

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

Complaint no. : 2164 of 2025
Date of filing : 01.05.2025
Date of Order : 02.12.2025

Amit Dagar
R/o: - 89A, Block-A, Phase 4, Gali No. 7, Prem Nagar
Najafgarh, New Delhi - 110043

Complainant

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32-B, Pusa Road, New Delhi-
110005

Respondent

CORAM:

Shri Ashok Sangwan
Shri Phool Singh Saini

Member
Member

APPEARANCE:

Shri Garvit Gupta (Advocate)
Shri Venkat Rao and Venkatesh Dubey
(Advocates)

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Welcome Letter	22.10.2019 (As per pg. no. 32 of the complaint)
7.	Unit no.	116, 3 rd floor (page no. 38 of the BBA attached with the complaint)
8.	Unit area admeasuring	300 sq. ft. (As per page no. 38 of complaint)
9.	Date of buyer's agreement	09.12.2019 (As per page no. 36 of complaint)
10.	Date of MoU	09.12.2019 (As per page no. 51 of complaint)
11.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Due date of possession	09.06.2023 (Due date to be calculated 3 years from the execution of buyer's agreement i.e.,

		09.12.2019, being later, plus, grace period of 6 months) (Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)
13.	Assured return Clause	<i>4. The Company shall pay a Penalty of Rs. 29,973/- (Rupees Twenty-Nine Thousand Nine Hundred Seventy-Three Only) per month on the said Unit, on the Total amount received with effect from 10th December 2020 (Effective Date II) subject to TDS, Taxes, any other levy which is due and payable by the Allottee(s) and which shall be adjusted in total sales consideration; the balance total sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as Annexure I. The penalty shall be paid to the Allottee(s) from end of effective date until the date of offer of possession letter date, on pro-rata basis.</i> (As per page no. 53 of the complaint)
14.	Basic sale consideration	Rs. 19,06,764/- (As per payment plan on page no. 29 of complaint) Rs.21,33,156/- (As per pg. no. 60 of the SoA attached with the Complaint)
15.	Amount paid by the complainant	Rs. 18,39,264/- (As per page no. 60 of complaint)
16.	Fit-Out Demands dated 28.02.2025	Rs.12,39,000/- (As per page. no. 62 of the complaint)
17.	Reminder letter for Fit-Out Charges	02.04.2025 (As per page. no. 64 of the complaint)
18.	Occupation certificate	14..08.2024 (As per the DTCP site)
19.	Offer of possession	24.12.2024 (As per page no. 58 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. The respondent company, M/s Neo Developers Private Limited is a private limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate.
 - b. That the Complainant is a simple, law abiding and peace-loving person. The Complainant has throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to his contractual obligations. The booking has been made by the Complainant and the payments has been made by him with all the efforts and hope to fulfil his dream of his own space for a peaceful and secured life.
 - c. That the Complainant received a marketing call from the office of the Respondent in the month of July, 2019 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. The marketing staff of the Respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the Respondent in its project. The marketing staff of the Respondent also assured timely completion of all the obligations of the allotment. It was specifically projected by the Respondent that the main USP of its said project is that it would diligently offer the allottees penalty on the amount paid by the Complainant till the offer of possession and thereafter the respondent would lease the unit and would thereafter pay lease rentals

to the Complainant for the entire period of lease by leasing the unit to a third party.

- d. 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. The Complainant made a payment of Rs. 1,50,000/- vide Cheque dated 18.10.2019 towards the booking amount to the Respondent. The said amount paid by the Complainant was acknowledged by the Respondent vide its receipt dated 22.10.2019.
- e. That the Respondent vide its welcome letter dated 22.10.2019 confirmed the allotment of Commercial Space admeasuring 300 sq. ft. on 3rd Floor, in the said project of the Respondent.
- f. 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.
- g. That it is pertinent to mention herein that it was stated in the Buyer's Agreement that in the event of non-payment of instalment amount by the complainant, the Complainant would be liable for penalty @ 18% per annum. However, in case of delay on the part of the respondent in offering

the possession, no such penalty was specifically stated in the Buyer's Agreement.

- h. That the Complainant made vocal his objections to the arbitrary and unilateral clauses of the Buyer's Agreement to the Respondent. 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 and that the interest payable by the respondent to the Complainant would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. 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 09.12.2019. As per Clause 2.1 of the Buyer's Agreement the Complainant was allotted a unit bearing Priority No. 116, Third Floor admeasuring 300 sq.ft. 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. 16,97,064/- and the total consideration of the unit was Rs.19,06,764/-which was inclusive of IFMS, EDC, IDC and GST. It is pertinent to mention herein that the Complainant had already paid an amount of Rs. 17,10,000/- towards the sale consideration to the Respondent and the same was agreed and acknowledged by the Respondent in Clause 4.1 of the Buyer's Agreement.
- i. 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 prior to the execution of this

MOU has paid an amount of Rs. 17,10,000/- 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 'Penalty' of Rs. 29,973/- per month from 10.12.2020 (Effective date-II as per Clause 4 of MOU) onwards till offer of possession which shall be adjusted in the Total Sale consideration and after adjustment, the balance sale consideration shall be payable by the Complainant to the Respondent in accordance with the Payment plan. 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 penalty amount and in adhering to its contractual obligations. It is submitted that as per Clause 4 of the said MOU, it was agreed that the Respondent would pay a penalty of Rs. 29,973/- per month.

j. Furthermore, it was agreed vide Clause 8(a) of the said MOU that the Respondent would make payment of lease rentals at assured lease @ Rs.81.75/- per sq. ft. per month rent to the Complainant from commencement of first lease. Furthermore, it was decided as per Clause 9(a) of the MOU that the Respondent was to finalize the terms for leasing the premises with a perspective lessee. Clauses 8 and 9 of the said MOU are reproduced herewith: -

"8(a). That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs. 81.75/- per sq. ft. per month."

Clause 9(a) of the MOU is reproduced hereunder: -

"9(a). That the Allottee(s) herein authorizes Company to finalize the terms for leasing the said unit with any prospective lessee....."

k. That as per Clause 3 of the MOU and 5.2 of the Buyer's Agreement, the construction of the project was to be completed by the respondent within

a period of 36 months from the date of execution of the MOU/Buyer's Agreement or the date of start of construction. The relevant provisions/clauses of the said MOU and Buyer's Agreement are reproduced hereunder: -

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

- I. Complainant enquired about the date of possession and pending payment of the monthly penalty. It was informed that the possession of the unit would soon be offered along with adjustment of the delayed payment interest and monthly penalty. The representatives of Respondent assured the Complainant that the possession of the unit would be offered over to him very shortly as the construction was almost over and that it would soon start the payment towards the monthly penalty as per its obligations as stated in the MOU. It was also assured that Respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted Real Estate (Regulation and Development) Act, 2016.
- m. That the Respondent vide its letter dated 15.10.2020 informed the Complainant that the Respondent are in the process of applying 'Occupancy Certificate' with the concerned authorities and thereafter, the Respondent shall offer possession of the Complainant's unit. Furthermore, the Respondent vide the same letter also assured the Complainant that the payment towards the monthly interest shall be paid/adjusted at the time of possession.
- n. That the Respondent finally, after a considerable delay sent a Demand Notice and Offer of Possession dated 24.12.2024 and 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 realized that Respondent had failed to adjust the amount of the monthly penalty as assured by the Respondent. It is pertinent to mention herein that the Respondent vide the said letter had demanded additional amounts against Labour Cess, FTTH, Interest on delayed payment and Development Charges. The Complainant was in complete shock and was surprised to note that the Respondent vide the said Demand Notice and Offer of Possession illegally demanded the amount of Rs. 2,94,116/-

- o. is very important to mention herein that the Complainant raised several objections to the said illegal demands raised by the Respondent. However, the Respondent paid no heed to the genuine concerns of the Complainant. The Complainant under the threat of his allotment of the said unit being terminated by the Respondent made a payment of Rs. 2,60,000/- against the illegal demands raised by the Respondent vide the Demand Notice and Offer of Possession. The said payment of Rs. 2,60,000/- was made to the Respondent vide Cheque dated 27.01.2025 which was acknowledged by a receiving from the representative of the Respondent.
- p. However, the Respondent has illegally demanded such charges and is liable to refund such additional charges to the Complainant. 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.
- q. That till date, the respondent failed in handing over of possession and monthly assured return of Rs. 29,973/- on the total amount received as

per the MOU. It is pertinent here to mention that the respondent assured to pay the monthly assured return to the complainant but the complainant has not been received any assured return till date. the continuous atrocity of the respondent company has caused severe mental agony and financial harassment to the complainant.

- r. That furthermore, there is an inordinate delay of more than 28 months calculated from the due date of possession upto April 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 penalty 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. The Complainant even visited the site and was shocked to check the status of the unit allotted to them. The unit was not at all in a habitable condition and it was apparent that the common areas of the project was incomplete and lifts were not even operating. The Complainant requested the Respondent to rectify the defaults and update on the payment which the Respondent was to make to them as per the terms of the MOU. However, the Respondent failed to respond to the said queries of the Complainant. The Respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the Complainant and are unconcerned about the possession of the unit despite repeated assurances.
- s. 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.12,39,000/- 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 fitout 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.

- t. That the Respondent yet again sent a Reminder Letter dated 02.04.2025 for payment towards the fit-out charges. The Respondent vide the said letter asked the Complainant to remit the outstanding amount at the earliest to avoid any further accrual of interest.
- u. That it is pertinent to mention herein that the Complainant has already made the payment of Rs. 19,70,000/- 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.
- v. That as per Clause 12 of the MOU dated 09.12.2019, the Sale Deed had to be executed and registered in favour of the allottee within 45 days from the date of receipt of occupation certificate. Furthermore, a similar obligation has been casted upon the Respondent vide Clause 5.10 of the Buyer's Agreement dated 09.12.2019. The relevant clause is reproduced hereunder: -

"12. That the Sale Deed shall be executed in favour of the Allottee(s) based on the terms of the present MOU and Buyers Buyer's Agreement. The Sale Deed shall be executed and got registered in favour of the Allottee(s) within 45 days from the date of receipt of occupation certificate....

- w. 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 paying no heed to the genuine concerns of the Complainant with respect to the execution of the Conveyance Deed.

- x. The Complainant is a victim of misrepresentation on the part of the Respondent. Furthermore, it is pertinent to mention here that the Respondent has now threatened the Complainant that the Respondent would be cancelling the allotment of the Complainant in case the Complainant does not comply with its unlawful/unjustified/unethical demands. Several other allottees have received the cancellation letter and the Complainant fears that the Respondent might cancel his allotment in the said project. Hence, on the basis of such apprehension, an interim relief under Section 36 of the RERA Act, 2016 may be passed that pending the adjudication of the present complaint, the Respondent would not cancel/terminate the allotment of the unit in question.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):

- I. Respondent be directed to make payment towards the monthly penalty along with interest as per law from 10.12.2020 onwards till offer of possession.
- II. Respondent be directed to make payment of delayed interest charges on the amount paid by the Complainant from the due date of offer of possession i.e. 09.12.2022 till the date of issuance of the offer of possession as per the provisions of RERA Act, 2016 read with Haryana RERA Rules, 2017.

- III. Respondent be directed to refund the amount of the labour cess of Rs. 7,500/-, FTTH Charges of Rs. 6,490/-, Development Charges of Rs. 2,12,400/- and Interest Payable of Rs. 224/-.
- IV. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs.12,39,000/- or any such amount towards the same from the Complainant.
- V. 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 at the rate of Rs. 81.75/- per sq. ft. per month.
- VI. 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.
- VII. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
- VIII. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.
- IX. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

5. That despite being repeated opportunities to file its written reply, the respondent has failed to comply with the directions of this Authority and did not file any reply. On 06.08.2025, counsel for the respondent submitted that the matter had been settled out of court and sought disposal of the complaint on the basis of a settlement deed dated 23.01.2025.

6. Further, The counsel for the complainant submitted that notwithstanding the execution of the settlement deed, the respondent-promoter has, subsequent thereto, raised an illegal and unilateral demand vide letter dated 28.02.2025, whereby a sum of Rs.12,39,000/- has been demanded towards so-called *fit-out charges* in favour of a third party, namely H5 Hospitality LLP, which was neither a party to the Buyer's Agreement nor to the settlement deed. It was further contended that the said demand has been raised after the settlement and is dehors the agreed terms, thereby rendering the settlement ineffective and illusory in its implementation. In view of the continued raising of unlawful demands even post-settlement, counsel for the complainant submitted that no benefit has accrued to the complainant from the settlement and, therefore, the complainant seeks to pursue the present complaint and presses the reliefs as prayed for.

D. Jurisdiction of the Authority

7. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D.II Subject-matter jurisdiction

9. 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.

10. 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 complainant at a later stage.

E. Findings on the relief sought by the complainant.

- I. Direct the Respondent to pay pending Assured Return for a Period of 10.12.2020 till 24.12.2024 amounting to Rs. 20,22,212/- (along with interest @11.10/% from the Effective Date II until the offer of possession letter date).
- II. Direct the Respondent to pay delayed possession charges to the Complainant on the principal amount paid by the Complainant, from the due date of possession till the date of actual handing over of possession.

E.I) Assured Returns

11. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 10.12.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

12. 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.
13. It is to be noted that 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 Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that

the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

16. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 09.12.2019, which is reproduced below for the ready reference:

Clause 4.

The Company shall pay a Penalty of Rs. 29,973/- (Rupees Twenty-Nine Thousand Nine Hundred Seventy-Three Only) per month on the said Unit, on the Total amount received with effect from 10th December 2020 (Effective Date II) subject to TDS, Taxes, any other levy which is due and payable by the Allottee(s) and which shall be adjusted in total sales consideration; the balance total sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as Annexure I. The penalty shall be paid to the Allottee(s) from end of effective date till the date of offer of possession letter date, on pro-rata basis.

17. Thus, as per the abovementioned clause the assured return/penalty was payable @Rs.29,973/- per month w.e.f. 10.12.2020, till the offer of possession.
18. In light of the above, the Authority is of the view that as per the MoU dated 09.12.2019, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 24.12.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.29,973/- from the effective date as per clause 4 of the MoU i.e., 10.12.2020 till 24.12.2024.

E.II] Delay Possession Charges:

19. In the present complaint, the complainant intends 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"

20. The subject unit was allotted to the complainants vide MOU dated 09.12.2019. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 36 months from the date of execution of this agreement or from the start of construction whichever is later. The period of 36 months is calculated from the date of BBA i.e., 09.12.2019 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 09.06.2023.

21. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is 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"

22. 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.
23. 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;"*

24. 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.
25. On consideration of documents available on record and submissions made by the complainant, 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 09.06.2023.

26. 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/penalty as well as delayed possession charges?
27. To answer the above proposition, it is worthwhile to consider that the assured return/penalty is payable to the allottees on account of provisions in the MoU dated 09.12.2029. The assured return/penalty in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return/penalty of @Rs.29,973/- on the total amount received with effect from 10.12.2020 till the offer of possession letter i.e., 24.12.2024. If we compare this assured return/penalty with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs.29,973/- per month whereas the delayed possession charges are payable approximately Rs.16,630/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.
28. 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.

29. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 09.12.2019, the promoter had agreed to pay to the complainant allottee Rs.29,973/- with effect from 10.12.2020 till the offer of possession letter date.
30. 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.29,973/- with effect from 10.12.2020 till the offer of possession letter date i.e., 24.12.2024.
31. 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 not levy any holding charges from the Complainant.

32. 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.

33. 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 complainant 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 order is reiterated as under-

“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 complainant.

IV. Direct the Respondent to not levy any maintenance charges from the Complainant till date of actual handover.

34. 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 not to raise any payment demand which is in contrary to the agreed terms of the allotment.**
- VI. Directing the respondent company to withdraw the demand letter dated 02.04.2025 in the said project till the pendency of the present complaint.**
 - Fit-out Charges
35. The complainant has filed Miscellaneous Application No. 385/2025, wherein letter has been annexed being pertaining to the leasing-out communication issued by the respondent on 28.02.2025. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.12,39,000/- and has directed the complainant to make the said payment in favour 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.
36. In view of the above, and considering that the respondent has also failed to furnish the bifurcation or justification of the said fit-out charges despite being granted an opportunity by the Authority vide proceedings dated 11.11.2025, the unreasonable demand raised by the respondent towards fit-out charges is held to be not maintainable in the present case which has been asked to pay by the complainant to the respondent vide letter dated 02.04.2025/28.02.2025.
37. The Authority observes that under clause 9(b) of the MoU, the company has complete power to lease out the unit and decide the lease terms, and the

allottee must accept those terms without objection. However, this clause cannot be interpreted to give the respondent unrestricted authority to impose arbitrary or excessive demands. While the respondent may finalize leasing terms with a lessee, any financial liability arising therefrom must be reasonable, duly justified, and within the scope of the original understanding between the parties. This is just to comment as to how the promoter has misused its dominant position and drafted such mischievous clause in the MoU and the allottees is left with no option but to sign on the dotted lines. Therefore, the respondent cannot unilaterally burden the complainants with additional charges without proper basis or prior intimation to the complainants. It is also evident that no prior intimation letter or demand letter specifying the nature of such fit-outs charges has been shared with the complainants while signing the BBA and MoU. In the absence of any documentary proof demonstrating transparency, disclosure or lease agreement at the time of leasing between the parties, the arbitrary imposition of fit-outs charges by the respondent cannot be sustained in the eyes of law, hence the same is set-aside.

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 at the rate of Rs. 81.75/- per sq.ft. per month.

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.

38. The complainants are seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clause 7(a) of the MoU dated 19.12.2019, it was agreed that the respondent would make payment of lease rentals at Rs.81.75/- 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 09.12.2019.

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.

39. 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.

F. Directions of the Authority

40. 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 penalty/assured return to the complainant at the agreed rate i.e., @Rs.29,973/- from the effective date as per clause 4 of the MoU i.e., 10.12.2020 till offer of possession letter date i.e., 24.12.2024, after deducting the amount already paid on account of assured returns to the complainant.
- II. The respondent/promoter 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, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- III. The Fit-out charges demanded by the respondent are set-aside for reasons discussed in paragraph no. 35, 36 and 37 of this order.
- IV. The respondent shall charge maintenance charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments
- V. The respondent shall not charge anything from the complainant 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. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

VII. 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 from the date of this order.

VIII. 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 09.12.2019.

41. Complaint stands disposed of.

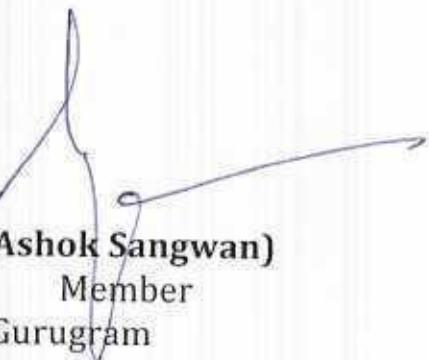
42. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.12.2025



(Ashok Sangwan)
Member