

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

Complaint no. :	2592 of 2025
Date of Filing:	18.06.2025
Date of Decision:	21.11.2025

1. Vivek Mishra
2. Sabiha Hasan

Both R/o: 559-KHA-307, Sri Nagar, Near B.N
Lal Vocational Inter College, Singarnagar,
Alambagh, Lucknow-226005, Uttar Pradesh

Complainants

Versus

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

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Ms. Preeti Jha
Sh. Venkatesh Dubey

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	3 rd floor (page no. 51 of complaint)
7.	Unit area admeasuring	250 sq. ft. (page no. 51 of complaint)
8.	Date of buyer's agreement	22.04.2016 (page no. 46 of complaint)
9.	Date of MOU	22.04.2016 (page no. 34 of complaint)
10.	Assured return Clause	4. <i>The Company shall pay a monthly assured return of Rs.22,500/- on the total amount received with effect from 22.04.2016 after deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.</i> (page no. 36 of complaint)



11.	Basic sale consideration	Rs. 15,88,171/- (as per payment plan on page no. 72 of complaint) Rs. 19,78,625/- (as per SOA at page 90 of complaint)
12.	Amount paid by the complainants	Rs. 16,62,634/- (as per SOA on page no. 90 of complaint)
13.	Occupation certificate	14.08.2024
14.	Offer of possession	21.12.2024 (page no. 86 of complaint)
15.	Leasing of unit	28.02.2025 (Page no. 98 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants booked a commercial unit bearing no. 369, Third (3rd) floor, admeasuring approximately 250 sq. ft. of super area in the respondent's project titled "Neo Square", situated at Sector 109, Dwarka Expressway, Gurugram, Haryana expressly under an assured return scheme.
 - II. That prior to the execution of the memorandum of understanding ("MOU") and builder buyer agreement ("BBA") the complainant(s) made payment of 100% of the consideration amounting to Rs. 15,88,171/- against the total basic sale price of Rs. 13,54,500/- as per the payment plan provided by the respondent.
 - III. That subsequently, the MOU and BBA were duly executed between the parties on 22.04.2016. That under the said agreements the respondent assured the complainants of a monthly assured return of Rs. 22,500/- until commencement of the first lease of the said unit. Additionally, the respondent undertook to complete the construction of the building/complex, within which the said unit is located, within a period



of 36 months from the date of execution of the MOU or from commencement of construction, whichever was later.

- IV. That pursuant to a payment demand letter dated 30.03.2017 issued by the respondent, the complainant(s) made an additional payment of Rs. 74,463/- towards VAT charges. Thus, the complainants had cumulatively paid an amount of Rs. 16,62,633/- to the respondent in terms of the payment plan.
- V. That vide email dated 09.04.2020, the respondent expressed their inability to continue disbursement of assured monthly returns, citing disruptions caused by the outbreak of the COVID-19 pandemic, and invoked the force majeure clause. The respondent stated that their contractual obligations stood deferred during the lockdown period and for an additional six months thereafter.
- VI. That vide email dated 09.07.2020, the complainants inquired about the status of construction works after Government permissions to resume activities were granted in May 2020. The complainants also sought clarification regarding the assured return payments due from August' 2019 onwards, and referred to oral assurances provided by the respondent's office that possession would be handed over by March, 2020.
- VII. That the respondent had made partial payments towards assured returns amounting to Rs. 8,84,250/-. However, since August' 2019, the respondent has failed to honor its commitment to make any further assured return payments to the complainants.
- VIII. That in October 2020 vide letter dated 30.10.2020, the respondent raised an unlawful demand for Rs. 1,48,976/- towards additional VAT charges. In response, vide letter dated 10.11.2020, the complainants



raised serious concerns about the basis of such demand and reiterated their claim for release of the pending assured return payments. The respondent failed to respond to the said communication.

- IX. Thereafter, vide reminder letter dated 15.09.2021, the respondent again demanded Rs. 70,001.06/- towards VAT charges. In response, the complainants, vide letter dated 24.09.2021, once again questioned the legality of such demand, pointed out that such charges were not part of the original payment plan, and insisted on payment of the outstanding assured returns. The respondent did not address the complainant's grievances.
- X. Having received no response, the complainant(s) vide email dated 17.06.2022, issued a final reminder to the respondent to clear all pending assured return dues from August' 2019 onwards along with applicable interest. No response was received.
- XI. That vide email dated 21.12.2024, the respondent informed the complainants about the obtainment of the occupancy certificate ("OC") for the project. Along with this, a statement of account cum demand statement was shared, wherein the complainants were asked to clear alleged outstanding dues amounting to Rs. 4,06,932/-, despite the complainants having already paid 100% of the consideration as per the original payment plan.
- XII. That in response, the complainants issued a notice challenging the unlawful imposition of further demands and called upon the respondent to clear the outstanding assured return dues. It was also pointed out that CRM Head of the respondent, informed the complainants that the company would not be in a position to honor the

outstanding assured returns payment. No reply was received from the respondent.

- XIII. That vide letter dated 28.02.2025, the respondent informed the complainants that unit no. 369 would be leased to Worlds of Shalom (operating restaurant brands like Laid-Back Café in Punjab) and demanded an amount of INR 10,32,500/- towards fit-out charges. The contents of the letter were reiterated by the respondent vide email dated 03.03.2025.
- XIV. That In response, vide email dated 06.03.2025, the complainants issued a further notice denying liability for the unlawful fit-out charges and once again demanded payment of the pending assured returns. No response was received.
- XV. That despite repeated communications, the respondent vide reminder letters dated 21.03.2025, 02.04.2025 and 17.04.2025, continued to raise unlawful demands without addressing the complainant's concerns regarding the pending assured returns. Further, vide letter dated 24.04.2025, the respondent also raised a demand for Rs. 24,854/- towards maintenance charges for the period from 01.11.2024 to 31.03.2025, despite failing to offer physical possession of the said unit to the complainants.

C. Relief sought by the complainants:

4. The complainants in the present complaint are seeking the following relief(s).
- (i) Direct the respondent to handover the possession of the unit to the complainants bearing no. no. 369, third floor, admeasuring approximately 250 sq. ft. of super area, in the respondent's project



titled "Neo Square", situated at Sector 109, Dwarka Expressway, Gurugram, Haryana, expressly under an Assured Return Scheme.

- (ii) Direct the respondent to pay to the complainants delayed assured return along with the interest for every month of delay at 18 % computed from the due date of such payment.
- (iii) Direct the respondent to pay the complainants a sum of ₹50,000/- as cost of litigation.

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

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
- I. That the complainants with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 250 sq. ft. super area in the project "NEO Square".
 - II. Considering the request of the complainants, the respondent allotted a unit bearing priority no. 69, on 3rd Floor, admeasuring 250 sq. ft. super area.
 - III. 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.
 - IV. That after much persuasion by the respondent, the complainants came forward and executed the builder buyer's agreement on 22.04.2016.

- V. Since, the complainants have 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 22.04.2016 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.
- VI. That since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly and leased out the subject unit vide letter dated 01.10.2020, requested the complainants to forward to complete the formalities with respect to leasing of the unit.
- VII. The occupation certificate of the project was granted by the competent Authority on 14.08.2024.
- VIII. Thereafter, the respondent sent an offer of possession letter dated 19.12.2024, wherein the respondent requested the complainants to clear the outstanding amounts payable against the unit.
- IX. 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, 25.02.2025 and 21.03.2025 requesting the complainants to do the needful.
- X. That the respondent *vide* letters dated 30.10.2020 and 15.09.2021 requested the complainants to make payment of VAT charges as per the agreed terms and conditions of the MOU.

- XI. That the respondent vide 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.
- XII. That the respondent vide letter dated 24.04.2025, requested the complainants to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- XIII. That the respondent had duly discharged its obligations by paying a sum of ₹8,61,750/- to the complainants towards assured return up to 15.10.2019. It is only subsequent to the complainant's default in fulfilling his contractual obligations and in view of the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act), that the respondent was constrained to discontinue further payments under the assured return arrangement
- XIV. That the complainants, despite receiving the aforementioned demands/reminders and assured returns, failed to come forward to fulfil his obligations under the MOU and BBA.
- XV. That the complainants have booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainants at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainants have executed an MOU which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainants themselves have entrusted the respondent with the leasing rights of the units.



- XVI. That the complainants, vide their complaint, is raising an issue that they have already paid the entire sale consideration and that the respondent is raising additional demands.
- XVII. That there is no additional demand nor any price escalation, and the unit sold to the complainants are of the same price. That the demand of the development charges as have been sought in the demand letter from the complainants, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit. That under clause 11 of the BBA, the complainants have agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.
- XVIII. That as per the agreed terms and conditions of the MOU the complainants are liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the unit, fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the Unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU.
- XIX. That the complainants have invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any

shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainants, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. In case the lessee desires any infrastructural changes in the unit, then the complainants shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee.

- XX. From a bare perusal of the aforementioned clause of the MOU, it is evident that the complainants themselves have agreed to pay the fit-out charges to be incurred on account of leasing the unit to any lessee. That the respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainants about the details of the lease and requested the complainants to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be utilised to make ready the space in terms of the requirements of the lessee for their business operation.
- XXI. That the obligation of the payment of Fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainants.

- XXII. That the complainants wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also impliedly part of the MOU. Therefore, the complainants cannot be permitted to partly rely on the mou which are beneficial to him and denies the other.
- XXIII. That the units were sold as a bare shell, and they were to be made fit out ready at the time of possession. The sale consideration for the units did not include any fit-out expenses therefore, the fit-out expenses were meant to be recovered as on the date of leasing rather than as on the date of booking. Much time has lapsed from the date of booking to the date of leasing, and the cost and also the preferences of the lessees have also undergone changes, and accordingly, the fit-out ready leases are as per the current market preferences and prices.
- XXIV. That the respondent has always been transparent about the fit-out charges. That as and when the buyers have approached the respondent, clarifications and details with respect to fit-out charges were provided to such buyers.
- XXV. That payment of the fit-out charges is very crucial for leasing out the subject unit, as it is required for making the subject unit ready for occupation of the lessee to run its business. Without getting the subject unit ready as per the requirements of the lessee, it is not possible for any lessee to take the subject unit on lease. Furthermore, the subject unit is leased out along with other units as part of a larger space, therefore, the unwillingness of the complainants towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the project, whose leasing of the units will be hampered



due to the defaults of the complainants. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the project and the overall fate of the project, the complainants are bound to pay the fit-out charges.

- XXVI. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. The building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee.
- XXVII. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.
- XXVIII. That after the first lease of the units, intimations were sent to the complainants to come forward for completion of the formalities with respect to 1st lease with the lessees. However, the complainants failed to come forward and to do the needful.
- XXIX. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law

and the introduction of the BUDS Act, the issue with respect to assured return was not clear and accordingly, a writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.

- XXX. That without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. That 1st lease was executed as the building was completed and the fit-out works as per the requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.
- XXXI. That subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving assured return/penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.
- XXXII. That 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.

- XXXIII. That though the respondent has not raised any demand of maintenance charges. However, as per clauses 10, 11 and 12 the complainants are contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainants shall be liable to make timely payment of maintenance charges and other related dues.
- XXXIV. That time was essence in respect to the complainant's obligation to make the respective payment and, as per the agreement so signed and acknowledged the complainants were bound to make the outstanding payment as and when demanded by the respondent.
- XXXV. That the respondent has made multiple requests to the complainants to clear the outstanding dues, however, the complainants have failed to make the payments, which amounts to violation of Section 19 (6) of the RERA Act, 2016.
- XXXVI. That construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of



the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:

- **NGT ORDERS/ CONSTRUCTION BANS:** That the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
- **Demonetization of Rs. 500 and Rs. 1000 currency notes:** The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.
- **GST Implications:** It is pertinent to apprise to the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The

respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of respondent is situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work due to the fear of riots and remobilisation of work workforce took considerable time of 3-4 months.
- **Cascading Impact of Default of the Buyer's on Project Progress:** **That** due to persistent and simultaneous defaults by several buyers including the respondent faced severe financial constraints, which significantly hampered the timely progress of construction of the project. The financial model of the project was structured on the timely inflow of funds from buyers, which was disrupted due to non-payment of dues. This led to a shortage of working capital, affecting procurement, labour payments.

XXXVII. That from the facts indicated above, it is comprehensively established 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 stated hereinabove come within the meaning of force majeure, as stated above. 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 above and therefore the same is not to be taken into reckoning while computing the completion period 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.

XXXVIII. That the construction/ completion work of the project was hampered due to force majeure situations beyond the control of the respondent. That the respondent despite facing the force majeure situations beyond its control, has completed the construction/development of the project, obtained the occupation certificate and offered possession of the subject unit in terms with MOU.

XXXIX. That the entire case of the complainants are nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. The complainants have vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainants are entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.

7. 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

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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.

11. 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.

12. 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;"

13. 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 22.04.2016. 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.

G. Findings on the reliefs sought by the complainants:

- (i) Direct the respondent to handover the possession of the unit to the complainants bearing no. no. 369, third floor, admeasuring approximately 250 sq. ft. of super area, in the respondent's project titled "Neo Square", situated at Sector 109, Dwarka Expressway, Gurugram, Haryana, expressly under an assured return scheme.**

14. The complainants have sought the relief of handing over of possession of the unit. The builder-buyer agreement/MOU was executed between the parties on 22.04.2016. The occupation certificate was issued on 14.08.2024. Subsequently, the respondent offered constructive possession to the complainants on 21.12.2024.

15. The authority after considering all the documents on record observes that as per Clause 8(a) of the MOU dated 22.04.2016 the unit is not meant for self-occupation but for the purpose of leasing the said unit with prospective lessee.

- (ii) Direct the respondent to pay to the complainants delayed assured return along with the interest for every month of delay at 18 % computed from the due date of such payment.**

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

17. The respondent has submitted that the complainants 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 complainants are raising her grievance.

18. 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.

19. 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;*

20. 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.
21. 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.
22. 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.

23. 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.
24. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 22.04.2016, which is reproduced below for the ready reference:
4.
*The Company shall pay a monthly assured return of **Rs.22,500/-** on the total amount received with effect from **22.04.2016** after deduction of Tax at source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee(s) **until the commencement of first lease** on the said unit. This shall be paid from the effective date .*
25. Thus, as per the abovementioned clause the assured return was payable @Rs.22,500/- per month w.e.f. 22.04.2016, till the commencement of first lease.
26. In light of the above, the Authority is of the view that as per the MoU dated 22.04.2016, it was obligation on part of the respondent to pay



the assured return until the commencement of first lease. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered for possession on 21.12.2024. However, no document has been placed on record by respondent to show that the respective unit has been leased out. Accordingly, in that case, the respondent continues to remain liable to pay assured return to the complainants at the agreed rate i.e., @Rs.22,500/- from the date i.e., 22.04.2016 till the commencement of first lease after deducting the amount already paid on account of assured return to the complainants.

(iii) Direct the respondent to pay the complainants a sum of ₹50,000/- as cost of litigation.

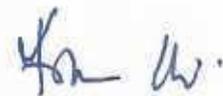
27. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

28. 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):

- ii. The respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.22,500/- per month from the date i.e., 22.04.2016 till the commencement of first lease after deducting the amount already paid on account of assured return to the complainants.
 - iii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 22.04.2016 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
 - iv. The respondent shall not charge anything from the complainants which is not the part of the BBA/MoU dated 22.04.2016.
 - v. The complainants are directed to pay outstanding dues, if any, after adjustment of payable assured returns.
29. Complaint as well as applications, if any, stands disposed off accordingly.
30. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2025