BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No:	**1869 of 2025**
Date of Filing:	**08.04.2025**
Date of Order:	**02.12.2025**

Jitender Yadav
R/o: House No. 256, VPO Kherki Daula Gurgaon, 122004.

Complainant

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 Garvit Gupta (Advocate)	**Counsel for Complainant**
Shri Venkatesh Dubey (Advocate)	**Counsel for Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28

of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

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

S. N.	Particulars	Details
1.	Name of the project	"Neo Square", Sector 109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
5.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021 plus 6 months of extension due to COVID-19 = 23.02.2022
6.	Unit no.	Unit no. 163 on first floor (As per Payment request letter at pg. no. 45 of the complaint) Unit No. 1-24 (At pg. 65 of the complaint in demand notice and offer of possession letter dated 29.11.2024)
7.	Unit area admeasuring	439 Sq. Ft. on First Floor (old) (As per pg. no. 37 of the complaint)

		1-24 on First Floor with revised are 429.8100 Sq. Ft. (New) (As per pg no. 65 of the complaint)
8.	Date of execution of agreement to sell	N/A
9.	Date of execution of MoU	07.03.2014 (as per page no. 35 of reply)
10.	Assured Return Clause as per MoU	*Clause 3.* *"That Company hereby has agreed to allot to the Allottee(s) premises measuring 439 sq.ft. (40.78 Sq.Mt.) Super built up area on the First floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 10250/- per sq.ft. taking into consideration a return of Rs. 97/- Per Sq.ft. per month, subject to the terms of this MOU."* *Clause 8.* *"That the responsibility of paying assured returns to be paid by the Company shall cease upon the Possession or within 30 days of Notice of possession by the Company to the Allottee(s)."* *(As per pg. no. 38 of the complaint)*
11.	Due date of possession	07.03.2017 [3 years from the date of signing of the MoU - Calculated as per ***Fortune***

		Infrastructure and Ors. Vs. Trevor D'lima and Ors. (12.03.2018) – SC); MANU/SC/0253/2018]
14.	Total sale consideration	Rs 62,20,292/- (As per page no. 44 of reply)
15.	Amount paid by the complainant	Rs. 48,65,588/- (As per page no. 44 of reply)
17.	Occupation certificate /Completion certificate	14.08.2024 (As per the DTCP site)
18.	Offer of possession	29.11.2024 (As per pg. no. 65 of the complaint)
19.	Reminder letters	03.01.2025 and 01.03.2025 (As per pg. no. 71 and 73 of the complaint)
20.	Demand for maintenance charges	24.04.2025 (As per pg. no. 48 of the reply)

B. Facts of the complaint.

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

i. That the complainant received a marketing call from the office of the respondent in the month of november, 2013 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. It was specifically projected by the respondent that the main USP of its said project is that it would diligently offer the allottees assured return on the amount paid by the complainant.

ii. 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 given within the agreed time frame. It was also agreed between the parties that the complainant will opt for the 'Investment Return Plan' for the unit in the said project of the respondent. On the basis of the representations made by the respondent, the complainant made a booking in the said project of the respondent and made a payment of Rs.44,33,356/- vide cheques dated 21.02.2014, 04.03.2014 and 05.03.2014 to the respondent.

iii. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the mou to the respondent. The complainant repeatedly requested the respondent for execution of MOU 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 mou and further threatened the complainant to forfeit the previous amount paid towards the unit if the mou was not signed and submitted. The complainant was left with no other option but to sign the one-sided mou for allotment of a unit in the project of the respondent. As per recital of the MOU, the respondent specifically mentioned that the booking made by the complainant was for the allotment of unit no. 63 on first floor admeasuring super area of 439 sq.ft. and that the complainant has opted for investment return plan. Relevant recital of the MOU is reproduced here: -

"AND WHEREAS the Allottee(s) herein had made an application for the allotment of Provisional Commercial Unit No. 63 on First Floor (hereinafter referred to as the said Commercial unit in the said building) admeasuring an approximate Super Area of 439 Sq. Ft. (40.78 Sq. Mtr.) super built up area and the allottee(s) have opted for Investment Return Plan."

iv. That as per Clause 3 of the MOU, the Respondent categorically mentioned that the Complainant has opted for 'Investment Return Plan' and has agreed that the basic consideration for the allotment of the said unit is to be determined at Rs. 10,250/- per sq. ft taking into consideration a return of Rs. 97/- per sq.ft. per month.

Clause 3 of the MOU is reproduced below: -

"3. That Company hereby has agreed to allot to the Allottee(s) premises measuring 439 sq.ft. (40.78 Sq.Mt.) Super built up area on the First floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 10250/- per sq.ft. taking into consideration a return of Rs. 97/- Per Sq.ft. per month, subject to the terms of this MOU."

v. That as per clause 15 of the MOU, it was agreed between the parties that the complainant has paid the respondent an amount of Rs.44,33,356/- prior to the execution of the mou and the same fact was reiterated in clause 14 of the MOU that the total basic selling consideration as on the date of the signing of the MOU has been paid.

vi. It is submitted that as per clause 3 of the said MOU, it was agreed that the Respondent would pay monthly return of Rs. 97/- per sq.ft. The respondent reiterated the same in clause 15 of the mou and categorically mentioned that the respondent shall pay a monthly return of Rs. 42,583/- on the total amount deposited till the signing of the MOU with effect from 07.03.2014. As per Clause 8 of the MOU, the Respondent was under the obligation to pay the

assured returns to the Complainant and that such obligation shall cease upon possession of the unit or within 30 days of notice of possession by the Respondent to the Complainant. Relevant Clauses of the MOU are reproduced below: -

Clause 15. That the Allottee(s) has paid the unto Company upon and/or prior to the execution of this MOU an amount of Rs. 44,33,356 (Rupees forty-four lakh thirty-three thousand three hundred fifty-six only) ..... The Company shall pay a monthly return of Rs. 42,583 (Rupees Forty-two thousand five hundred eighty-three only) on the total amount deposited till the signing of this MOU, with effect from 07.03.2014.

Clause 14. That the total Basic selling Price consideration as on the date of signing of this MOU determined has been paid.....

Clause 8. That the responsibility of paying assured returns to be paid by the Company shall cease upon the Possession or within 30 days of Notice of possession by the Company to the Allottee(s)."

vii. That the respondent vide its payment demand dated 16.12.2015 demanded Rs. 2,08,086/- from the complainant on account of EDC and IDC. The complainant made the said payment of Rs. 2,08,086/- vide Cheque dated 30.12.2015. The said amount was acknowledged by the Respondent vide Receipt dated 02.01.2016. The respondent further sent two payment requests dated 30.03.2017 for payment towards VAT which was charged @5% on BSP, EDC, IDC, PLC & Car Parking. The complainant made payment towards vat of Rs. 2,24,146/- vide cheque dated 08.06.2017 on the demand of the respondent.

viii. That despite having made the MOU dated 07.03.2014, the respondent failed to specify the due date of possession and made the MOU very much favourable as per the wishes of the respondent.

ix. It is pertinent to mention here 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 07.03.2014, the due date to offer the possession of the unit to the respondent was 07.03.2017. Hence, as per the provisions laid down by law, the possession of the unit was to be offered by the respondent to the complainant latest by 07.03.2017.

x. It is pertinent to mention herein 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 07.03.2014 till the possession of the unit. It was specifically mentioned in clause 18 of the mou that the respondent in terms of its commitment to pay the monthly assured returns till possession shall issue the post-dated cheques for each financial year and that the post-dated cheques shall not be dishonoured for any of the reason. Clause 18 of the MOU is reproduced below: -

> *"18. The builder in terms of its commitment to pay the assured return till possession shall issue the post dated cheques for each financial year taking into consideration the expected period of possession. The postdated cheques shall not be dishonored for any of the reason."*

xi. 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 payment towards the monthly assured returns to the complainant. The complainant visited the

office of the respondent to enquire about the monthly assured return but the respondent paid no heed to the genuine concerns of the complainant.

xii. That the complainant vide an email dated 01.06.2023 requested the respondent to update the postal address of the complainant and to share the soft copy of the draft of the builder buyer's agreement. The respondent vide an email dated 02.06.2023 shared the soft copy of the BBA and intimated the complainant that the postal address has been updated. On going through the terms of the BBA, the complainant realised that the respondent had mentioned the sale consideration amount to be rs. 60,11,832/- towards the unit number 24. However, as per the MOU dated 07.03.2014, the complainant was allotted unit no. 63 on first floor for sale consideration of Rs. 44,99,750/-.

xiii. It is pertinent to mention herein that the complainant had already paid an amount of Rs.48,65,588/- to the respondent. The complainant sought clarification in this regard from the respondent via email dated 28.07.2023 and specifically mentioned that the complainant will sign the BBA after seeking clarification on the aforementioned queries. However, the respondent made no efforts to revert to the queries of the complainant. the complainant sent another email dated 08.08.2023 awaiting reply from the respondent with regard to the abovementioned queries, but the respondent paid no heed to the genuine concerns of the complainant.

xiv. The complainant made another correspondence vide an email dated 08.11.2024 to the respondent enquiring about the pending assured return amount and the registration process of the unit in question. However, yet again, no heed was paid to the genuine grievances of the complainant.

xv. That the respondent finally, after a considerable delay vide its demand notice and offer of possession dated 29.11.2024, intimated the

complainant that the unit allotted to him was ready for possession as the respondent had obtained the occupation certificate. On-going through the terms of the offer of possession, the complainant was shocked to see that the respondent has unilaterally changed the unit no. and the area of the unit of the complainant without the consent of the complainant. it is pertinent to mention herein that it was agreed and reiterated by the respondent in the mou dated 07.03.2014 and in the payment requests sent by the respondent that the complainant was allotted unit no. 63 on first floor admeasuring 439 sq.ft in the said project. However, the respondent vide the said offer of possession changed the unit no. to 1-24 on first floor with revised area of 429.81 sq.ft. in the said project. Such change in the unit no. was neither made on necessary actions of the government or any public authority nor after obtaining the consent of the complainant. Thus, the said change was made unlawfully by the respondent.

xvi. Hence, the said offer of possession was in complete contrast to the terms of the MOU. The respondent in a completely illegal manner had demanded rs. 30,95,678/- vide the said offer of possession. It was assured by the respondent vide its letter dated 01.02.2022 that the pending assured returns would be adjusted at the time of offer of possession.

xvii. Hence, the said offer of possession dated 29.11.2024 is illegal and does not stand the test of law. The said offer of possession dated 29.11.2024 is liable to be recalled and a fresh 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. The respondent cannot demand such illegal charges as sought to be done by it and the same are to be considered and adjudicated as illegal.

xviii. That the complainant challenged the imposition of such unlawful charges that were demanded by respondent under the garb of a so called 'legal' offer of possession. The complainant made vocal of his objections and sought clarifications from respondent. However, respondent failed to pay heed to any of the genuine queries raised by the complainant. The complainant visited the office of the respondent multiple times but received no positive response from the respondent. Rather, the representatives of the respondent kept on dilly dallying the concerns of the complainant. The complainant was constrained to send emails dated 01.12.2024, 04.12.2024 and 11.12.2024 requesting the respondent to give clarifications with respect to the illegal charges demanded by the respondent from the complainant vide the said offer of possession and non-adjustment of the assured returns promised to the complainant.

xix. That the respondent failed to respond to the said emails. Rather the respondent continued to demand the payments against the illegal charges along with interest vide its reminder letter dated 03.01.2025. The complainant vides an email dated 30.01.2025 requested the respondent to respond to the emails as sent by the complainant and provide the complainant with the correct demand notice and offer of possession. However, yet again the respondent failed to respond to the said emails and letters sent by the complainant and sent a final reminder dated 01.03.2025 to remit the outstanding payment at the earliest to avoid any further accrual of the interest.

xx. The respondent vide an email dated 04.03.2025 again threatened the complainant to remit the outstanding amount, otherwise the respondent would cancel the unit of the complainant. The complainant vide another email dated 05.03.2025 requested the respondent to pay the assured

returns to the complainant in order to proceed further, but the respondent paid no heed to the correspondences made by the complainant.

xxi. That the respondent has misappropriated and siphoned the funds of the complainant and by doing so, cheated the complainant. The complainant had trusted the respondent with a dream to have a unit to himself but the respondent has breached the trust of the complainant and snatched away such dream and also caused huge financial losses to the complainant.

C. Relief sought by the complainant

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

I. Respondent be directed to make payment towards the monthly returns from July, 2019 onwards till valid offer of possession along with interest as per law.

II. Respondent be directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date i.e., 07.03.2017 till the date of valid offer of possession.

III. Direct the Respondent to revoke the offer of possession dated 29.11.2024 and issue a valid offer of possession of the unit in a habitable condition.

IV. The Respondent be directed not to charge the Labour Cess, FTTH Charges, and Interest on Delay Payment. Further, the Respondent be directed not to charge Development charges of Rs. 3,10,812/- from the Complainant or any amount towards development charges from the Complainant.

V. Respondent be directed not to charge PLC from the Complainant.

VI. Respondent be directed not to further charge VAT amount from the Complainant as the same stands paid by him.

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

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

X. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.

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

D. Reply by the Respondent

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

I. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form in the year of 2014, requesting the respondent to allot a unit/space, admeasuring 439 sq. ft. super area in the project "NEO Square" (hereinafter referred to as the "Project").

II. Considering the request of the complainant, the respondent allotted a provisional unit no. 63, on 1st floor, admeasuring 439 sq. ft. super area, (hereinafter referred to as the "Subject Unit/Unit").

III. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.

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 07.03.2014 (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 the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit, requested the complainant to forward to complete the formalities with respect to leasing of the unit.

VI. The Occupation Certificate of the Project was granted by the Competent Authority on 14.08.2024.

VII. Thereafter, the respondent sent an offer of possession letter dated 29.11.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

VIII. 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 03.01.2025, 20.02.2025 and 01.03.2025 requesting the complainant to do the needful.

IX. That the respondent *vide* letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.

X. That the respondent *vide* letters dated 30.10.2020, 15.09.2021, 30.09.2021, requested the complainant to make payment of the VAT charges as per the agreed terms and conditions of the BBA & MoU.

XI. It is further submitted that the respondent had duly discharged its obligations by paying a sum of Rs.27,16,796/- (Rupees Twenty-Seven Lakh Sixteen Thousand Seven Hundred Ninety-Six only) to the complainant towards assured return up to 15.02.2020. It is only subsequent to the complainant's default in fulfilling his contractual obligations and in view of the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act), that the Respondent was constrained to discontinue further payments under the assured return arrangement.

XII. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

XIII. Relevant Clauses of the MOU are reproduced hereinbelow:

> *"10 That the Allottee(s) herein authorizes the Company to finalize the terms for leasing the said unit with any prospective lessee. The Allottee(s) undertakes not to object to the terms of the lease and further undertakes not to object as to whom the Lease shall be or what shall be the lease amount.*
>
> *11(a) That as and when the terms are finalize between Company and any prospective lessee to lease the unit, the lessee may, if advised by Company, separately execute the lease deed with the Allottee(s).*

11(b) PROVIDED FURTHER that the Company shall be at liberty to finalize a Group Lease arrangement with any prospective lessee. For the purposes of this clause, the term Group Lease shall mean and include a situation where the same lessee takes on lease more than one unit either simultaneously or in a staggered sequence of leases, whether directly from the respective unit owners, or through any person nominated by such unit owners, or through a group constituted by the unit owners for the purpose of leasing their respective units to the said prospective lessee

11 (c) The Said Unit is being allotted to the Allottee(s) on the consideration that the Allottee(s) shall be leasing the property through Company...."

XIV. It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. 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.

XV. It is noted herein 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:

- Change in government norms, which led to cost incurred towards Electrification;
- cost incurred towards the Electrical meter charges;
- cost incurred towards power backup charges;

- 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;
- cost towards STP,
- cost towards water connection charges.

XVI. That from a bare perusal, it is evident that the complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.

XVII. That due to additional costs incurred by the respondent in providing the aforementioned facilities, the development charges are demanded from the complainant. Therefore, as per the agreed terms and conditions of the BBA, the complainant is bound to pay the development charges and the respondent is entitled to recover the same, so it is evident that there is no escalation in the price of the subject unit, the price remains frozen, that the development charges as and when could have been quantified, the respondent would have been in a position to charge.

XVIII. It is submitted that the Complainant, after fully understanding the terms and conditions, voluntarily executed the Memorandum of Understanding (MOU) with the Respondent. In Clause No. 13 of the said MOU, it is categorically stipulated that the Complainant shall be liable to pay all development charges, apart from the basic sale consideration. Clause 13 specifically enumerates such charges to include, inter alia, External Development Charges (EDC), Internal Development Charges (IDC), Preferential Location Charges (PLC), Interest Free Maintenance Security (IFMS), Security Deposit, Registration Fees, Stamp Duty, statutory duties, taxes, levies, and other lawful charges as may be demanded by the Respondent.

XIX. It is pertinent to mention herein that as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the Unit, Fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the Unit.

XX. 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 mou. 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.

XXI. It is reiterated herein that the complainant under clause 10 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.

XXII. It is noted herein that under clause 11 (a) 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.

XXIII. Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand the complainant is seeking payment of assured return on the basis of mou, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the MOU.

XXIV. It is pertinent to mention herein that the complainant is a investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.

XXV. It is most humbly submitted that the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. that the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the bba. in fact, the complainant has executed an mou which records the terms and conditions pertaining to leasing rights and lease rental, etc. also, because the complainants themselves have entrusted the respondent with the leasing rights of the units.

XXVI. That the demand letter dated 22.02.2024 & 10.04.2024 is issued in consonance with the mutually agreed terms and conditions of the BBA. Furthermore, it is well established principle of law that a person who signs a contract is bound by them. Therefore, in the present case, the complainants are bound to pay outstanding dues as intimated in the demand letter.

XXVII. 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.

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

XXIX. That due to the above reasons the project in question got delayed from its scheduled timeline. however, the respondent is committed to compete the said project in all aspect at the earliest.

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

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the objections raised by the respondent.

F.I Objection regarding 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 BBA, 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 BBA 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 07.03.2014. 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.

F.II. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

15. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

16. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the

counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"

17. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainants.

I. **Respondent be directed to make payment towards the monthly returns from July, 2019 onwards till valid offer of possession along with interest as per law.**

II. **Respondent be directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date i.e 07.03.2017 till the date of valid offer of possession.**

G.I) Assured Returns

18. The complainant is seeking unpaid monthly assured returns on as per the terms of the MoU dated 07.03.2014 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

19. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

20. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

21. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies

Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

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

22. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
23. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.
24. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has

a right to approach the authority for redressal of his grievances by way of filing a complaint.

25. The 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.

26. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 07.03.2014.

27. In the present complaint, the assured return was payable as per clause 15 and clause 18 of the MoU dated 07.03.2014, which is reproduced below for the ready reference:

> ***Clause 15.***
>
> *"The Company shall pay a monthly return of Rs.42,583 (Rupees Forty-two thousand five hundred eighty-three only) on the total amount deposited till the signing of this MOU, with effect from 07.03.2014."*
>
> ***Clause 18.***

*"The builder in terms of its commitment to **pay the assured return till the possession** shall issue the post-dated cheques for each financial year taking into consideration the expected period of possession. The post-dated cheques shall not be dishonored for any of the reason."*

28. Thus, as per the abovementioned clauses the monthly assured returns were payable **@Rs.42,583/-** per month w.e.f. 07.03.2014, till the possession.

29. In light of the above, the Authority is of the view that as per the MoU dated 07.03.2014, it was obligation on part of the respondent to pay the monthly assured return till the possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., **@Rs.42,583/-** from the date i.e., 07.03.2014 until the possession after deducting the amount already paid on account of assured returns to the complainant.

G.II) Delay Possession Charges:

30. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges in G.II as provided under the provisions of section 18(1) of the Act which reads as under:

> ***"Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

31. **Due date of possession:** The subject unit was allotted to the complainant vide MoU dated 07.03.2014. As per the documents available on record, no BBA has been executed between the parties and the due date of possession

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."*

32. In the instant case, the MoU executed between the parties on 07.03.2014. 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 07.03.2017.

33. **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"

34. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 02.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

35. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

36. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

37. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the

respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 07.03.2017.

38. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

39. To answer the above proposition, it is pertinent to note that the assured return payable to the allottee flows from the provisions of the MoU dated 07.03.2014. The promoter had contractually agreed to pay assured returns to the complainant from the date stipulated in the MoU till the possession of the unit. Upon comparison, it is evident that the assured return agreed between the parties is higher than the delayed possession charges contemplated under the proviso to Section 18(1) of the Act, 2016. By way of assured return, the promoter assured the allottees a fixed and definite return for the continued use of their funds, which operates as a more beneficial mechanism for safeguarding their interests. Even after completion of construction, the obligation to pay assured return continues till the possession of the unit, thereby protecting the allottees against prolonged utilization of their money by the promoter. The very object of delayed possession charges, namely, to compensate the allottee for delay and continued use of their funds beyond the promised date of possession, stands duly fulfilled through payment of assured return. Accordingly, the allottee is entitled to receive either the assured return or delayed possession charges, whichever is more beneficial, so as to effectively protect their interest.

40. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under

section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

41. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.42,583/- with effect from 07.03.2014 till the possession of the unit as mentioned in the MoU.

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

III. Direct the Respondent to revoke the offer of possession dated 29.11.2024 and issue a valid offer of possession of the unit in a habitable condition.

43. The Authority observes that the offer of possession dated 29.11.2024 has been issued after obtaining the Occupancy Certificate of the project and, therefore, constitutes a valid offer of possession. In terms of Section 11(4)(b) of the Act, 2016, it is the statutory obligation of the promoter to obtain the Occupancy Certificate and make it available to the allottee, and possession can be lawfully offered only thereafter. Further, Section 19(10) of the Act casts a corresponding obligation upon the allottee to take possession of the unit within the prescribed period after issuance of the Occupancy Certificate. Accordingly, the offer of possession made post grant of Occupancy Certificate is in consonance with the provisions of the Act and is legally valid.

IV. The Respondent be directed not to charge the Labour Cess, FTTH Charges, and Interest on Delay Payment. Further, the Respondent be directed not to charge Development charges of Rs. 3,10,812/- from the Complainant or any amount towards development charges from the Complainant.

44. Complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges and Interest on delay payment in terms of demands.

- **Labour cess**

Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the 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 MOU in clause 13. The said clause of the MOU is reproduced hereunder: -

Clause 13 – "That all other charges which are payable shall be enumerated in the Allotment Letter other than the basic sale consideration and service tax shall be payable by the Allottee(s) to the Company on or before notice of possession which shall include but not be limited to IFMS, Security Deposit, Registration Fees, Stamp Duty Duties, Taxes, Levies, etc & EDC, IDC, PLC (Preference location Charge) upon demand by company."

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 30.09.2025 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.

- **Interest Payable**

The Authority, upon careful consideration of the pleadings and documents placed on record, observes that the Respondent has levied an amount of Rs. 17,40,974/- towards interest without substantiating the same with any cogent justification or calculation. It is further observed that the respondent has failed to demonstrate any delay or default on the part of the complainant in making payments towards the sale consideration as per the agreed payment schedule. In the absence of any evidence establishing delay attributable to the Complainant and without furnishing a detailed basis for such levy, the charging of interest by the respondent is arbitrary, unjustified, and devoid of legal sanction. Accordingly, the said demand towards interest cannot be sustained and is liable to be set aside.

- **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.

V. Respondent be directed not to charge PLC from the Complainant.

45. The Authority has carefully perused the record and observes that the respondent has failed to place on record any consent letter, agreement, or prior communication to establish that the Complainant had ever agreed to the levy of Preferential Location Charges (PLC). It is further observed that neither the allotment terms nor any subsequent correspondence discloses

that the respondent had reserved any right to demand PLC from the complainant. In the absence of any express consent or prior intimation to the allottees regarding the applicability of PLC, the unilateral demand raised by the respondent is arbitrary, unjustified, and contrary to the settled principles of contract and the provisions of the Act. Accordingly, the demand raised towards PLC, being without consent and contractual basis, cannot be sustained in the eyes of law.

46. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment/MoU.

VI. Respondent be directed not to further charge VAT amount from the Complainant as the same stands paid by him.

47. The complainant has contended that the respondent has illegally charged amount from him towards VAT submitting that in March 2017, a demand notice of Rs.5,84,925/- towards 'VAT outstanding' was sent by the developer to the complainant. It is pertinent to mention herein that even before this illegal demand, the developer had made such demands in the year 2017 and the complainant had readily cleared all the VAT payments, after which the developer had sent an email stating that no dues are payable. However, despite the same being an admitted position, developer again raised this demand without giving any legal basis on the basis of which such demand is being made, as VAT already has been superseded by the GST regime. But the version of respondent is otherwise and took a plea that respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of

Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. 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 complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

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

48. The complainant has sought additional relief with respect to putting the allotted unit on lease and payment of lease rentals in terms of the Memorandum of Understanding. The Authority observes that the Memorandum of Understanding provides for payment of lease rentals to the complainant and further casts an obligation upon the respondent to finalize the terms of leasing with a prospective lessee. Since the occupation certificate for the project in question has already been received by the respondent from the competent authority, the Authority is of the view that the respondent is now bound to comply with the said terms of the Memorandum of Understanding. Accordingly, the respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental strictly in accordance with the terms and conditions of the Memorandum of Understanding dated 07.03.2014.

X. **Direct to the Respondent to execute conveyance deed under Section 17 of the RERA Act, 2016.**

49. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

H. Directions of the Authority

50. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the Authority under section 34(f):

i. The respondent/promoter is directed to pay the monthly assured return to the complainant at the agreed rate i.e., @Rs.42,583/- with effective date as per clauses 08 and 15 of the MoU i.e., 07.03.2014 till the possession of the unit, after deducting the amount already paid on account of assured returns to the complainant. (*Note – The rate of monthly Assured Return of Rs.36,277/- has inadvertently mentioned in the proceeding dated 02.12.2025*)

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 the said amount would be payable with interest @8.85% p.a. till the date of actual realization.

iii. The PLC demanded by the respondent are set-aside for reasons discussed in paragraph no. 45 of this order.

iv. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge FTTH charges, holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.***

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

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

vii. 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.

viii. 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.

51. The complaint stand disposed of.

52. Files be consigned to registry.

(Phool Singh Saini)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.12.2025