

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

Date of Order : 02.12.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		“Neo Square”	
S. No.	Case No.	Case title	Attendance
1.	CR/1874/2025	Akshay Kumar and Kajal Kumari V/S NEO Developers Private Limited	Geetansh Nagpal (Complainants) E.Krishna Dass and Dushyant Yadav (Respondent)
2.	CR/1818/2025	Sarita Devi V/S NEO Developers Private Limited	Gaurav Rawat (Complainants) E.Krishna Dass and Dushyant Yadav (Respondent)

CORAM:

Shri Ashok Sangwan
Shri Phool Singh Saini

Member
Member

ORDER

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

namely, "*Neo Square*" Sector 109, Gurugram being developed by the same respondent/promoter i.e., **M/s Neo Developers Private Limited**. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return/penalty, waiver of fit out charges, development charges and other reliefs.

3. The details of the complaints, reply status, unit no. & unit size, date of execution of the BBA and MoU, assured return/penalty clause, Basic sale consideration, total paid amount by the complainants, and relief sought are given in the table below:

Project Name and Location		"Neo Square", Sector 109, Gurugram, Haryana					
Nature of the project		Commercial Colony					
Project area		3.08 acres					
Occupation certificate		14.08.2024					

Sr. No.	Complaint no./title/ date of filing complaint	Assured return/Penalty clause	Unit No. and area admeasuring	Date of execution of agreement for sale	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainants (s)	Relief Sought
1.	CR/1874/2025 Akshay Kumar and Kajal Kumari V/s M/s Neo Developers Pvt. Ltd. DOF- 08.04.2025	4. "The Company shall pay a Penalty of Rs.69,937/- per month on the said Unit, on the Total amount received with effect from 07.06.2020 (Effective	7A, 3 rd Floor, 700 Sq. Ft. (page no. 33 of complaint)	06.06.2019 (page no. 36 of complaint)	Due date- 06.12.2022 (Calculate d from date of agreement being later + 6 months on account of covid-19) Offer of possession-	BSP: Rs.45,71,000/- (As on page no. 36 of complaint) AP: Rs.65,00,000/- (as per page no. 69 complaint)	Issuance of valid possession letter, Set aside illegal demands, DPC, Penalty, payment of lease rental, CD, not to create 3 rd party rights



	RR- 12.09.2025	<p>Date II) 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."</p> <p>(As per page no. 60 of the complaint)</p>			21.12.2024		
2.	<p>CR/1818/2 025</p> <p>Sarita Devi V/s M/s Neo Developers Pvt. Ltd.</p> <p>DOF- 08.04.2025</p> <p>RR- 16.09.2025</p>	<p>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)..... 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.</p>	<p>101, 3rd floor, 300 sq. ft.</p> <p>(page no. 48 & 38 of complaint)</p>	<p>04.10.20 19 (page no. 45 of complaint)</p>	<p>Due date- 04.04.2023 (Calculate d from date of agreement being later + 6 months on account of covid- 19) Offer of possession - 04.12.2024</p>	<p>BSP: Rs.19,06,76 4/- (as per payment plan at page 29 of complaint) AP: Rs.16,80,00 0/- (as per page no. 71 of the complaint)</p>	<p>Issuance of valid possession letter, Set aside demands, Assured Return/Penalt payment of rental, CD, n create 3rd rights.</p>

		(As per pg. no. 62 of the complaint)					
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Reliefs:

- i. Direct the Respondent to revoke the offer of possession dated 21.12.2024 and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.
- ii. Respondent be directed not to charge the labour cess of Rs. 17,500/-, FTTH Charges of Rs. 6,490. Further, the Respondent be directed not to charge Development charges of Rs. 4,95,600/- from the Complainants or any amount towards development charges from the Complainants.
- iii. Respondent be directed not to increase or demand the amount of EDC/IDC charges to be paid by the Complainants from Rs. 3,31,800/- to Rs. 3,71,616/- and of PLC from Rs. 7,63,000/- to Rs. 8,85,080/-.
- iv. Respondent is 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 Complainants from the due date of offer of possession i.e. 06.06.2022 till the date of issuance of the valid offer of possession.
- v. Respondent be directed to make payment towards the penalty from 07.06.2020 till the date of issuance of valid offer of possession along with interest as per law.
- vi. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainants 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.
- vii. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs.28,91,000/- towards the same from the Complainants.
- 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 Complainants.
- ix. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
- x. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment.

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

Abbreviations Full form

RR- Reply Received

DOF- Date of filing complaint

BSP- Basic Sale Price

AP- Amount paid by the allottee(s)

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

the possession by the due date, seeking the Assured returns delayed possession charges, lease rental and to set aside other charges.

5. The facts of all the complaints filed by the complainants-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/1874/2025 titled as Akshay Kumar and Kajal Kumari VS NEO Developers Private Limited.*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

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

CR/1874/2025 titled as Akshay Kumar and Kajal Kumari VS. NEO Developers Private Limited

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.	Unit no.	Priority No. 7a, 3rd Floor (page no. 36 of complaint)
7.	Unit area admeasuring	700 Sq. Ft (Super Area). (page no. 36 of complaint)
8.	Date of buyer's agreement	06.06.2019 (page no. 33 of complaint)
9.	Date of MoU	06.06.2019 (page no. 57 of complaint)
10.	Possession clause in the BBA	5.2 <i>"The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months</i>

		<i>from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate."</i>
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	06.12.2022 (36 months Calculated from date of agreement being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
13.	Assured return/Penalty Clause	<i>4. "The company shall pay a penalty of @ Rs.69,937/- per month on the said unit on the total amount received with effect from 07.06.2020 (effective date II) subject to TDS, taxes, cess or any other Levy which is due and payable by allottee and which shall be adjusted in total sale consideration the balance total sale consideration shall be payable by the allottee to the company in accordance with the payments schedule annexed at annexure-I. The penalty shall be paid to the allottee from end of effective date II until the offer of possession letter date, on pro rata basis."</i> <i>(As per pg. no. 60 of the complaint)</i>
14.	Lease rental Clause	8(a)

		<p><i>That the responsibility of the assured returns to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottees shall be entitled to receive the lease rentals at assured lease of Rs.81.75/- per sq. Ft. per month.</i></p> <p><i>(As per pg no. 60 of the complaint)</i></p>
15.	Basic sale consideration	Rs. 47,71,000/- (As per MoU at page no. 59 of the complaint)
16.	Amount paid by the complainants	Rs. 65,00,000/- (as per page 38 of complaint in BBA)
17.	Reminder letters by the respondent	24.02.2025 and 28.02.2025 Further illegal demand of Rs.28,91,000/- fit-out charges was raised. (As per pg no. 72-74 of the complaint)
18.	Occupation certificate	14.08.2024 (As per the DTCP site)
19.	Offer of possession with SOA	21.12.2024 (As per page no. 67-69 of the complaint)

B. Facts of the complaint

7. The complainants have made the following submissions in the complaint:
 - I. That, the respondent launched a commercial project named "Neo Square" located in sector 109, Dwarka expressway, Gurugram, under License No. 102 of 2008 issued by DTCP, Haryana.
 - II. That, the project was registered with the Haryana Real Estate Regulatory Authority (HRERA) vide Registration No. 109 of 2017, with a declared completion date of 23.08.2021.
 - III. That the complainants induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as they 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 complainants decided to make the booking in the said project of the respondent. It is pertinent to mention herein that the complainants made a total payment of Rs.65,00,000/- against the total sale consideration of the said unit to the respondent.

- IV. That the respondent provided the complainants with a copy of the buyer's agreement. After going through the buyer's agreement, the complainants 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.
- V. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainants repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. During such discussions, the Respondent assured the complainants that no illegality whatsoever, would be committed by them and that the interest payable by the respondent to the complainants would be strictly as per the norms prescribed under the provisions of RERA Act, 2016.
- VI. That the respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the Complainants to forfeit the previous amount paid towards the unit if the buyer's agreement was not signed and submitted. Hence, the complainants had no other option but to sign the buyer's agreement on

06.06.2019. As per clause 2.1 of the buyer's agreement the complainants were allotted a unit bearing priority no. 7A, third floor admeasuring 700 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.52,50,896/- and the total consideration of the unit was Rs. 65,03,196/- inclusive of PLC, EDC, IDC, IFMS and taxes.

VII. That on the said date, a Memorandum of Understanding (MOU) was also executed between the respondent and the complainants. As per the terms of the MOU, it was specifically mentioned that the complainants have paid an amount of Rs. 65,00,000/- to the respondent. Furthermore, it was agreed in the MOU that the respondent will make payment to the complainants under the nomenclature of 'Penalty' of Rs. 69,937/- per month from 07.06.2020 (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 complainants 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. 69,937/- per month.

VIII. 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 complainants 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.

IX. As per clause 3 of the MOU, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of this agreement or the date of start of construction. The relevant provisions/clauses of the said MOU and Buyer's Agreement are reproduced hereunder: -

X. That, since the MOU was executed between the respondent and the complainants on 06.06.2019, thus, the due date to offer the possession as per the terms of the MOU was 06.06.2022. The complainants visited the office of respondent to enquire about the date of possession and pending payment of the monthly penalty. 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.

XI. That the respondent finally, after a considerable delay sent a demand notice and offer of possession dated 21.12.2024 and intimated the complainants that the respondent had obtained the occupation certificate and that the respondent is ready to initiate the possession process for the unit of the complainants. As per Clause 4 of the MOU, it was agreed that the amount of penalty would be adjusted in the Total sale consideration. As per the terms of the MOU, the penalty amount from 07.06.2020 till 21.12.2024, calculated at the rate of Rs.69,937/- is Rs.37,76,598/-.

XII. The complainant raised objections to the said illegal demands of the respondent. However, the respondent paid no heed to the genuine concerns of the complainants. Rather, the respondent sent a final reminder letter dated 21.03.2025 to the complainants to remit the outstanding amount at the earliest to avoid any further accrual of interest. Furthermore, the respondent vides the same letter also threatened the complainants that in case of default to pay the said

outstanding amount the respondent shall be constrained to cancel and terminate the allotment of the said unit.

XIII. That the complainants have already made the payment of Rs.65,00,000/- against the sale consideration of the unit. The complainants have been duped of their hard-earned money paid to the respondent regarding the unit in question. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

XIV. That, the respondents allegedly refused to hand over possession unless the complainants signed an indemnity bond waiving their right to delay compensation.

XV. That the respondent simply duped the complainants of their hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted in to extreme kind of financial hardship, mental distress, pain and agony to the complainants.

C. Relief sought by the complainants:

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

- I. Respondent be directed to make payment towards the penalty from 07.06.2020 till the date of issuance of valid offer of possession along with interest as per law.
- II. Respondent is 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 Complainants from the due date of offer of possession i.e., 06.06.2022 till the date of issuance of the valid offer of possession.
- III. Direct the Respondent to revoke the offer of possession dated 21.12.2024 and issue a valid offer of possession of the unit in a

habitable condition, as per the specifications provided in the Buyer's Agreement.

- IV. Respondent be directed not to charge the labour cess of Rs. 17,500/-, FTTH Charges of Rs. 6490/- . Further, the Respondent be directed not to charge Development charges of Rs. 4,95,600/- from the Complainants or any amount towards development charges from the Complainants.
- V. Respondent be directed not to increase or demand the amount of EDC/IDC charges to be paid by the Complainants from Rs. 3,31,800/- to Rs.3,71,616/- and of PLC from Rs.7,63,000/- to Rs.8,85,080/-.
- VI. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. Rs.28,91,000/- towards the same from the Complainants.
- VII. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainants 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 Complainants.
- IX. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

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

9. 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

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

- a. That considering the request of the complainants, the respondent allotted a unit bearing priority no. 7A, on 3rd floor, admeasuring 700 sq. ft. super area, (hereinafter referred to as the "subject unit/unit").
- b. Thereafter, the respondent made multiple requests to the complainants 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 complainants failed to come forward to do the needful. After much persuasion by the respondent, the complainants came forward and executed the builder buyer's agreement on 06.06.2019.
- c. Since, the complainants 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 06.06.2019 (hereinafter referred to as the "MOU") was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- d. That the respondent was anticipating that the occupation certificate would be granted by the competent Authority shortly, and leased out the

subject unit and *vide* letter dated 01.10.2020, requested the complainants to forward to complete the formalities with respect to leasing of the unit. The Occupation Certificate of the Project was granted by the Competent Authority on 14.08.2024.

- e. Thereafter, the respondent sent an offer of possession letter dated 21.12.2024, wherein the respondent requested the complainants to clear the outstanding amounts payable against the unit.
- f. Despite receiving the offer of possession, the complainants failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated 14.02.2025, 24.02.2025 and 21.03.2025 requesting the complainants to do the needful.
- g. That the respondent vides letters dated 28.02.2025, 02.04.2025 and 17.04.2025 requested the complainants to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- h. That the respondent vides letters dated 28.02.2025, 02.04.2025 and 17.04.2025 requested the complainants to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- i. That the complainants, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- j. That the present complaint has been preferred by the complainants before the Ld. Authority on frivolous and unsustainable grounds and the complainants has not approached the ld. authority with clean hands and

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

- k. That the respondent has duly honored its obligations in good faith and made payments of assured returns as per the contractual terms. The complainants, by concealing these material facts, is attempting to mislead this authority and misuse the benevolent provisions of the RERA Act
- l. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- m. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the Authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the Promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.
- n. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the

promotor and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the Agreement of Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

- o. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The Rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That even this agreement does not contain any condition governing assured returns. Thus, any order of payment of Assured Return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.
- p. That there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.
- q. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the Agreement for Sale (Buyer's Agreement). However, in the present matter the complainants is relying upon the terms of mou which is a distinct agreement than the Buyer's agreement and thus, the MOU is not covered under the provisions of the Act, 2016. The said complaint is not maintainable on this basis that

there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainants are raising their grievance.

- r. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.
- s. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- t. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the Respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees/Complainants due above said prevailing confusion/anomaly. The preamble of the act reads as under:
- u. "An Act to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto."

- v. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.
- w. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- x. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- y. 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.

- z. That as the Complainants in the present complaint is seeking the relief of *Assured Return/Penalty*, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the *Banning of Unregulated Deposit Schemes Act, 2019* ("BUDS Act"). Any direction for payment of *Assured Return/Penalty* would amount to violation of the provisions of the BUDS Act.
- aa. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainants, as the same has been assessed and demanded by the competent Authority.
- bb. That the respondent has not availed the Amnesty Scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiate the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department

Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

cc. That the demand of VAT is done as per Clause 11 of the Buyer's Agreement.

The said clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

dd. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. N. o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old. Which are commonly

					Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of

					expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due

		was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.		to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 mont hs: Natio nwide lockd own)
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days

ee. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of *force majeure*. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement.

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

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

E. Jurisdiction of the Authority

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

E.I Territorial Jurisdiction

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

E.II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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.

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

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or

otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 06.06.2019. 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.

19. 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.

20. 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”

21. 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 penalty from 07.06.2020 till the date of issuance of valid offer of possession along with interest as per law.
- ii. Respondent is 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 Complainants from the due date of offer of possession i.e., 06.06.2022 till the date of issuance of the valid offer of possession.

G.1) Assured Returns

22. The complainants are seeking unpaid assured returns/penalty on monthly basis as per the terms of the MoU dated 06.06.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

23. The respondent has submitted that the complainants in the present complaint are claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of

builder-allottee in terms of the MoU, by virtue of which the complainants is raising her grievance.

24. 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 property as specified in terms of the agreement or arrangement.*

25. 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 an immovable property*

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

26. 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.
27. 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.
28. 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.
29. 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 complainants 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 complainants 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 dated 06.06.2019.

30. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 06.06.2019, which is reproduced below for the ready reference:

Clause 4.

*"The Company shall pay a Penalty of **Rs.69,937/-** (Rupees Sixty Nine Thousand Nine Hundred Thirty Seven only) per month on the said Unit, On the total amount received with effect from **07-06-2020** (Effective Date-II) Subject to TDS, Taxes, cess or any of their levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale 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 II until the offer of possession letter date, on prorate basis."*

31. Thus, as per the abovementioned clause the assured return/penalty was payable **@Rs.69,937/-** per month w.e.f. 07.06.2020, till the offer of possession.
32. In light of the above, the Authority is of the view that as per the MoU dated 06.06.2019, it was obligation on part of the respondent to pay the assured return/penalty 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 21.12.2024. Accordingly, the respondent/promoter is liable to pay assured return/penalty to the complainants at the agreed rate i.e., **@Rs.69,937/-** from the effective date as per clause 4 of the MoU i.e., 07.06.2020 till 21.12.2024.

G.II) Delay Possession Charges:

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

"Section 18: - Return of amount and compensation

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

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

34. The subject unit was allotted to the complainants vide MOU/BBA dated 06.06.2019. 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., 06.06.2019 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 06.12.2022.

35. 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"

36. 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.
37. 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;"*

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

39. On consideration of documents available on record and submissions made by the complainants, 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 06.12.2022.
40. 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?
41. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 06.06.2019. The assured return/penalty in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of @Rs.69,937/-on the total amount received with effect from 07.06.2020 till the offer of possession letter i.e., 21.12.2024. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs. 69,937/- per month whereas the delayed possession charges are payable approximately Rs.58,770/- 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.

42. 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.
43. On consideration of the documents available on the record and submissions made by the parties, the complainants have 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 06.06.2019, the promoter had agreed to pay to the complainants allottee Rs.69,937/- with effect from 07.06.2020 till the offer of possession letter date.
44. Therefore, considering the facts of the present case, the respondent is liable to pay the amount of assured return at the agreed rate i.e., @ Rs.69,937/- with effect from 07.06.2020 till the offer of possession letter date i.e., 21.12.2024.

iii. Direct the Respondent to revoke the offer of possession dated 21.12.2024 and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.

45. The Authority affirms that the letter dated 21.12.2024, issued post-Occupancy Certificate of the said project, shall be treated as the valid offer of possession letter, and all obligations shall be calculated from this date. Further, as per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour

of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

iv. Respondent be directed not to charge the labour cess of Rs. 17,500/-

FTTH Charges of Rs. 6490/-. Further, the Respondent be directed not to charge Development charges of Rs. 4,95,600/- from the Complainants or any amount towards development charges from the Complainants.

v. Respondent be directed not to increase or demand the amount of EDC/IDC charges to be paid by the Complainants from Rs. 3,31,800/- to Rs.3,71,616/- and of PLC from Rs. 7,63,000/- to Rs.8,85,080/-.

vi. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. Rs.28,91,000/- towards the same from the Complainants.

46. All the above reliefs are taken up together as the same are inter connected with each other. Further, in both the complaints, complainants are seeking relief with regard to the waiver of the Fit-out charges, development charges, labour Cess, FTTH charges and Interest Payable.
47. It is to be noted that the respondent, vide its demand notice and offer of possession letter dated 21.12.2024, and thereafter through subsequent reminder letters, has raised various demands upon the complainants towards development charges, labour cess, FTTH charges, EDC/IDC, VAT, fit-out charges, interest on delayed payment, etc. Upon perusal of the record and the applicable contractual documents, this Authority observes that while certain statutory and development-related charges may be leviable strictly in accordance with the terms of the BBA and MoU and subject to actual proof of payment to the competent authorities, the respondent cannot raise blanket or composite demands without placing on record any justification,

calculation sheet, or documentary evidence substantiating the same. Further, it is settled that interest on delayed payment cannot be charged in a mechanical manner, particularly when the delay, if any, is attributable to the respondent itself on account of non-handover of possession and non-fulfilment of its contractual obligations. Accordingly, the Authority is deliberating its findings on the demands:

- Labour cess

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

- Development charges

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

"11.

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

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

- **FTTH Charges**

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

- **Holding charges**

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

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

3. “134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.”

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

- **Maintenance charges**

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of

possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **Fit-Out charges**

49. In the demand letter and Offer for Fit-out dated 28.02.2025, the respondent has raised a demand towards fit-out charges amounting to Rs.28,91,000/-. The complainants have raised objection towards the fit-out charges raised by the respondent as seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. Further, the counsel for the respondent in proceeding dated 04.11.2025 has placed reliance upon Clause 8(d) of the MoU. However, on perusal of the MoU executed between the allottee and the promoter, the Authority finds that Clause 8(d) exists in the present MoU and is reproduced herein below:

Clause 8(d) of the MoU -

"That the Allottee(s) further agrees and understand that in case the tenant desires any infrastructural changes in the form of separate sewage arrangement or the gas pipeline or any other change which involves expenses on the part of allottee(s) then in that event the same shall be paid by the Allottee, strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rent payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above-mentioned arrangement defined at clause 8(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received."

50. The Authority has observed that clause 8(d) of the MoU clearly mandates that any expenditure incurred on account of infrastructural or any changes, if demanded by the tenant, can be recovered from the allottee only after issuance of a written notification by the promoter on the registered e-mail address of the allottee(s). The said clause does not confer any unfettered or

unilateral right upon the promoter to incur expenses on its own accord and thereafter recover the same from the allottee without prior intimation. Such conduct is contrary to the express terms of clause 8(d) as well as the statutory obligations cast upon the promoter under Section 11(4)(d) of the Act, which require the promoter to act in a reasonable and responsible manner. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under clause 8(d), was issued to the complainants before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 28.02.2025 towards fit-out charges amounting to Rs.28,91,000/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.

51. 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, 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 complainants to the respondent vide letter dated 28.02.2025. 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.

- **Interest on delayed payment:**

The Authority has perused the offer of possession letter dated 21.12.2024, wherein an amount of Rs.8,76,517/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainants have already paid a sum of Rs.65,00,000/-, which

includes basic sale price (BSP), external development charges (EDC), internal development charges (IDC), preferential location charges (PLC), and service Tax/GST. The Authority further observes that the total basic sale consideration of the said unit is Rs.45,71,000/-, as expressly mentioned in clause 4 of the MoU executed between the parties. Thus, it is evident on record that the amount paid by the complainants is substantially higher than the total basic sale consideration agreed between the parties. In view of the above facts, the Authority is of the view that the pending BSP and levy of interest on delayed payment amounting to Rs.8,76,517/- as reflected in the SOA dated 28.12.2024 is unjustified, especially when the complainants has already made payments exceeding the agreed basic sale consideration.

vii. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainants 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 Complainants.

52. 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 8(a) of the MoU dated 06.06.2019, 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 9(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 06.06.2019.

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

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

53. The Authority hereby directs the respondent not to cancel the unit and shall hand over symbolic and constructive possession of the unit in question to the complainants within a period of 30 days from the date of this order. The Respondent is further directed to ensure that the possession is delivered in absolute completeness, strictly adhering to the amenities and specifications as promised in the Agreement for Sale and the sanctioned project brochures.
54. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the Authority -

55. 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):

1. The respondent/promoter is directed to pay the penalty/assured return to the complainants at the agreed rate i.e., @Rs.69,937/- from the effective date as per clause 4 of the MoU i.e., 07.06.2020 till offer of possession letter date i.e., 21.12.2024, after deducting the amount already paid on account of assured returns to the complainants.

- II. The respondent/promoter is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- III. The respondent is directed to supply a copy of the updated statement of account after adjusting assured returns within a period of 30 days to the complainants.
- IV. The complainants are directed to pay outstanding dues, if any, after adjustment of assured returns within a period of 60 days from the date of receipt of updated statement of account.
- V. The respondent/promoter is directed to handover possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
- VI. The Fit-out charges demanded by the respondent are set-aside for reasons discussed in paragraph nos. 49, 50 and 51 of this order.
- VII. The respondent is not entitled to charge FTTH and holding charges from the complainants/ 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.***

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

IX. The respondent is directed to restrict its demand towards advance maintenance charges strictly to a maximum period of one year only, and any demand raised in excess thereof shall be deemed unsustainable and liable to be withdrawn/adjusted in accordance with law.

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

XI. 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 06.06.2019.

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

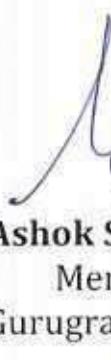
57. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

58. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.12.2025



(Ashok Sangwan)
Member