

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

**Date of Order : 25.11.2025**

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Attendance
1.	CR/680/2025	Neetu Singh V/S NEO Developers Private Limited	Gaurav Rawat (Complainant) E.Krishna Dass and Dushyant Yadav (Respondent)
2.	CR/2225/2025	Manish Dhawan V/S NEO Developers Private Limited	Geetansh Nagpal (Complainant) E.Krishna Dass and Dushyant Yadav (Respondent)

**CORAM:**

Shri Ashok Sangwan  
Shri Phool Singh Saini

**Member  
Member**

**ORDER**

1. This order shall dispose of the aforesaid 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for

all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **Neo Square**, Sector 109, Gurugram being developed by the same respondent/promoter i.e., **M/s Neo Developers Pvt. Ltd.** The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return/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				
S. No.	Complaint no./title/ date of filing complaint	Unit No. and area admeasuring	Date of execution of agreement for sale/MoU	Assured return clause/Penalty clause	Basic sale consideration and amount paid by the Complainant (s)	Offer of possession
1	CR/680/2025	Unit no. 710-A, 7th Floor	BBA: 03.04.2019	Clause 04 of MoU "The company shall pay a penalty of Rs.36,277 per month on the said unit on the total	B.S.C: Rs. 36,96,879/-	Offer of Possession-



	Neetu Singh V/S NEO Developers Private Limited  DOF: 11.02.2025 Reply: 09.10.2025	(As per BBA, pg.no. 61 of the complaint) And 501 sq. ft. (as per page 39 in MoU of complaint)	(page 53 of complain t)  MOU: 03.04.20 19 (page 37 of complain t)	amount received with effect from 03.04.2020 (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."  (As per pg no. 40 of the complaint)	(as per page 39 in MoU of complaint)  A.P: - Rs. 30,76,620/- (as per page no. 83 of complaint)	02.09.2 024
2	CR/2225/20 25  Manish Dhawan V/S NEO Developers Private Limited  DOF: 07/05/2025 Reply: 16.09.2025	Unit no. Priority No. 14, 3rd floor (As per pg. no. 41) And 1614 Sq. ft. (page 41 of complaint)	BBA: 11.09.20 19 (page 38 of complain t)  MOU: 11.09.20 19 (page 29 of complain t)	Clause 04 of MoU  "The company shall pay a penalty of ₹1,61,255 per month on the said unit on the total amount received with effect from 12.03.2020 (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	B.S.C: Rs. 80,70,000/- (as per page no. 30 of complaint)  A.P.: - Rs. 89,68,400/- (as per page no. 73 of Complaint)	Offer of Possess ion- 02.09.2 024

				<p><i>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></p> <p><i>(As per pg no. 30 of the Complaint)</i></p>		
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**Reliefs –**

- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the due and payable monthly assured return / commitment charges amount till the unit in question is so leased out in terms of the allotment letter, and possession of the unit in question is handed over, as per the MOU dated 03.04.2019.
- Direct the Respondents to pay interest on the total amount paid by the Complainant at the prescribed rate of interest as per RERA, from the due date of possession till the handing over of possession.
- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the amount due to the Complainant, from the Respondents, on account of interest, as per the guidelines laid down under RERA, 2016, and the monthly assured amount(s) as per the clause of the MOU.
- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to set aside the offer of possession dated 15.04.2024 and 26.10.2024.
- It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the Respondents from raising any fresh demand(s) for payment under any head, as the Complainant has already made payment as per the payment plan.
- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to charge anything irrelevant which has not been agreed between the parties, such as Labour Cess, electrification charges, maintenance charges, etc., which in any case are not payable by the complainant.
- It is most respectfully prayed that till the time possession, as promised in the MOU, of the unit in question is handed over to the Complainant, this Hon'ble Authority be pleased to order the Respondents to pay lease rentals @ Rs. 59,25/- per Sq. Ft. per month till lease out of the said property, as per the terms and conditions of the MOU.



- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay monthly assured rental amount / commitment charges w.e.f. the date of completion of construction of the said building till the leasing out of the said space/unit, as per the clause of the MOU.
- It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to force the Complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.
- It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondents to provide the exact layout plan of the said unit.
- It is most respectfully prayed that this Hon'ble Authority be pleased to take penal action against the Respondents for violation of various provisions of the RERA Act, 2016.
- Direct the Respondents to hand over the symbolic and constructive possession of the said unit in question with all amenities and specifications as promised, in all completeness, without any further delay, and after completion of the same.
- Direct the Respondents to execute a conveyance deed in respect of the unit in question in favour of the Complainant.

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

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
AP	Amount paid by the allottee/s
ODP	Offer of Possession

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement /MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the delayed possession charges, Assured returns/penalty, lease rental and revoke other charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/680/2025 titled as Neetu Singh 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**

7. 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:

**CR/680/2025 titled as Neetu Singh 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.	710-A, 7 <sup>th</sup> Floor (page no. 23 of complaint)
7.	Unit area measuring	501 Sq. Ft (Super Area). (page no. 23 of complaint)
8.	Date of buyer's agreement	03.04.2019 (page no. 20 of complaint)
9.	Date of MoU	03.04.2019 (page no. 46 of complaint)
10.	Possession clause	3. The company shall complete the construction of the said Building/Complex, within which the said space is located within <b>36 months</b> 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.



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	03.10.2022 (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	4. <i>"The company shall pay a penalty of Rs.36,277/- per month on the said unit on the total amount received with effect from 03.04.2020 (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> (As per pg no. 40 of the complaint)
14.	Lease rental Clause	<b>8(a)</b> <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. 59.25/- per sq. Ft. per month.</i> (As per pg no. 40 of the complaint)

15.	Basic consideration sale	Rs. 36,96,879/- (As per MoU at page no. 39 of the Complaint)
16.	Amount paid by the complainant	Rs. 30,76,620/- (as per page 81 of complaint)
17.	Offer of possession for fit-outs	15.04.2024 (As per page no. 83 of the complaint)
18.	Reminder letters by the respondent	09.12.2024 (As per pg no. 87 of the complaint)
19.	Email communication made by the complainant.	01.01.2025 (as per pg no. 90 - 99 of the complaint)
20.	Occupation certificate	14.08.2024 (As per the DTCP site)
21.	Offer of possession with SOA	26.10.2024 (As per page no. 84 of the complaint)

#### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:
- 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.
  - That, the respondents launched a commercial project named "neo square" located in sector 109, Dwarka expressway, Gurugram, under License No. 102 of 2008 issued by DTCP, Haryana.
  - 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.
  - That the Booking Lured by advertisements and representations, the Complainant booked Unit No. 710-A on the 7th Floor, having a super area of 501 sq. ft., on 15.02.2019 and the total sale consideration was fixed at Rs. 45,19,200/-, inclusive of basic price, EDC, IDC, and other charges.



- v. That the complainant paid an initial booking amount of Rs. 2,00,000/- on 15.02.2019. Subsequent payments of Rs. 20,00,000/- (20.03.2019) and Rs. 8,76,620/- (29.03.2019) were made. The complainant has paid a total sum of Rs. 30,76,620/- to the respondents, which exceeds 68% of the total sale consideration.
- vi. That, a Memorandum of Understanding (MOU) and a Builder Buyer's Agreement (BBA) were executed on 03.04.2019. However, the BBA was registered only on 08.07.2022 after repeated follow-ups.
- vii. That thereafter, a buyer agreement was executed between the complainant and the respondent wherein under clause 5.2, the respondent undertook to complete construction, handover possession of the unit in question within 36 months from the date of execution of buyer agreement.
- viii. That, the respondents committed to paying a monthly penalty/assured return of @Rs.36,277/- starting from 03.04.2020 until the offer of possession.
- ix. That respondents promised a committed return of Rs. 59.25 per sq. ft. per month once construction was complete or the unit was leased.
- x. That, the respondents collected more than 10% of the cost (collecting approx. 68%) without executing and registering a valid agreement for sale at the time of collection.
- xi. That, the respondents charged the complainant based on "Super Area" (501 sq. ft.) instead of the mandatory "Carpet Area" as required under the RERA Act, 2016.
- xii. That, as per the MOU, possession was to be handed over by 03.04.2022 (36 months from MOU). The respondents failed to deliver the unit within this stipulated timeline.

- xiii. That, despite the contractual obligations in the MOU, the respondents have failed to pay the monthly assured returns/penalties since April 2020.
- xiv. That the complainant received an "Offer of Possession for Fit-outs" on 15.04.2024 and a final "Offer of Possession" on 26.10.2024. The complainant alleges the offer is invalid as it was coupled with "illegal" demands for IFMS, FTTH, Labour Cess, and interest charges claimed to be outside the BBA.
- xv. That, it is alleged that the initial offer was sent without the project obtaining a valid Occupancy Certificate.
- xvi. That, the respondents allegedly refused to hand over possession unless the complainant signed an indemnity bond waiving their right to delay compensation.
- xvii. That the respondent simply duped the complainant of her 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 complainant.

**C. Relief sought by the complainant:**

- 9. The complainant has sought following relief(s):
  - I. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the due and payable monthly assured return / commitment charges amount till the unit in question is so leased out in terms of the allotment letter, and possession of the unit in question is handed over, as per the MOU dated 03.04.2019.
  - II. Direct the Respondents to pay interest on the total amount paid by the Complainant at the prescribed rate of interest as per RERA, from the due date of possession till the handing over of possession.

- III. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the amount due to the Complainant, from the Respondents, on account of interest, as per the guidelines laid down under RERA, 2016, and the monthly assured amount(s) as per the clause of the MOU.
- IV. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to set aside the offer of possession dated 15.04.2024 and 26.10.2024.
- V. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the Respondents from raising any fresh demand(s) for payment under any head, as the Complainant has already made payment as per the payment plan.
- VI. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to charge anything irrelevant which has not been agreed between the parties, such as Labour Cess, electrification charges, maintenance charges, etc., which in any case are not payable by the complainant.
- VII. It is most respectfully prayed that till the time possession, as promised in the MOU, of the unit in question is handed over to the Complainant, this Hon'ble Authority be pleased to order the Respondents to pay lease rentals @ Rs. 59.25/- per Sq. Ft. per month till lease out of the said property, as per the terms and conditions of the MOU.
- VIII. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay monthly assured rental amount / commitment charges w.e.f. the date of completion of construction of the said building till the leasing out of the said space/unit, as per the clause of the MOU.

- IX. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to force the Complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.
- X. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondents to provide the exact layout plan of the said unit.
- XI. It is most respectfully prayed that this Hon'ble Authority be pleased to take penal action against the Respondents for violation of various provisions of the RERA Act, 2016.
- XII. Direct the Respondents to hand over the symbolic and constructive possession of the said unit in question with all amenities and specifications as promised, in all completeness, without any further delay, and after completion of the same.
- XIII. Direct the Respondents to execute a conveyance deed in respect of the unit in question in favour of the Complainant.
10. 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**

11. The respondent has contested the complaint on the following grounds:
- It is submitted that the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", (*hereinafter referred to as the "Project"*) situated at Sector-109, Gurugram, Haryana being developed by the Respondent.
  - That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by



submitting a booking application form dated 07/03/2019, whereby seeking allotment of Unit No. 710 A, admeasuring 490.84 Sq. Ft Super Area on the 7<sup>th</sup> Floor of the Project having a Basic Sale Price of Rs. 7379/- (hereinafter referred to as the "Unit") The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

- iii. That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 03/04/2019 (*hereinafter referred to as "MOU"*) was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. it is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 03/04/2020 till offer of possession. it is also submitted that as per terms of the mou, the complainants herein had duly authorised the respondent to put the said unit on lease.
- iv. That the MOU executed between the parties was in the form of an "Investment Agreement." That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have Possession Clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

- v. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 03.04.2019 for Shop No. 710 on 7<sup>th</sup> floor admeasuring 490.84 sq. ft super area in the project.
- vi. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Id. Authority upon enactment of the BUDS Act.
- vii. 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.
- viii. 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.
- ix. 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.

- x. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.
- xi. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale (buyer's agreement). However, in the present matter the complainant is relying upon the terms of mou which is a distinct agreement than the Buyer's agreement and thus, the MOU is

not covered under the provisions of the Act, 2016. The said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

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

*"11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.*

- xiii. 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.
- xiv. 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.
- xv. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act")



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

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

- xvi. 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.
- xvii. 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.
- xviii. 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.

- xix. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- xx. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.
- xxi. 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.

- xxii. That as the complainant in the present complaint is seeking the relief of *Assured Return/Penalty*, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.
- xxiii. A bare reading of Section 13(2) demonstrates that *Assured Return/Penalty* is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.
- xxiv. That Moreover, the present Complaint is based on the terms of an *MOU* entered into between the parties, which is distinct from the Builder-Buyer Agreement. The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on *M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd.* (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.
- xxv. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come

forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

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

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

xxviii. 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.

xxix. 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 affect ed	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 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> 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 Hindered The construction activity.
2.	19 <sup>th</sup> 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 is 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 <sup>th</sup> Nov, 2016	National Green	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was

		<p>Tribunal had directed all brick kilns operating</p> <p>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.</p>			<p>Absolute. The order had</p> <p>Completely Stopped Construction activity.</p>
4.	7 <sup>th</sup> Nov, 2017	<p>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<sup>th</sup> Nov 2017 till further notice.</p>	Till date the order has not been vacated	90 days	<p>The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21<sup>st</sup> Dec, 19 and 30<sup>th</sup> Jan, 20.</p>

5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> 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 <sup>th</sup> of Nov, 2017]. By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> 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 <sup>th</sup> October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 <sup>th</sup> Oct 2018. By virtue of order dated 29 <sup>th</sup> 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 <sup>st</sup> Nov to 10 <sup>th</sup> Nov 2018.	1 <sup>st</sup> Nov to 10 <sup>th</sup> 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 <sup>th</sup> July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendragarh 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 <sup>th</sup> October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> 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 " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	162 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 <sup>rd</sup> week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The



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

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

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

12. All other averments made in the complaint were denied in toto.
13. 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**

14. 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**

15. 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**

16. 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.*

17. 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.1 Objection regarding maintainability of complaint on account of complainants being the investors.**

18. The respondent took a stand that the complainant is the investor and not the consumer 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,"*

19. 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 03.04.2019. 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 Objection regarding the project being delayed because of force majeure circumstances.**

20. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, Covid-19 etc. As per MoU, the due date of possession was 03.04.2022. Further, an extension of 6 months on account is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020. It is observed that orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.



**G. Findings on the relief sought by the complainant.**

- i. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the due and payable monthly assured return / commitment charges amount till the unit in question is so leased out in terms of the allotment letter, and possession of the unit in question is handed over, as per the MOU dated 03.04.2019.
- ii. Direct the Respondents to pay interest on the total amount paid by the Complainant at the prescribed rate of interest as per RERA, from the due date of possession till the handing over of possession.
- iii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the amount due to the Complainant, from the Respondents, on account of interest, as per the guidelines laid down under RERA, 2016, and the monthly assured amount(s) as per the clause of the MOU.

**G.i) Assured Returns**

21. The complainant is seeking unpaid assured returns/penalty on monthly basis as per the terms of the MoU dated 03.04.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
22. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

23. 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.*

24. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

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

25. 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
26. 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.
27. 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.
28. 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.

29. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 03.04.2019, which is reproduced below for the ready reference:

*Clause 4.*

*"The company shall pay a penalty of Rs.36,277 per month on the said unit on the total amount received with effect from 03.04.2020 (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."*

30. Thus, as per the abovementioned clause the assured return was payable @Rs.36,277/- per month w.e.f. 03.04.2020, till the offer of possession.
31. In light of the above, the Authority is of the view that as per the MoU dated 03.04.2019, 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 26.10.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.36,277/- from the effective date as per clause 4 of the MoU i.e., 03.04.2020 till 26.10.2024.

**G.ii) Delay Possession Charges:**

32. 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"*

33. The subject unit was allotted to the complainants vide MOU dated 03.04.2019. 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., 03.04.2019 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 03.10.2022.

34. **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"*

35. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
36. 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;"*
37. 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.
38. 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 03.10.2022.

39. 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?
40. 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 03.04.2019. 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 of @Rs.36,277/- on the total amount received with effect from 03.04.2020 till the offer of possession letter i.e., 26.10.2024. 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. 29,973/- per month whereas the delayed possession charges are payable approximately Rs. 27,817/- 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.

41. 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.
42. 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 03.04.2019, the promoter had agreed to pay to the complainant allottee Rs.36,277/- with effect from 03.04.2020 till the offer of possession letter date.
43. 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.36,277/- with effect from 03.04.2020 till the offer of possession letter date i.e., 26.10.2024.
44. 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.

**iv. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to set aside the offer of possession dated 15.04.2024 and 26.10.2024.**

45. The Authority observes that the offer of possession dated 15.04.2024, lacks legal sanctity as it was issued before an Occupancy Certificate. Consequently,



the said letter is set-aside. The Authority further affirms that the letter dated 26.10.2024, issued post-OC, shall be treated as the valid offer of possession letter, and all obligations shall be calculated from this date.

**v.It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the Respondents from raising any fresh demand(s) for payment under any head, as the Complainant has already made payment as per the payment plan.**

**vi.It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to charge anything irrelevant which has not been agreed between the parties, such as Labour Cess, electrification charges, maintenance charges, etc., which in any case are not payable by the complainant.**

46. Both 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 Development charges, Labour Cess, FTTH charges.
47. It is to be noted that the respondent, vide its offer of possession letters dated 15.04.2024 and 26.10.2024, and thereafter through subsequent reminder letters, has raised various demands upon the complainant 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.

#### **Labour cess**

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

#### **Development charges**

49. 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"***

50. 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**

51. The respondent during proceedings dated 16.09.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH

charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

### **Holding charges**

52. 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**



53. 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**

54. In the demand letter and Offer for Fit-out dated 15.04.2024, the respondent has raised a demand towards fit-out charges amounting to Rs.17,53,500/-. 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. 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."*



55. 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 complainant before incurring the alleged fit-out charges. Consequently, the demand raised vide letter dated 15.04.2024 towards fit-out charges amounting to Rs.17,53,500/- 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.

56. 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. It is most respectfully prayed that till the time possession, as promised in the MOU, of the unit in question is handed over to the Complainant, this Hon'ble Authority be pleased to order the Respondents to pay lease rentals @ Rs.59.25/- per Sq. Ft. per month**

till lease out of the said property, as per the terms and conditions of the MOU.

**viii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay monthly assured rental amount / commitment charges w.e.f. the date of completion of construction of the said building till the leasing out of the said space/unit, as per the clause of the MOU.**

57. 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 03.04.2019, it was agreed that the respondent would make payment of lease rentals at Rs.59.25/- 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 03.04.2019.

**ix. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to force the Complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.**

58. It is important to note that the above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information to the above-mentioned relief sought. The Authority is of the view that the complainant

counsel does not intent to peruse the relief sought by the complainant. Hence, the Authority has not returned any finding with regard to the above-mentioned relief.

**x.It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondents to provide the exact layout plan of the said unit.**

59. The Authority, having considered the prayer of the complainant and the statutory obligations of the respondent under Section 11(3) of the Act, hereby respondent is directed to disclose and hand over the sanctioned building plan, Layout Plan, and floor plan pertaining to the concerned unit in Neo Square project.

**xi.It is most respectfully prayed that this Hon'ble Authority be pleased to take penal action against the Respondents for violation of various provisions of the RERA Act, 2016.**

60. With regard to the prayer seeking penal action, this Authority directs that the competent branch of the Authority shall examine the conduct of the respondents for violation of the provisions of the RERA Act, 2016, and take action in accordance with law, if so warranted.

**xii.Direct the respondents to hand over the symbolic and constructive possession of the said unit in question with all amenities and specifications as promised, in all completeness, without any further delay, and after completion of the same.**

**xiii.Direct the respondents to execute a conveyance deed in respect of the unit in question in favour of the Complainant.**

61. 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 complainant 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.

62. 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 -**

63. 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.36,277/- from the effective date as per clause 4 of the MoU i.e., 03.04.2020 till offer of possession letter date i.e., 26.10.2024, after deducting the amount already paid on account of assured returns to the complainant. [Inadvertently, the rate of Assured returns of Rs.37,277/- has mentioned in POD dated 02.12.2025]
  - 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. 48, 49 and 50 of this order.
  - IV. 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 FTTH, 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. 3864-3882/2020 on 14.12.2020*.

- V. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- VI. 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.
- VII. 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 03.04.2019.
- VIII. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.
- IX. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns/penalty within a period of 10 days from the date of receipt of updated statement of account.
- 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.




64. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
65. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
66. File be consigned to registry.



**(Phool Singh Saini)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 25.11.2025**



**(Ashok Sangwan)**  
Member