contained in the said agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally un-balanced and unwarranted. It is pertinent to mention herein that it was stated in the agreement that in the event of non-payment of instalment amount by the complainants, the complainants would be liable for penalty @18% per annum. However, in case of delay on the part of the respondent in offering the possession, no such penalty was specifically stated in the agreement.
- III. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the agreement to the respondent. The

respondent/promoter refused to amend or change any term of the pre-printed agreement and further threatened the complainants to forfeit the previous amount paid towards the unit if the agreement was not signed and submitted. The complainants were left with no other option but to sign the one-sided agreement for an allotment of unit No. 1112 on 11th Floor having super area of 847 sq.ft. unit. As per Annexure-I of the said agreement, the basic sale consideration of the unit was Rs.25,41,000/- and the total consideration of the unit was Rs.40,72,067/-. Even in the agreement, it was acknowledged by the respondent that the complainants had, till then, made the payment of Rs.29,50,000/- to the respondents against the said unit.

- IV. That on the same date, a Memorandum of Understanding (MOU) was executed between the respondent and the complainants. As per Clause 4 of the MoU, it was reiterated that the basic sale consideration of the unit was Rs.25,41,000/- and that the complainants had made the payment of Rs.29,50,000/- till then. The respondent had categorically assured at the time of the booking that it would be diligent in making payment towards the assured return and in adhering to its contractual obligations. It is submitted that as per Clause 4 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.55,055/- on the total amount received with effect from 17.08.2018 till the 'commencement' of first lease. Furthermore, it was agreed vide Clause 7(a) of the said MoU that the respondent would make payment of lease rentals at Rs.53.17 per sq. ft. per month to the complainant from commencement of first lease. It was decided as per Clause 8(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a perspective lessee.

- V. That as per Clause 3 of the MoU, the possession of the unit was to be handed over by the respondent within a maximum period of 36 months from execution of agreement or start of construction, whichever is later. Thus, the due date to offer the possession as per the terms of the MoU was 17.08.2021.
- VI. That respondent kept on making delayed payment towards the monthly assured return to the complainants and discontinued to make any payments towards the monthly assured return from the month of April, 2020 onwards. Upon the grievances raised by the complainants regarding the non-payment of assured returns, it was assured and promised by the representatives of respondent vide its letter dated 30.12.2019 that the said amount would be adjusted along with interest at the time of possession.
- VII. That the complainants visited the office of respondent in September, 2022 to enquire about the date of possession and pending payment of the monthly assured returns. It was informed that the possession of the unit would soon be offered to the complainants along with adjustment of the delayed payment interest and monthly assured rentals.
- VIII. That the respondent finally, after a considerable delay vide its offer of possession dated 02.09.2024, intimated the complainants that the unit allotted to them was ready for possession as the respondent had obtained the Occupation certificate. On-going through the terms of the offer of possession, the complainants realized that respondent had unilaterally increased the sale consideration of the unit by demanding illegal charges which were not attributable to the complainants.
- IX. That, the complainants were in complete shock and were surprised to note that the respondent vide the said offer of possession letter illegally

demanded an additional amount of Rs.44,27,875/-. It is pertinent to mention here that the complainants had already paid a sum of Rs.38,81,492/- out of the total sale consideration of Rs.40,72,067/- and the said fact is also evident from the statement of account attached along with the said offer of possession letter. The said offer of possession is illegal as it consists of the below mentioned illegal demands: -

- I) Fitout Charges: A major component of the said illegal demand was against the Fitout charges of Rs.34,98,110/-. The complainants were never informed that the respondent had any right to demand any such fitout charges from the complainants. The respondent cannot be allowed to charge any additional amount only because it deems fit to do so. The demand against the said charges is against the terms of the contract and even as per the 11 provisions laid down by law. The Respondent cannot demand such charges and the Complainants are not legally liable to make any payment against the same.
 - II) Development Charges: The respondent has illegally and in a completely malafide manner demanded Rs.5,99,676/- as development charges. It is submitted that the respondent has already demanded charges against the External Development Charges (EDC) of Rs.3,99,377/- and against the Internal Development Charges (IDC) of Rs. 50,278/- and the said fact is evident from a perusal of the statement of account attached with the offer of possession. When charges towards EDC and IDC have already been demanded and forms part of the pre-decided total sale consideration amount, there is no question to demand payment against the development charges.
- X. That the complainants challenged the imposition of fit out charges that were demanded by respondent under the garb of a so called 'legal' offer of possession. However, respondent failed to pay heed to any of the genuine queries raised by the complainants. The complainants were constrained to send emails dated 05.09.2024, 16.09.2024, 18.10.2024 and letter dated 18.09.2024 requesting the respondent to share the statement of accounts

with the complainants and further seeking clarifications with respect to the illegal charges demanded by the respondent from the complainants vide the said offer of possession.

- XI. That the respondent failed to respond to the said emails and letters. Rather the respondent continued to demand the payments against the illegal charges vide its reminder letters dated 11.10.2024, 26.10.2024 and 20.11.2024. The complainants vide its letters dated 11.11.2024, 28.11.2024 and 09.12.2024 requested the respondent to respond to the emails and letters as sent by the complainants and provide the complainants with the statement of accounts. However, yet again the respondent failed to respond to the said emails and letters sent by the complainants.
- XII. That the complainants apprehend that the respondent would illegally and unilaterally cancel/terminate the allotment by creating third party rights. The said strong apprehension is based on the fact that the representatives of the respondent have been issuing threats to the complainants that in case the complainants don't accept the unilateral reasoning given by the respondent then it would terminate the allotment of the complainants and would allot the unit in question to a third party.

C. Relief sought by the complainants

9. The complainants have sought the following relief(s):
- I. Revoke demand of fit-out charge and development charge.
 - II. Hold cancellation as invalid and restore allotment of unit.
 - III. Direct the respondent to pay delay possession charges to the complainant till valid offer of possession and execution of conveyance deed.
 - IV. Direct the respondent to pay assured return, lease the unit and make payment of lease rental as per MoU.

10. 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

11. The respondent has contested the complaint on the following grounds:
- i. That the respondent has not received outstanding dues from the complainant in terms of the offer of possession dated 02.09.2024, despite of repeated reminders and request by the respondent. The complainants deliberately failed to clear the outstanding dues. That vide offer of possession letter dated 02.09.2024 it was brought to the very knowledge of the complainants that there existed an outstanding due of Rs.44,27,875/- at the time of offer of possession and were requested to clear the same for the purposes of possession.
 - ii. That the complainants post receiving the above said offer of possession failed to clear the outstanding dues as mentioned in the above said letter and in lieu to the same a "Reminder- 2 Demand Notice payment" and "offer of possession letter" dated 26.10.2024 was issued to the complainants by the respondent to clear the above said amounts, however, again the complainant with malafide intention choose not to clear the same.
 - iii. That the respondent after waiting for such a considerable period of time again vide "Reminder -3 for Demand Notice Payment" and offer of possession letter dated 20.11.2024 reminded the complainants to clear the outstanding dues for the purposes of taking over the possession, however again the complainants failed to do so for the reasons best known to them.
 - iv. That upon the repetitive failure of the complainants to adhering to the notice of possession as well various reminder letters by the respondent for

clearing the outstanding dues, the respondent was constrained to cancel the unit of the complainants vide final notice of cancellation/termination of builder buyer agreement dated 19.12.2024.

- v. That post cancellation of the unit of the complainants due to deliberate and intentional default by them in not clearing the outstanding dues despite of repeated reminders by the respondent, the respondent requested the complainants to visit the office of the respondent for the purposes of handing over the original documents in the custody of the complainants for the purposes of executing the refund proceedings. However, the complainants despite of requests and reminders by the respondent deliberately and malafidely did not approached the respondent and due to which the refund proceedings could not be executed
- vi. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. It is imperative to bring the attention of this 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 complainant cannot be construed to fall within the ambit of RERA Act. That the complainant has failed to provide the correct/complete facts that she is investor and not allottee therefore, the same are reproduced hereunder for proper adjudication of the present matter.
- vii. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "Neo Square" situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 20.06.2018, whereby seeking

allotment of unit no. 112, admeasuring 847 sq. ft super area on the 11th floor of the project having a basic sale price of Rs.25,41,000/-. The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

- viii. That since the complainants had opted for the investment return plan, a Memorandum of Understanding dated 17.06.2018 was executed between the parties, which was completely a separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per clause 4 of the MoU, the returns were to be paid from 28.11.2018 and as per clause 7 of the MoU, the returns were to be paid till commencement of first lease. It is also submitted that as per clause 8(a) of the MoU, the complainants had duly authorised the respondent to put the said unit on lease.
- ix. That by no stretch of imagination it can be concluded that the complainants are "allottee/consumer." The complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. The allotment of the said unit contained a "lease clause" which empowers the developer to put the unit of the complainant along with other commercial spaces on lease and does not have possession clause.
- x. That as the complainants in the present complaint are seeking the relief of assured return, which is not maintainable before the Authority upon enactment of the BUDS Act. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.

- xi. That the complainants in the present complaint are claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the RERA Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.
- xii. That as per clause 3 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 agreement or from start of construction, whichever is later and apply for grant of occupancy/completion certificate. Accordingly, the due date of delivery of possession in the present case is 36 months to be calculated from 17.08.2018, and the due date of possession in the instant case comes out to be 17.08.2021.
- xiii. That in spite of being aware of the payment plans, the complainant has failed to pay the outstanding dues on time. It is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as fit out charges, IFMS, FTTH, Labour Cess, Development Charges, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various Clauses of the buyer agreement and MoU. The complainant as per the records of the respondent had only paid Rs.38,81,492/- against the total due amount of Rs.82,18,444/-. It is to be noted that there is still an outstanding due of Rs.47,25,866/- which is to be paid by the complainant against the unit booked.

- xiv. 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. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts which were beyond the power and control of the respondent. Due to the above reasons, the project in question got delayed from its scheduled timeline. However, the respondent is committed to complete the said project in all aspect at the earliest.
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.

F. Findings on the objections raised by the respondent.**F. I. Objection regarding the complainants being investor.**

17. 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 17.08.2018, it is revealed that the complainants are buyers, and they have paid a total price of Rs.38,81,492/- 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:

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 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.

F. II Objection regarding the project being delayed because of force majeure circumstances.

19. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, Covid-19 etc. As per MoU, the due date of possession was 17.08.2021. Further, an extension of 6 months on account is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020. It is observed that orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into

be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

I. Revoke demand of fit-out charge and development charge.

20. **Fit-out charges:** The Authority observes that under clause 9(b) 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 by the respondent cannot be sustained in the eyes of law, hence the same is set-aside.
21. **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"***

22. 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.

G.II Hold cancellation as invalid and restore allotment of unit.

23. The complainants have submitted that the respondent after a considerable delay vide its offer of possession dated 02.09.2024, intimated the complainants that the unit allotted to them was ready for possession as the respondent had obtained the Occupation certificate. On-going through the terms of the offer of possession, the complainants realized that the respondent had unilaterally increased the sale consideration of the unit by demanding illegal charges on account of fit-out charges

amounting to Rs.34,98,110/- and development charges of Rs.5,99,676/- which were not attributable to the complainants. The said offer of possession is illegal as it consists of the above-mentioned illegal demands which were not stipulated either under the builder buyer agreement and the memorandum of understanding dated (MoU) dated 17.08.2018 executed between the parties. The complainants challenged the imposition of fit out charges and development charges that were demanded by respondent under the garb of a so called 'legal' offer of possession. However, respondent failed to pay heed to any of the genuine queries raised by the complainants. The respondent has submitted that though the complainants have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as fit out charges, IFMS, FTTH, Labour Cess, Development Charges, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various Clauses of the buyer agreement and MoU. However, the complainants despite repeated demand notices and reminders have failed to clear the outstanding dues and take possession. Therefore, the respondent was constrained to cancel the unit of the complainants vide final notice of cancellation/termination of builder buyer agreement dated 19.12.2024. Now the question before the Authority is that whether the cancellation made by the respondent vide letter dated 19.12.2024 is valid or not.

24. On consideration of documents available on record and submissions made by both the parties, it is determined that on the basis of provisions of allotment, the complainants have paid an amount of Rs.38,81,492/- against the basic sale consideration of Rs.25,41,000/- at the time of allotment. The possession of the unit was offered to the complainants vide offer of possession letter dated 02.09.2024 subject to payment of Rs.83,09,367/-. The respondent vide said offer of possession letter raised demands towards fit-out charges of Rs.34,98,110/-, labour cess of

Rs.21,175/- and unjustified interest on delayed payments of Rs.91,252/- from the complainants, but it has not adjusted the payments towards pending assured return that was agreed to be adjusted at the time of possession vide letter dated 01.02.2022. The complainants after receipt of the same, wrote several emails to the respondent regarding adjustment of outstanding dues from the pending assured return, but the respondent kept on raising demands and ultimately cancelled the unit of the complainants vide cancellation letter dated 19.12.2024. Therefore, while dealing with cancellation, the validity of the demands raised by the respondent must be determined. It is observed that the demand on account of fit-out charges has already been declared invalid by the Authority. 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.

- **Interest on delayed payment:** The Authority has perused the offer of possession letter dated 09.02.2024, wherein an amount of Rs.91,252/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainants have already paid a sum of Rs.38,81,492/-, which includes basic sale price (BSP), external development charges (EDC), internal development charges (IDC), preferential location charges (PLC), and service Tax/GST. The Authority further observes that the total basic sale consideration of the said unit is Rs.25,41,000/-, as expressly mentioned in clause 4 of the MoU executed between the parties. Thus, it is evident on record that the amount paid by the complainants is substantially higher than the total basic sale consideration agreed between the parties. In view of the above facts, the Authority is of the view that the pending BSP and levy of interest on delayed payment amounting to Rs.91,252/- as reflected in the SOA dated 02.09.2024 is unjustified, especially when the complainants has already made payments exceeding the agreed basic sale consideration, subject to reconciliation strictly in accordance with the terms of the MoU and the provisions of the Act.

25. In view of the above, the cancellation made by the respondent in continuation of the above said illegal demands cannot be held valid in the eyes of law and is hereby set aside. Therefore, the respondent is directed to restore the unit of the complainants.

G.III Direct the respondent to pay delay possession charges and to execute conveyance deed in favour of the complainants.

G.IV Direct the respondent to pay assured return, lease the unit and make payment of lease rental as per MoU

26. The complainants are seeking unpaid monthly assured returns on as per the terms of the MoU dated 17.08.2018 at the rates mentioned therein. It is pleaded by the

complainants that the respondent has not complied with the terms and conditions of the said MoU.

27. The respondent has submitted that the complainants in the present complaint are claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.
28. It is pleaded on behalf of respondent 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.*
29. 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;*

30. 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 promoter at the time of booking or immediately thereafter and as agreed upon between them.
31. 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.
32. The money was taken by the promoter 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 promoter 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.
33. The promoter 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 promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship.

34. 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 promoter 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 17.08.2018.
35. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 17.08.2018, which is reproduced below for the ready reference:

Clause 4.

The Company shall pay a monthly assured return of Rs. 55,055/- on the total amount received with effect from 17 August 2018 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- 1. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.

Thus, as per the abovementioned clause, the monthly assured returns were payable @Rs. 55,055/- per month w.e.f. 17.08.2017, till the commencement of first lease.

36. In light of the above, the Authority is of the view that as per the MoU dated 17.08.2018, it was obligation on part of the respondent to pay the monthly assured return till the commencement of first lease. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. However, the unit of the complainants has not been put on lease till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the

agreed rate i.e., @Rs.55,055/- per month from the date 17.08.2017 till the commencement of the first lease on the said unit as per the memorandum of understanding dated 17.08.2018, after deducting the amount already paid on account of assured returns to the complainants.

G.IV Delay Possession Charges:

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

"Section 18: - Return of amount and compensation

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

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

38. Clause 3 of the MoU dated 17.08.2018 provides for handing over of possession and is reproduced below:

"The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate"

39. **Due date of possession:** As per clause 3 of the MoU, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later. Further, a grace period of 6 months is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Thus, the due date of possession come out to be 17.02.2022.

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

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

41. 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., 02.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
42. 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;"*

43. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is liable to be paid to the complainants in case of delay possession charges.
44. 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 by 17.02.2022. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainants on 02.09.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 17.08.2018. 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.55,055/- on the total amount received with effect from 17.08.2018 till the commencement of first lease. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 17.08.2018 upto the commencement of first lease which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay 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 delay possession charges whichever is higher.

45. 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 delay possession charges, whichever is higher without prejudice to any other remedy including compensation.
46. In the present complaint, as per clause 4 of the MoU dated 17.08.2018, the amount on account of assured return was payable from 17.08.2018 upto the commencement of first lease. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on lease by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.50,055/- per month from the date i.e. 17.08.2018 till the commencement of the first lease on the said unit as per the memorandum of understanding dated 17.08.2018, after deducting the amount already paid on account of assured returns to the complainants.
47. Further the complainants are seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

48. The occupation/completion 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.

G.V Direct the respondent to lease the unit and pay lease rental as per MoU.

49. The complainants are seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clause 7(a) of the MoU dated 17.08.2018, it was agreed that the respondent would make payment of lease rentals at Rs.53.17/- per sq. ft. per month to the complainant from commencement of first lease. Further, vide clause 8(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a perspective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 17.08.2018.

F. Directions of the Authority

50. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under section 34(f):
- The respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.50,055/- per month from the date i.e. 17.08.2018 till the commencement of the first lease on the said unit as per the



memorandum of understanding dated 17.08.2018, after deducting the amount already paid on account of assured returns to the complainants.

- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- iii. The 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.
- iv. The complainants are 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.
- v. The respondent/promoter is directed to handover 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.
- vi. The Fit-out charges demanded by the respondent are set-aside for reasons discussed in paragraph no. 20 of the order.
- vii. The respondent shall not charge labour cess from the complainants. The respondent is further directed to not to charge anything from the complainants which is not part of the MoU or buyers' agreement.
- viii. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the




promoter buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.*

- ix. The respondent shall charge development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
 - x. The respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 17.08.2018.
51. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
52. The complaints stand disposed of.
53. Files be consigned to registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.12.2025


(Ashok Sangwan)
Member