BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Order: 25.11.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Attendance
1.	CR/1942/2025	Vikanshu Narang V/S NEO Developers Private Limited	Garvit Gupta (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)
2.	CR/1944/2025	Sushil Kumar Narang V/S NEO Developers Private Limited	Garvit Gupta (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)

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

ORDER

1. This order shall dispose of the aforesaid 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, ***"Neo Square"*** Sector 109, Gurugram being developed by the same respondent/promoter i.e., ***M/s Neo Developers Pvt. Ltd.*** The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return, waiver of fit out charges and other reliefs.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid and amount are given in the table below:

Project Name and Location	"Neo Square", Sector 109, Gurugram, Haryana
Nature of the project	Commercial Colony
Project area	2.71 acres
Occupation certificate	14.08.2024

S. no.	Complaint no./title/ date of filing complaint	Unit No. and area admeasuring	Date of execution of agreement for sale	*Assured return clause*	Basic sale consideration and amount paid by the Complainants (s)
1	CR/1942/2025 Vikanshu Narang V/S NEO Developers Private Limited **DOF:** 25.04.2025 **RR:** 20.08.2025	Unit no. Virtual Unit FCV-06 And 100 Sq. ft. (page 43 of complaint) Allotte-09 On 3rd Floor (page no. 82 of the complaint)	**BBA:** 16.05.2015 (page 38 of complaint) **MOU:** 16.05.2015 (page 67 of complaint)	***Clause 04 of MoU*** *"The company shall pay a monthly return of Rs. 9,000/- on the total amount received with effect from 16.05.2015 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 Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee*	**B.S.C:** Rs. 10,88,105/- (as per payment plan at page no. 64 of complaint) **A.P.:** - Rs. 10,18,206/- (as per MoU at page no. 69 of reply)

				(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date" *(As per pg. no. 69 of the Complaint)* *(Note – The rate Rs.45,000/- of Assured returns has inadvertently mentioned in the proceedings dated 14.10.2025 and 25.11.2025)*	
2	CR/1944/2025 Sushil Kumar Narang V/S NEO Developers Private Limited **DOF:** 25.04.2025 **RR:** 20.08.2025	.Unit no. .Food Court space on 3rd floor And 100 Sq. ft. (page 37 of complaint)	**BBA:** 03.06.2015 (page 14 of complaint) **MOU:** 03.06.2015 (page 36 of complaint)	***Clause 04 of MoU*** *"The company shall pay a monthly return of Rs. 9,000/- on the total amount received with effect from 03.06.2015 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 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 pg no. 68 of the Complaint)* *(Note – The rate of Rs.45,000/- of Assured returns has inadvertently mentioned in the proceeding dated 25.11.2025)*	**B.S.C:** Rs. 9,77,100/- (as per page no. 39 of complaint) **A.P.:** - Rs. 10,18,200/- (as per page no. 68 of reply)

Reliefs sought by the complainant –

1. Respondent be directed to make payment towards the assured return till the commencement of the first lease of the unit along with interest as per law.
2. Respondent be directed to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession till the date of issuance of the valid offer of possession.
3. Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.
4. Direct the Respondent to revoke the letters dated 03.01.2025 and 01.03.2025.
5. Direct the Respondent to revoke the letter dated 28.02.2025 demanding fitout charges.
6. Respondent be directed not to charge any illegal demands under the garb of 'fitout charges', 'development charges', 'labour cess' and 'FTTH'.
7. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental.
8. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
9. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
10. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

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

Abbreviation	**Full form**
DOF:	**Date of filing of complaint**
BBA:	**Builder Buyer's Agreement**
MOU:	**Memorandum of Understanding**
AP:	**Amount paid by the allottee/s**
RR:	**Reply received**

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement/MoU executed between the parties in respect of subject unit for not handing over the

possession by the due date, seeking the delayed possession charges, assured return, revoking illegal demands and setting aside the other charges.

5. The facts of all the complaints filed by the complainants-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/1942/2025 titled as Vikanshu Narang Vs. M/s Neo Developers Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details.

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

CR/1942/2025 titled as Vikanshu Narang Vs. M/s Neo Developers Pvt. Ltd.

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	16.05.2015 (As per pg no.38 of the complaint)
7.	Unit no.	Virtual Unit FCV-06 (FOOD COURT) (As per pg no. 43 of the complaint) Allotte-09 On 3rd Floor (page no. 82 of the complaint)
8.	Unit area admeasuring	100 sq. ft. (Super Area) (As per pg. no. 43 of the complaint)

9.	Date of MoU	16.05.2015 (As per pg. no. 67 of the complaint)
10.	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.
11.	Possession clause	Not Available
12.	Due date of possession	16.05.2018 [Calculated as ***per fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors,(12.03.2018 - SC); MANU/SC/0253/2018***]
13.	Assured return Clause	*Clause 4.* *"The company shall pay a monthly return of* ***Rs. 9,000/- on the total amount received with effect from 16.05.2015*** *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 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 pg. no. 69 of the Complaint)*
14.	Total basic Sale consideration	Rs. 10,88,105/- (including GST, IFMD, EDC, IDC and taxes) As per pg. no. 64 of the Complaint)
15.	Amount paid by the complainant	Rs. 10,18,206/- (As per pg. no. 46 of the Complaint)
16.	Occupation certificate	14.08.2024 (As per DTCP site)

17.	Offer of possession	09.12.2024 (As per pg. no. 79 of the complaint)
18.	Reminders for payment	Letters dated 03.01.2025 (demand of Rs. 5,35,030/-) Fit-out demand on 28.02.2025 01.03.2025 (final reminder + holding/maintenance charges of Rs. 5,40,518/-)

B. Facts of the complaint.

7. 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' which claimed to comprise of several facilities on a piece and parcel of land situated in Sector-109, Gurugram, Haryana.

ii. The respondent stated that it is well established in the business of real estate development and has significant expertise in the marketing of commercial complexes in various parts of India. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 102 of 2008 dated 15.05.2008 on a land area of about 3.06 acres in Village Pawala, Khusrupur, District Gurugram for development of the Commercial Complex in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.

iii. That the complainant received a marketing call from the office of the respondent in the month of February, 2015 for booking in the said project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity done by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent.

iv. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as he required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively offered within the agreed time frame and thereafter the unit would be leased to the third party by the respondent. On the basis of the representations made by the respondent, the complainant decided to make the booking in the said project of the respondent by submitting an application form for the allotment of unit in the said project of the respondent and also made a payment of Rs. 4,00,000/- vide cheque dated 10.05.2015 to the respondent. The said amount was acknowledged by the respondent vide its receipt dated 14.05.2015.

v. The complainant further made a payment of Rs. 6,18,206 vide RTGS dated 16.05.2015 to the respondent towards the booking amount and the same was acknowledged by the respondent vide its receipt dated 16.05.2015.

vi. The respondent provided the complainant with a copy of the buyer's agreement. After going through the buyer's agreement, the complainant realized that the provisions contained in the said buyer's agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally un-balanced and unwarranted.

vii. The complainant repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. During such discussions, the Respondent assured the complainant that no illegality whatsoever, would be committed by them. The respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the Complainant to forfeit the previous amount paid towards the unit if the Buyer's Agreement was not signed and submitted. Hence, the complainant had

no other option but to sign the buyer's agreement on 16.05.2015. As per the terms of the buyer's agreement the complainant was allotted a virtual unit FCV-06 admeasuring 100 sq.ft. in the food court in the said project. Furthermore, as per annexure-i of the said buyer's agreement, the basic sale consideration including GST of the unit was Rs.10,18,205/- and the total consideration of the unit was Rs.10,88,105/- inclusive of IFMD, EDC, IDC and taxes.

viii. That on the said date, a memorandum of understanding (MOU) was also executed between the respondent and the complainant. It was reiterated in Clause 4 of the MOU that the complainant has made a payment of rs. 10,18,206/- to the respondent. As per the terms of the MOU, it was agreed that the respondent will make payment to the complainant under the nomenclature of 'assured return' of Rs. 9,000/- per month from 16.05.2015 onwards till the commencement of the first lease on the said unit. The respondent had categorically assured at the time of the execution of the said mou that it would be diligent in making payment towards the assured return amount and in adhering to its contractual obligations.

ix. It is submitted that as per clause 4 of the said MOU, it was agreed that the Respondent would pay assured return of Rs. 9,000/- per month.

x. Furthermore, it was agreed vide clause 7(a) of the said MOU that the respondent would make payment of lease rentals to the complainant from commencement of first lease. Furthermore, 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.

xi. That despite having made the MOU dated 16.05.2015, the respondent failed to specify the due date of possession and made the MOU very much favorable as per the wishes of the respondent.

xii. That this Hon'ble Authority placing reliance on the Judgment of the Hon'ble Supreme Court in the case of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 – SC); MANU/SC/0253/2018 has observed that in case there is no agreement or where no due date has been specified in the Agreement, then a reasonable period of 3 years from the date of booking would be considered as an apt time in which the promoter would be bound to offer the possession of a plot/unit/apartment. Thus, the unit was to be offered within 3 years from the date of booking of the unit. Since, the booking was made by the complainants on 16.05.2015, the due date to offer the possession of the unit to the respondent was 16.05.2018. Hence, as per the provisions laid down by law, the possession of the unit was to be offered by the respondent to the complainants latest by 16.05.2018.

xiii. That the respondent was under an obligation as per the MOU executed between both the parties to make payment towards the monthly assured return from 16.05.2015 till the commencement of first lease of the said unit in question.

xiv. The respondent in furtherance of the agreed terms made payments towards the monthly assured returns till the month of june, 2019. Thereafter, the respondent discontinued to make the payment towards the monthly assured return. The complainant vides an email dated 02.07.2019 inquired from the respondent about the pending monthly assured returns payable by the respondent to the complainant. The respondent in response to the said email informed the complainant vide an email dated 04.07.2019 that the cheques are delayed at the end of the respondent due to shift of funds towards the completion of the project and requested the complainant to give time to the respondent for the payment of the same. The complainant in good faith believed the assurances made by the representatives of the respondent with

a hope that the respondent would adhere to its contractual obligations. However, the respondent failed to make any further payment towards the monthly assured return and assured the complainant that the pending monthly assured returns would be adjusted at the time of offer of possession.

xv. That the respondent vides its letter dated 01.02.2022 informed the complainant that the respondent had applied for the Occupation Certificate in 2021, and that this Hon'ble Authority wanted to make certain modifications before the grant of the OC and thus, the respondent had withdrawn the application for OC. Furthermore, the respondent vides the said letter also assured the complainant that payment towards the monthly interest would be adjusted at the time of possession.

xvi. That instead of offering the possession of the said unit within the agreed time frame, the respondent sent a reminder letter dated 03.01.2025 for demand notice payment and offer of possession, informing the complainant that an amount of Rs. 5,35,030/- was due for payment.

xvii. That the complainant never received any aforementioned demand notice and offer of possession from the respondent. The respondent with a malafide intention to extract money from the complainant issued the said reminder letter and also threatened the complainant that the respondent shall cancel the said unit if the illegal demands of the respondent will not be paid.

xviii. That, the complainant was in complete shock and was surprised to note that the respondent vide letter dated 28.02.2025 illegally demanded an additional amount of Rs. 4,13,000/- towards fitout charges. The complainant was never informed that the respondent had any right to demand any such fitout charges from the complainant. The parameter of fit out charges never found mentioned in buyer's agreement or in the MOU and the complainant

was informed about the same for the first time at the time of receipt of the letter dated 28.02.2025 only.

xix. 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 provisions laid down by law. The respondent cannot demand such charges and the complainant is not legally liable to make any payment against the same. Importantly, vide letter dated 28.02.2025, the respondent has admitted that the respondent would offer the possession of the unit to the complainant only after the complainant makes the payment towards the said illegal charges.

xx. That the respondent served a final reminder letter dated 01.03.2025 to the complainant asking the complainant to remit the outstanding payment at the earliest, along with holding charges at the rate of Rs.10/- per sq. ft. per month along with maintenance charges. Furthermore, the respondent vide the said letter again threatened the complainant that in case of default to pay the said outstanding amount the respondent shall be constrained to cancel and terminate the allotment of the said unit.

xxi. Furthermore, the letters dated 03.01.2025 and 01.03.2025 sent by the respondent were absolutely silent about the amount of the monthly penalty as assured by the respondent. Hence, the said letters were in complete contrast to the terms of the MOU. The respondent vide its letter dated 01.02.2022 assured the complainant that the monthly assured return would be adjusted at the time of offer of possession. However, the respondent completely sidelined its own obligations and failed to adjust any such amount in the remaining sale consideration. Even this Hon'ble Authority while ascertaining the validity of offer of possession in its judgment titled 'Varun Gupta vs Emaar MGF Land Ltd', has held that the respondent cannot make

additional demands along with the offer of possession. Hence, the said letters dated 03.01.2025 and 01.03.2025 are illegal and does not stand the test of law. An offer of possession is to be issued by the respondent to the complainant wherein no additional amount would be demanded from the complainant and the assured return amount would be adjusted.

xxii. That furthermore, there is an inordinate delay of more than 82 months calculated from the due date of possession up to March 2025 and till date basic requirements including offer of possession after sending a valid offer of possession and adjustment of the amount of the monthly assured return has not been completed due to default of respondent. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter.

xxiii. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and offer of possession of the unit in question to the complainant as per the terms of allotment. the respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant.

xxiv. That the complainant has already made substantial payment against the sale consideration of the unit. The complainant has been duped of his hard-earned money paid to the respondent regarding the unit in question. the complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.

xxv. That the respondent by adopting unfair trade practices, misuse of funds, failed to offer a valid offer of possession of the unit allotted to the complainant as well as the other allottees. The respondent has extracted sale consideration

of the unit from the complainant as well as from other allottees and miserably failed to offer a valid the possession. Instead of abiding by the terms of the contract, the respondent is now threatening the complainant to cancel the allotment and also forfeiting the already paid substantial amount.

xxvi. That the complainant fears that the respondent would deliberately not lease out the said unit of the complainant. In this scenario, it is important for this Hon'ble Authority to order that in case the respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of occupation certificate or to demarcate the unit and handover the physical possession of the unit to the complainant.

xxvii. That the respondent has violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and is liable for the same. As per section 18 of RERA 2016 and Rules 15(1) and 15(3) of Haryana RERA Rules, 2017, the respondent/promoter is liable to pay interest for every month of delay till offer over of possession.

C. Relief sought by the complainants

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

1) Respondent be directed to make payment towards the assured return from July 2019 onwards till the commencement of the first lease of the unit along with interest as per law.
2) Respondent be directed to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession i.e. 16.05.2018 till the date of issuance of the valid offer of possession.

3) Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.
4) Direct the Respondent to revoke the letters dated 03.01.2025 and 01.03.2025.
5) Direct the Respondent to revoke the letter dated 28.02.2025 demanding Rs. 4,13,000/- as fitout charges.
6) Respondent be directed not to charge any illegal demands under the garb of 'fitout charges', 'development charges', 'labour cess' and 'FTTH'.
7) Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.
8) Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental.
9) In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
10) Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

D.Reply by the respondent

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

i. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant have not approached this Hon'ble Authority with clean hands and are trying to

suppress material facts relevant to the matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.

ii. That the complainants, applied for and were allotted a commercial unit in the project titled "NEO SQUARE" situated at Sector-109, Dwarka Expressway, Gurugram. The said unit with FCV-06, allotted on the 3rd floor, measuring approximately 100 square feet super area in the designated food court and entertainment space. The total basic sale consideration for the said unit was agreed at Rs.9,81,000/-. A builder buyer agreement executed on 16.05.2015 and a memorandum of understanding executed between the parties on 16.05.2015.

iii. That the respondent, in good faith and in compliance with contractual obligations, issued a written reminder dated 24.04.2025 to the complainant, calling upon them to clear the outstanding maintenance dues amounting to Rs 9,942/-. However, the complainant failed to respond to or comply with the said reminder, thereby wilfully continuing in default and displaying a deliberate disregard of both contractual and statutory obligations.

iv. That as per the terms and conditions of the executed memorandum of understanding between the parties, the fit-out works are a mandatory and integral requirement prior to the commencement of any lease arrangement. Without completion of such fit-out, the unit is not in a condition fit for leasing or occupation by any prospective lessee. Thus, the demand towards fit-out charges is a direct contractual obligation, voluntarily accepted by the allottee, and cannot be termed as illegal or arbitrary.

v. That the obligation to hand over possession of the unit in a lease-ready condition necessarily includes completion of fit-out works. Such works are not mere discretionary amenities but essential functional requirements without which the unit cannot be commercially utilised. Hence, the demand of fit-out charges is neither an extra-statutory levy nor beyond the contractual scope; rather, it is a condition precedent to the complainant's own benefit under the MOU.

vi. Without prejudice, it is submitted that the Respondent has duly honored its obligations in good faith and made payments of assured returns as per the contractual terms. The Complainant, by concealing these material facts, is attempting to mislead this Authority and misuse the benevolent provisions of the RERA Act

vii. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

viii. That under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.

ix. That a perusal of Section 13(2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.

x. That the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance where the project was an

ongoing project and provisions of the act were being made applicable, in such a situation, a strict interpretation of the statutory provisions is being mandated.

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

xii. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under Section 31 of the Act. Further, the Provisions of Section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the Act and Rules/Regulations made there under.

xiii. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the Promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.

xiv. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the Agreement of

Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

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

xvi. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

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

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

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

xx. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:

> *"11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said*

agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.

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

xxii. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

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

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

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

xxv. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to

Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.

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

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

xxviii. 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.

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

xxx. That recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. Vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits

till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

xxxi. That as the complainant in the present complaint is seeking the relief of assured return/penalty, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.

xxxii. A bare reading of Section 13(2) demonstrates that Assured Return/Penalty is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.

xxxiii. That Moreover, the present complaint is based on the terms of an mou entered into between the parties, which is distinct from the builder-buyer agreement. The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.

xxxiv. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other

charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

xxxv. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.

xxxvi. That the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

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

xxxviii. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the

respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. No.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7th of April, 2015 to 6th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.

3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st

					Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and 17th Nov, 2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real

					estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide	Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread,

				lockd own)	and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major caure of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

xxxix. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of force majeure. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the

Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

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

11. 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

1. 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

2. 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

3. 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.

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

F. Findings on the objections raised by the respondent.

F. I. Objection regarding the complainants being investor.

5. The respondent has taken a stand that the complainant is investor 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 16.05.2015, it is revealed that the complainants are buyers, and they have paid a total price of Rs.10,18,206/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

6. 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.

7. 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, etc. As per MoU, the due date of possession was 16.05.2018. 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 consideration while launching the project. Thus, the promoter/respondent cannot 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 complainant.

I. Respondent be directed to make payment towards the assured return from July 2019 onwards till the commencement of the first lease of the unit along with interest as per law.

II. Respondent be directed to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of

possession i.e 16.05.2018 till the date of issuance of the valid offer of possession.

G.I) Assured Returns

8. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 16.05.2015 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

9. 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 promoter-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.

10. 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 properly as specified in terms of the agreement or arrangement.

11. 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;*

12. 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.
13. 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.
14. 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.

15. 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 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.

16. 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.

17. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 16.05.2015, which is reproduced below for the ready reference:

> *4.*
> ***The Company shall pay a monthly assured return of 9,000/- on the total amount received with effect from 16.05.2015*** *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.*

18. Thus, as per the abovementioned clause the assured return was payable @Rs.9,000/- per month w.e.f. 16.05.2015, till the commencement of first lease.

19. Furthermore, the respondent promoter issued a letter on 07.12.2021 stating that the Assignment of Lease will be prepared and submitted to the complainant for review and signature. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the competent authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The validity of the said lease can be considered only upon obtaining the Occupation Certificate, i.e., on 14.08.2024, and the liability shall extend up to the date of obtaining the Occupation Certificate

20. In light of the above, the Authority is of the view that as per the MoU dated 16.05.2015, 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.9,000/- from the date i.e., 16.05.2015 till obtaining of Occupancy Certificate after deducting the amount already paid on account of assured return to the complainant.

E.II) Delay Possession Charges:

21. 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"

22. **Due date of possession**: The subject unit was allotted to the complainants vide MoU dated 16.05.2015. As per the documents available on record, nowhere in the MoU mentioned the period of possession/due date of possession hence the same cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"

23. In the instant case, the MoU executed between the parties on 16.05.2015. In view of the above-mentioned reasoning, the date of MoU ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession comes out to be 16.05.2018.

24. **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"*

25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

26. 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;"*

27. 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.
28. 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 16.05.2018.
29. 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?
30. To answer the above proposition, it is worthwhile to note that the assured return is payable to the allottees in terms of the provisions of the MoU dated 16.05.2015. In the present case, the promoter had agreed to pay a fixed monthly assured return on the total amount received from the complainants with effect from 16.05.2015 till the commencement of the first lease of the subject unit. A comparison between the assured return stipulated under the MoU and the delayed possession charges payable under the proviso to Section 18(1) of the Act, 2016 reveals that the assured return is more beneficial to the allottees. By way of the assured return clause, the promoter assured the allottees of a specific monthly compensation until the unit is put on valid lease. Moreover, the interest of the allottees continues to remain protected even after completion of construction, as the assured return is payable till the unit or space is actually leased out. The underlying objective of delayed possession charges, namely safeguarding the interest of the allottees for continued use of their funds by the promoter beyond the stipulated date of possession, stands duly satisfied by the payment of assured return after the due date of possession. Accordingly, the

allottees are entitled to receive either the assured return or delayed possession charges, whichever is higher, for the relevant period.

31. 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.

32. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 24.07.2020. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the competent authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. Therefore, the respondent's contention in written arguments dated 11.09.2025 regarding the non-payment of Assured Return after the execution of first lease lease is hereby rejected. The validity of the said lease can be considered only after obtaining the Occupation Certificate, i.e., on 14.08.2024, and the liability shall extend up to the date of possession is offered after obtaining the Occupation Certificate.

33. In the present complaint, as per clause 4 of the MOU dated 16.05.2015, the amount on account of assured returns was payable from 16.05.2015 up to 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 09.12.2024. 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.9,000/- per month from the effective date i.e., 16.05.2015 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainant.

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

III. **Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.**

IV. **Direct the Respondent to revoke the letters dated 03.01.2025 and 01.03.2025.**

V. **Respondent be directed not to charge any illegal demands under the garb of 'fitout charges', 'development charges', 'labour cess' and 'FTTH'.**

35. The complainants have further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated 16.05.2015or the MoU executed on the same date. The impugned demand letter dated 24.12.2024 reflects components such as IFMS, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainants. The authority of the view that:

- **Labour cess**

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

- **Development charges**

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

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

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

- **FTTH Charges**

The respondent during proceedings dated 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.

- **Maintenance charges**

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 right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

VI. Direct the Respondent to revoke the letter dated 28.02.2025 demanding Rs. 4,13,000/- as fit-out charges.

36. The letter dated 28.02.2025, demands Fit-out charges which amounting Rs. 4,13,000/-. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.4,13,000/- and has directed the complainant to make the said payment in favor of a third party, namely *H5 Hospitality LLP*, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties.

37. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 28.02.2025 towards fit-out charges amounting to Rs.4,13,000/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.

38. Further, it is observed that on the proceeding date of hearing, i.e., 14.10.2025, the counsel for the respondent contended that the demand of Fit-outs has been raised strictly in terms of clause 8(d) of the Memorandum of Understanding and clause 11 of the Buyer's Agreement dated 16.05.2015. It was further argued that under Clause 9 of the MOU, the complainant had authorized the respondent to finalize the terms and conditions of the lease. Upon perusal of the MOU dated 16.05.2015, this Authority finds that the said MoU does not contain any 8(d) clause authorizing the respondent to levy fit-out charges. In the absence of any

contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law.

VII. **Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental.**

VIII. **In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.**

39. 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 and the committed lease rentals are duly paid to the complainants without any delay.

40. The complainant is 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(b) of the MoU dated 16.05.2015, it was agreed that the respondent would make payment of lease rentals at Rs.54.55/- 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 16.05.2015.

IX. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

41. In view of the fact that the complainant has already paid a substantial portion of the sale consideration towards the subject unit, the respondent is hereby restrained from creating any third-party rights, interest, charge, lien, encumbrance, or alienation of any nature whatsoever in respect of the said unit, till the handing over of possession of the unit to the Complainant in terms of this order.

X. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

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

43. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the Authority

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

I. The respondent/promoter is directed to pay the assured return to the complainant at the agreed rate of @Rs.9,000/- per month as per the MoU dated 16.05.2015 till obtaining of Occupancy Certificate of the project i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainant. (*Inadvertently, vide proceedings dated 02.12.2025, the rate of assured returns mentioned as @45,000/- and effective date is 01.06.2015.*)

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. 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 and the committed lease rentals are duly paid to the complainants without any delay.

IV. The Fit-out charges demanded by the respondent are set-aside for reasons discussed in paragraph no. 36, 37 and 38 of this order.

V. 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.***

VI. The respondent is directed to recover development charges and maintenance charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

VII. The respondent shall not charge any interest on delayed payment from the complainant

VIII. 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.

IX. 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.

X. The respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 16.05.2015.

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

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

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

47. Files be consigned to registry.

(Phool Singh Saini)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:25.11.2025