BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No.	**:**	**1010 of 2025**
Date of filing	**:**	**27.02.2025**
Date of Decision	**:**	**11.11.2025**

Mr. Deepak Anand Mukarji and
Ms. Anupama Mukarji
Both R/o: - C-12, Trinity Towers, DLF City Phase V, Gurugram, Haryana, 122002.

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 Harshit Batra (Advocate) — **Counsel for Complainants**

Shri Gunjan Kumar and E. Krishna Dass (Advocates) — **Counsel for Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia

prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial Colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	01.04.2015 (As per BBA on page no. 27 of complaint)
7.	Unit no.	Priority No. 30, 3rd Floor (As per BBA on page no. 32 of complaint)
8.	Unit area admeasuring	500 Sq. Ft. (As per BBA on page no. 32 of complaint)
9.	Date of MoU	01.04.2015 (As per BBA on page no. 56 of complaint)
10.	Possession Clause from MoU	*Clause 3* *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.* *(Pg no. 58 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. 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	15.12.2018 (36 months from the start of construction of the project being later as per clause 3 of the MoU)
13.	Assured return Clause	*Clause 4.* *The company shall pay a monthly return of* ***Rs. 45,000/- on the total amount received with effect from 01.04.2015*** *after 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 Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s)* ***until the commencement of the first lease on the said unit****. This shall be paid from the effective date.* *(As per MoU on page no. 59 of complaint)*
14.	Sale consideration	Rs. 26,82,930/- (including BSP, EDC, IDC, IFMD; as per Agreement Annexure-I) Rs. 33,51,233/- (As per SOA at pg. no. 49 of the reply)
15.	Amount paid by the complainant	Rs. 28,65,743/- (As per SOA at pg. no. 49 of the reply)
16.	Occupation certificate	14.08.2024 (As per DTCP site)
17.	Offer of possession	26.12.2024

		(As per pg. no. 117 of the complaint)

B. Facts of the complaint.

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

i. That the respondent shared their company's profile to lure the complainants into investing in its project vide email dated 29.12.2014. Relying on the assurances, representations, and warranties of the respondent, and its shrewd marketing gimmick, the complainants were lured by the respondent and invested in the project.

ii. That on 01.04.2015, the parties entered into a buyer's agreement (hereinafter referred to as the "agreement") and memorandum of understanding wherein the complainants were allotted priority no. 30, third floor admeasuring 500 sq. ft. (hereinafter referred to as the "**unit**") in the project. The complainants invested in the project with the categorical arrangement of payment of assured returns. relevant extract from the MoU is reiterated hereinunder;

"That against the total basic sale consideration of Rs.22,50,000/-(Rupees Twenty-Two Lacs Fifty Thousand only) determined as per Clause 3 above, the Allottee(s) has, paid unto Company upon and/or prior to the execution of this MOU, an amount of Rs. 23,33,430/- (Rupees Twenty-Three Lacs Thirty-Three Thousand Four Hundred and Thirty only) vide cheque No. 608328, 608304 and 608330 dated 16.02.2015 and 30.03.2015 drawn on Citi Bank, towards advance/ part consideration of the unit, the receipt whereof, Company hereby admits and acknowledges. ***The Company shall pay a monthly assured return of Rs.45,000/-(Rupees Forty Five Thousand only)on the total amount received with effect from 15 Apsil 2015*** *after deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure 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."***

iii. That at as per annexure-I of the agreement, the total sale consideration of the Unit is Rs. 26,82,930/- which is inclusive of the following.

Particulars	Amount (In INR)
Basic Sale Price with Service Tax	23,33,430
Other Charges:	
External Development Charges (EDC)	2,10,500
Internal Development Charges (IDC)	26,500
Interest Free Maintenance Security (IFMD)	1,12,500
Preferential Location Charges (PLC)	000
Car Parking	000
Total Sale Consideration	**26,82,930**

iv. That, the complainants opted for assured return payment plan as is evident from annexure-i of the agreement, and in their readiness to own and possess the said unit paid the 100% of the basic sale price with service tax at the time of execution of the agreement.

v. That the complainant had made a payment of Rs. 23,22,430/- and the remaining other charges were to be paid at the time of offer of registration.

vi. That clause 4.1 of the agreement categorically notes that the respondent has received Rs. 23,33,430/- from the complainants. Further, letter dated 01.04.2015 notes that the complainants have paid Rs. 23,33,430/- and the balance towards total consideration including service tax remains nil.

vii. That, as per the terms of the agreement and the MoU, the respondent was liable to pay assured return of Rs. 45,000/-pm from 01.04.2015 till commencement.

viii. That the Respondent failed to abide by the terms of the MOU and made payment of assured return amounting to Rs. 45,000/- pm minus TDS for a period of 01.04.2015 to 30.06.2019.

ix. That the cheques towards assured return paid by the Respondent bounced on various occasions such as cheque no.s 000866, 000865, 000316.

x. That thereafter, the respondent herein arbitrarily began demanding extra charges from the complainants herein.

xi. That vide Demand Letter dated 16.12.2015, the respondent sought payment of Rs. 2,37,000/- towards EDC and no explanation for the exorbitant demand was given to the complainants. The complainants on seeking clarification of the same, were threatened by the respondent that non-payment of the demand shall lead to cancellation of the allotment. the complainants under coercion and threat made payment of the said demand vide cheque dated 31.12.2015 and the respondent duly issued receipt for the said amount on 07.01.2016.

xii. That the greed of the respondent knew no bounds, and the respondent arbitrarily raised demand for an amount of Rs. 1,24,350/- vide Demand Letter dated 30.03.2017 towards VAT @5% on BSP, EDC, IDC, PLC, and car parking.

xiii. It is pertinent to mention herein that the respondent could not have charged VAT from the Complainants as was held by this Hon'ble Authority vide order dated 12.08.2021, in matter titled *Varun Gupta vs. Emaar MGF Land Ltd.* bearing *complaint no. 4031 of 2019.*

xiv. That further, the respondent in contravention to the terms of builder buyer agreement and MOU dated 01.04.2015 has raised unlawful demands via reminder-1 demand notice and offer of possession letter dated 16.10.2024 to the tune of Rs.1,02,453/-.

xv. That on bouncing of cheque no.s 000866, 000865 towards assured return, the complainants expressed their disappointment to the respondent vide email dated 08.08.2017.

xvi. That once again cheque towards assured return bearing no. 000316 bounced and the Complainants wrote to the Respondent vide email dated 29.04.2019 about the same.

xvii. That despite having made payment of VAT on demand raised vide demand letter dated 30.03.2017, the respondent yet again raised demand amounting to Rs. 1,84,102/- towards outstanding VAT vide demand letter dated 22.01.2020.

xviii. That the said demand letter dated 22.01.2020 provided no clarification pertaining to the calculation of this outstanding VAT arising out of the blue without any prior intimation regarding the same.

xix. That the complainants raised queries pertaining to this illegal demand and the respondent paid no heed to the queries of the complainants, instead the respondent arbitrarily sent reminder-1 dated 30.10.2020 wherein the amount of demand was illegally raised to Rs. 2,38,441/-.

xx. That further, the respondent in order to arbitrarily extract more money from the complainants sent letter dated 01.10.2020 to the complainants, arbitrarily demanding Rs. 27,500/- towards registration fees.

xxi. That in response to the said letter the complainants quashed the demand and sought bifurcation of charges vide email dated 03.11.2020 and the respondent replied to the said email stating that registration fees is Rs. 22,500/- and lawyer's fees is Rs. 5,000/- with no proof of the same.

xxii. That despite the protest of the complainants to remove arbitrary terms from the draft lease agreement the respondent paid no heed to the same and sent

reminder letter dated 10.12.2020, attempting to arm twist the complainants to give up their rights and sign the lease deed.

xxiii. That the complainants vide email dated 16.07.2021 sought justification of delay and clarification regarding status of the project.

xxiv. That the respondent vide email dated 17.07.2021 replied to the mail stating that they have applied for occupancy certificate, however, the same was false and thus the complainant replied to the said email vide email dated 22.07.2021.

xxv. That, the complainants had sought clarification regarding the arbitrarily additional demand towards VAT despite making payment of the same, the respondent sent reminder -2 dated 15.09.2021 and reminder letter dated 30.09.2021, without providing justification the charges and demanded an amount of Rs. 2,02,068.75/- to be paid immediately, despite making payment of Rs. 1,24,350.00/-.

xxvi. Thereafter, yet again vide reminder letter dated 07.12.2021 the respondents forced the complainants to execute the lease assignment form without amending the arbitrary terms contained in the same.

xxvii. That on repeated requests by the complainants to update regarding the status of possession, to the utter shock and dismay of the complainants, the respondent vide letter dated 01.02.2022, informed that the application for occupation certificate has been withdrawn and the respondent assured that monthly interest shall be adjusted towards demand at the time of offer of possession.

xxviii. That the complainants all this while believing in the false promises and assurances given by the respondent waited for the grant of occupation certificate despite the prolonged delay. Relevant extract from letter dated 01.02.2022 is reiterated hereinunder:

With reference to the unit booked in our project "Neo Square". This is to confirm that we had applied for the occupation certificate in 2021. However authority wanted to add some additional work, corrections, modifications etc. before grant of OC, therefore we are finishing the suggested works as per the recommendation and requirement of DCP. In the meantime, till the recommendations are compiled we have withdrawn the OC application.

...Further, after getting the Occupancy Certificate, we would immediately offer possession.

Also, as per RERA Act & Guidelines, 70 percent of the amount received from the sale of real estate project from the buyers, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

...Considering the above development, and bearing our commitment in mind, we are left with no other option but to adjust your payments towards monthly interest at the time of possession.

xxix. That the complainants wrote emails dated 02.02.2022 and 04.07.2022 requesting the respondent to make payment of assured returns as per the terms of the agreement and MoU.

xxx. That the complainants were left with no alternative but to plead for the allotment of the unit not to be cancelled, and thus the complainants visited the office of the respondent on 04.07.2022 to seek clarification towards the arbitrary demand. The respondent during meeting dated 04.07.2022 stated that the demand towards VAT shall not be revised and an amount of Rs. to Rs. 2,35,011/- must be paid immediately.

xxxi. That the respondent herein during the course of the meeting on 04.07.2022 admitted that all previous demands raised pertaining to VAT were of inaccurate amount and the correct demand is of Rs. 1,70,962.50/-. The complainants in order to safeguard allotment of their Unit agreed to pay the

amount of Rs. 1,70,962.50/- i.e. VAT as alleged to be imposed @12% pa with 5% pa surcharge, under protest, subject to said claims being true.

xxxii. That the respondent could not have collected VAT from the complainants and the money has been collected arbitrarily, reliance is placed on judgment of Varun Gupta supra.

xxxiii. That to the absolute dismay and shock of the complainants, the respondent belatedly offered possession of the unit vide offer of possession dated 26.12.2024, and in the said offer of possession, the respondent raised additional demand amounting to Rs. 6,39,918/- and failed to adjust monthly interest as was promised. Further, the respondent had illegally imposed an interest of Rs. 1,54,428, without any justification and even though the complainants had paid entire sales consideration way back in April 2015.

xxxiv. That the said offer of possession further seeks payment of illegal and arbitrary charges labour cess, FTTH and development charges. It is pertinent to mention herein that development charges comprise of nothing but EDC and IDC which has been duly paid by the complainant amounting to Rs. 2,37,000/- vide cheque dated 31.12.2015 to the respondent, the same is evident from same statement of account annexed with the offer of possession.

xxxv. That as has been noted above, over and above the outstanding Monthly Assured Returns amount of Rs. 45,000/- is accruing and the arrears against the same also need to be paid by the respondent. The illegal charges demanded need to be revoked and the illegal charges collected need to be refunded with interest. Further lease deed must be revised with fair terms and executed.

xxxvi. That the Respondent shall be liable to pay lease rental per month as well.

C. Relief sought by the complainants

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

I. Direct the Respondent to pay monthly assured return of Rs. 45,000/- pm from July 2019 till lease rental commences and interest thereon.

II. Direct the Respondent to pay delayed possession charges from due date of possession till actual handover

III. Direct the Respondent to mutually decide the terms of the lease deed and execute the same.

IV. Direct the Respondent to not charge labour cess, FTTH, Development Charges, interest and issue revised and valid offer of possession.

V. Direct the Respondent to refund VAT charges, EDC, registration charges collected illegally from the Complainants along with interest from date of payment till realization.

VI. Direct the respondent not to raise any demands or charges from the complaints till the final adjudication of the present complaint.

VII. Direct the Respondent to pay lease rental per month.

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, requesting the respondent to allot a Unit/Space, admeasuring 500 sq. ft. super area in the project "NEO Square".

II. That considering the request of the complainant, the respondent allotted a unit bearing priority no. 30, on 3rd floor, admeasuring 500 sq. ft. super area.

III. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 01.04.2015.

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 01.04.2015 (hereinafter referred to as the *"MOU"*) was executed between the parties, recording the lease grant rights in favour of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.

V. 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.

VI. 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.

VII. That thereafter, the respondent sent an offer of possession letter dated 26.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

VIII. That despite receiving the offer of possession 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 29.06.2022, 14.02.2025, 25.02.2025, 17.04.2025 and 22.03.2025 and requesting the complainant to do the needful.

IX. That the respondent *vide* letter dated 17.04.2025, requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.

X. That the respondent *vides* letters dated 30.10.2022, 15.09.2021, 30.09.2021, 04.07.2022, requested the complainant to make payment of the vat charges

which were totally ignored by the complainant despite so many reminders sent by the respondent.

XI. That the Complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

XII. That from a bare perusal of the aforementioned terms and conditions of the mou, it is evident that the complainant has invested in the instant project with the sole motive of earning lease rental by getting the subject unit lease through the respondent. It was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself.

XIII. That the whole idea behind the leasing of the subject unit through the respondent was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the Project who, by themselves, could not get big brands to take their units on lease.

XIV. It is further submitted herein that the complainant has invested in the instant project for earning lease rental can be verified from the fact that under clause 6 of the BBA, it is clearly mentioned that the terms and conditions pertaining to leasing of the unit are mentioned in the MOU.

XV. That there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price.

XVI. That the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in para 15 herein below, equitably distributed amongst the unit.

XVII. That under clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.

XVIII. That the development charges are reimbursement towards the cost incurred by the respondent towards providing facilities in the project. It is noted herein that some of the reasons attributed to development charges are as follows:

(i) Change in government norms, which led to cost incurred towards Electrification;
(ii) cost incurred towards the Electrical meter charges;
(iii) cost incurred towards power backup charges;
(iv) cost incurred towards Trane PO for Chillers, Chiller shifting, Cooling Towers, Pumps, Plant room works, including panels and other miscellaneous costs related to these facilities;
(v) cost towards STP,
(vi) cost towards water connection charges

XIX. That the complainant is liable to pay the fitout charges as per the leasing requirement.

XX. That there is absolutely no escalation in the sale consideration of the Unit, Fitout demands are as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the Unit.

XXI. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA.

XXII. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU.

XXIII. That the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact

that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner.

XXIV. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021.

XXV. It is noted herein that the building was completed and all the requirement for the grant of the Occupation Certificates were fulfilled and the respondent anticipated the grant of the Occupation Certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the Units in the project on lease, therefore, the respondent anticipating that the Occupation Certificate will be granted by the Competent Authority, entered into a 1st lease with the lessee.

XXVI. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to Assured Return was not clear and accordingly, a Writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.

XXVII. It is reiterated herein that the complainant under clause 8 (a) of the MOU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the lease, the amount of lease, usage or to who the unit is leased out.

XXVIII. It is noted herein that under Clause 8 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee.

XXIX. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.

XXX. That in Clause 7 (b) of the MOU it is categorically agreed by the complainant that in case of any increase in monthly lease rental in excess of the Assured Return, the sale consideration shall be enhanced by Rs. 54.55/- per sq. ft. for each rupee increase in the monthly lease rental and likewise, in case the monthly lease rental is reduced from the Assured Return, then for each decreased rupee per sq. ft. per month, the sale consideration shall stand decreased by Rs. 109.10/- per sq. ft.

XXXI. That under the said clause, it was also agreed that the final sale consideration shall be calculated in terms of clause 7 (b) of the MOU.

XXXII. That in view of the aforementioned clauses of the MOU, it is evident that the complainant have categorically agreed to pay increased sale consideration in circumstances where the unit is leased out at a higher rate in comparison to the assured return which was paid to the Complainant. Similarly, the sale consideration shall be reduced in circumstances where the lease rentals are less in comparison to the assured return which was paid to the complainant.

In fact, it is necessary to point out herein that when the sale consideration of the unit is increasing on account of higher lease rental, the increment occurs at the rate of Rs. 54.55/- per sq. ft. Conversely, when the sale consideration is decreasing on account of lower lease rental, then the same is decreasing at the rate of Rs. 109.10/- per sq. ft. Accordingly, it is evident that the rights of the complainants are not being compromised under any circumstances. therefore, the complainant is bound to fulfil the terms and conditions with respect to the increase in sale consideration as agreed under clause 7 (b) of the mou. it is noted herein that the sale consideration of the subject unit was negotiated on the basis of the guaranteed returns to be received by the complainant and any change in payments of guaranteed return will result in change in the sale consideration of the unit in terms with the mutually agreed terms and conditions of the MOU.

XXXIII. That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the *Banning of Unregulated Deposit Schemes Act, 2019* (BUDS Act) on 21.02.2019, any scheme involving Assured Return/Penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such Assured Return/Penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.

XXXIV. It is pertinent to mention herein that in the present complaint, the complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the respondent. It is noted herein that though the respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the

maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole.

XXXV. It is a matter of fact, that time was essence in respect to the complainant's obligation to make the respective payment. and, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.

XXXVI. That from the facts indicated above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the Agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

XXXVII. That the present complaint has been preferred by the complainants before the ld. authority on frivolous and unsustainable grounds and the complainant has not approached the ld. Authority with clean hands and is trying to suppress the material facts relevant to this matter.

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

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

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 maintainability of complaint on account of complainants being the investors.

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

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

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that

the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 01.04.2015. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

1) Direct the Respondent to pay monthly assured return of Rs. 45,000/- pm from July 2019 till lease rental commences and interest thereon.

2) Direct the Respondent to pay delayed possession charges from due date of possession till actual handover.

G.1) Assured Returns

15. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 01.04.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

16. 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.

17. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '

deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

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

18. 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;*

19. 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.

20. 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.
21. 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.
22. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the addendum agreement.
23. 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.
24. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 01.04.2015, which is reproduced below for the ready reference:

4.
The Company shall pay a monthly assured return of Rs. 45,000/- on the total amount received with effect from 01 April 2015 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.

25. Thus, as per the abovementioned clause the assured return was payable @Rs.45,000/-per month w.e.f. 01.04.2015, till the commencement of first lease.

26. In light of the above, the Authority is of the view that as per the MoU dated 01.04.2015, it was obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.45,000/-from the date i.e., 01.04.2015 till obtaining of Occupancy Certificate of the concerned project.

G.2) Delay Possession Charges:

27. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges in G.2 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"

28. The subject unit was allotted to the complainants vide MOU dated 01.04.2015. In the facts and circumstances of this case, the developer was obligated to

complete the construction of the said unit within 36 months from the date of execution of this agreement or from the start of construction whichever is later. It is to be noted that the MOU is being signed prior to the start of construction of the concerned project on date 15.12.2015. Hence, the period of 36 months is calculated from the date of start of construction i.e., 15.12.2015 being later. Accordingly, the due date of possession comes out to be 15.12.2018.

29. **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"*

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

31. 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;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
33. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 15.12.2018.
34. However now, the proposition before it is as to whether the allottees who are 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?
35. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 01.04.2015. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of Rs.45,000/- on the total amount received with effect from 01.04.2015 till the commencement of the first lease. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act,

2016, the assured return is much better i.e., assured return in this case is payable as Rs.45,000/- per month whereas the delayed possession charges are payable approximately Rs.25,911/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

36. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

37. In the present complaint, as per clause 4 of the MOU dated 01.04.2015, the amount on account of assured returns was payable from 01.04.2015 upto the commencement of the first lease which was executed on 24.07.2020. The first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 26.12.2024. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainants at the agreed rate i.e.,

@Rs.45,000/- per month from the date i.e., 01.04.2015 till the date of obtaining the Occupancy Certificate after deducting the amount already paid on account of assured return to the complainants.

3) **Direct the Respondent to mutually decide the terms of the lease deed and execute the same.**

4) **Direct the respondent not to raise any demands or charges from the complaints till the final adjudication of the present complaint.**

38. The Authority observes that the clauses incorporated in the Memorandum of Understanding executed between the parties are one-sided and heavily tilted in favour of the promoter. The obligations relating to disclosure of the proposed lease terms, the draft lease deed, and the rental amounts being particulars essential for informed consent which were not communicated to the complainant in a timely manner. Two of such clauses is reproduced hereinbelow for ready reference:

> *Clause 8(d) of the MoU:*
> *"The allottee confirms that **he shall not be entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease**. The decision taken and terms negotiated by the company shall be final and binding on the allottee."*
>
> *Clause 9(a) of the MoU:*
> *"That upon the termination of the first Lease Deed, company shall retain the right to further lease the said unit. **The company shall be authorized to lease the unit forever, till eternity** and for all time to come and in case the allottee desires to withdraw at any stage he will be returned the basic sale price in terms of the calculation mentioned at clause 16 of the present MOU. The allottee undertakes to not seek any escalation or increase in price of premises at the stage of surrender of the unit. The allottee understands that the present is purely a plan of return on the investment with a security lien on the undivided and non-demarcated space, therefore the allottee shall not be entitled to any escalation benefits at any stage. The allottee understands that he is being allotted non-demarcated and undivided space therefore even after the execution of the sale deed of the undivided portion at best allottee is entitled to refund in the above terms in case of cancellation or withdrawal*

and in no circumstance the allottee shall be entitled to partition or possession of the allotted premises."

39. The manner in which these clauses have been drafted and enforced reflects a clear misuse of the promoter's dominant position, compelling the allottee to sign the MoU without full knowledge of critical commercial terms. Consequently, the promoter cannot be permitted to take advantage of conditions that were never adequately disclosed, and any attempt to enforce such vague and unilateral obligations is unsustainable in the eyes of law.

40. The complainants have objected to the demand of fit-out charges raised by the respondent vide letter dated 17.04.2025, contending that such charges do not find any mention either in the BBA or in the MoU dated 01.04.2015 executed between the parties. Upon perusal of the record, it is observed that the said MoU does not contain any clause pertaining to fit-out charges not any clause like 8(d) as mentioned in the written submission filed by the respondent. In the absence of any supporting document, the demand raised towards fit-out charges cannot be sustained. Accordingly, the respondent is directed not to levy fit-out charges of Rs.20,65,000/- from the complainant in respect of the said unit.

41. 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

5) Direct the Respondent to not charge labour cess, FTTH, Development Charges, interest and issue revised and valid offer of possession.

42. The complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

- **Labour cess**

  Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess

to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Development charges**

The undertaking to pay the development charges was comprehensively set out in the buyer agreement in clause 11. The said clause of the agreement is reproduced hereunder: -

> *"11.*
>
> ***That the Allottee agrees to pay all taxes, charges.*** *Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST.* ***Development charges,*** *Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like.* ***These shall be paid on demand*** *and in case of delay. these shall be payable with interest by the Allottee"*

43. In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

The respondent during proceedings dated 16.09.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos.*** 3864-***3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under-

> 3. *"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the* ***holding*** *charges will not be payable to the developer.* ***Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer***

shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.

6) Direct the Respondent to refund VAT charges, EDC, registration charges collected illegally from the Complainants along with interest from date of payment till realization.

44. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that the rate at which the Respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. The promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis-à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

45. Furthermore, with regards to the EDC and registration charges, the registration of property at the registration office is mandatory for execution of the conveyance deed between the developer and the allottee. Besides the stamp duty, allottee also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is

significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter /developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.

7) Direct the Respondent to pay lease rental per month.

46. Accordingly, the Respondent is directed to make payment towards the balance assured return amount as well as to ensure that the unit in question is leased out in terms of the said MOU dated 01.04.2015 and the committed lease rentals are duly paid to the complainants without any delay.

H. Directions of the Authority

47. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondent/promoter is directed to pay the assured return to the complainants at the agreed rate of Rs.45,000/-per month as per the MoU dated 01.04.2015 till obtaining of Occupancy Certificate of the project after deducting the amount already paid on account of assured return to the complainants.

II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

III. The Fit-out charges demanded by the respondent are set-aside for the reasons discussed in paragraphs 40 and 41 of this order.

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

entitled to charge holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020***.

V. The respondent shall charge 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.

48. Complaint stands disposed of.

49. File be consigned to registry.

(Phool Singh Saini)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:11.11.2025