

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

Date of Order: 09.12.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Attendance
1.	CR/2263/2025	Rajesh Singh V/S Neo Developers Private Limited	Rajinder Singh (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)
2.	CR/2273/2025	Rishabh Singh V/S Neo Developers Private Limited	Rajinder Singh (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)
3.	CR/1793/2025	Preeti Gandhi and Gagandeep Singh V/S Neo Developers Private Limited	Rajiv Vig (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)
4.	CR/1807/2025	Chanda Verma V/S Neo Developers Private Limited	Rajiv Vig (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)
5.	CR/1808/2025	Surabhi Srivastava V/S Neo Developers Private Limited	Rajiv Vig (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of the aforesaid 5 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, waiver of fit out charges and other reliefs.
3. The details of the complaints, reply status, unit no., date of agreement & MoU, AR clause, total sale consideration and total paid amount 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 Unit super area	Date of execution of BBA and MoU	Assured return clause in the MoU	Total sale consideration and Amount paid by the complainant

<p>1.</p>	<p>CR/2263/2025</p> <p>Rajesh Singh V/S Neo Developers Private Limited</p> <p>DOF: 09.05.2025</p> <p>RR: 11.09.2025</p>	<p>Unit no. - Priority Allotment serial no.42, 5th floor</p> <p>And 300 Sq. ft. (as per page no. 29 of complaint)</p>	<p>BBA: 16.01.2017 (page 26 of complaint)</p> <p>MOU: 16.01.2017 (as per page no. 52 of complaint)</p>	<p>Clause 04 of MoU "The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 12.11.2016 before deduction of Tax at Source, 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 by the Allottees 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"</p> <p>(As per pg. no. 54 of the Complaint)</p>	<p>T.S.C: Rs. 12,54,000/- (as per page no. 44 of complaint)</p> <p>A.P.:- Rs. 13,18,988/- (as per SOA at page no. 79 of complaint)</p>
<p>2.</p>	<p>CR/2273/2025</p> <p>Rishabh Singh V/S NEO Developers Private Limited</p> <p>DOF: 09.05.2025</p> <p>RR: 11.09.2025</p>	<p>Unit no. - Priority Allotment serial no.43, 5th floor</p> <p>And 300 Sq. ft. (as per page no. 30 of complaint)</p>	<p>BBA: 16.01.2017 (as per page no. 27 of complaint)</p> <p>MOU: 16.01.2017 (as per page no. 53 of complaint)</p>	<p>Clause 04 of MoU "The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 12.11.2016 before deduction of Tax at Source, 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 by the Allottees 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</p>	<p>T.S.C: Rs. 12,54,000/- (as per page no. 45 of complaint)</p> <p>A.P.:- Rs. 13,14,000/- (as per page no. 81 of complaint)</p>

				<p><i>commencement of the first lease on the said unit. This shall be paid from the effective date."</i></p> <p><i>(As per pg. no. 55 of the Complaint)</i></p>	
3.	<p>CR/1793/2025</p> <p>Preeti Gandhi and Gagandeep Singh V/S NEO Developers Private Limited</p> <p>DOF: 02.04.2025</p> <p>RR: 12.09.2025</p>	<p>Unit no. - Priority Allotment serial no.55, 5th floor</p> <p>And</p> <p>300 Sq. ft.</p> <p>(as per page no. 33 of complaint)</p>	<p>BBA: 12.06.2017 (as per page no. 27 of complaint)</p> <p>MOU: 12.06.2017 (as per page no. 15 of complaint)</p>	<p>Clause 04 of MoU</p> <p><i>"The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 12.06.2019 before deduction of Tax at Source, 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 by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-1. 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></p> <p><i>(As per pg. no. 18 of the Complaint)</i></p>	<p>T.S.C: Rs. 14,63,700/- (as per page no. 48 of complaint)</p> <p>A.P.:- Rs. 14,63,200/- (as per page no. 48 of reply)</p>
4.	<p>CR/1807/2025</p> <p>Chanda Verma V/S NEO Developers Private Limited</p> <p>DOF: 02.04.2025</p> <p>RR: 16.09.2025</p>	<p>Unit no. - Priority Allotment serial no.85, 5th floor or similar</p> <p>And</p> <p>300 Sq. ft.</p> <p>(as per page no. 33 of complaint)</p>	<p>BBA: 25.04.2018 (as per page 30 of complaint)</p> <p>MOU: 25.04.2018 (as per page no. 15 of complaint)</p>	<p>Clause 04 of MoU</p> <p><i>"The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 25.04.2017 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be</i></p>	<p>T.S.C: Rs. 16,84,204/- (as per page no. 48 of complaint)</p> <p>A.P.:- Rs. 15,17,000/- (as per BBA at page no. 25 of complaint)</p>

				<p>payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-1. 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"</p> <p>(As per pg. no. 17 of the Complaint)</p>	
5.	<p>CR/1808/2025</p> <p>Surabhi Srivastava V/S NEO Developers Private Limited</p> <p>DOF: 02.04.2025</p> <p>RR: 12.09.2025</p>	<p>Unit no. - Priority Allotment serial no.84, 5th floor or similar</p> <p>And</p> <p>300 Sq. ft. (as per page no. 28 of complaint)</p>	<p>BBA: 04.05.2018 (page 25 of complaint)</p> <p>MOU: 04.05.2018 (as per page no. 15 of complaint)</p>	<p>Clause 04 of MoU "The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 04.05.2020 before deduction of Tax at Source, 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 by the Allottees to the company in accordance with the Payment Schedule annexed as Annexure-1. 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"</p> <p>(As per pg. no. 17 of the Complaint)</p>	<p>T.S.C.: Rs. 16,17,468/- (as per page no. 43 of complaint)</p> <p>A.P.:- Rs. 15,50,000/- (as per BBA at page no. 30 of complaint)</p>

Reliefs sought by the complainant -

1. Direct the Respondent to pay Assured Returns @Rs.65 per sq. feet per month amounting to Rs.19,500/- (Rupees Nineteen Thousand Five Hundred Only) for

- Commercial Unit Priority (Food Court) No. 42 on 5th Floor since July, 2019 till handing over the possession.
2. To direct the Respondent to pay the interest/delayed possession compensation as per RERA Act along with the interest.
 3. Restrain the Respondent from entering the lease deed with 3rd party without seeking the consent of the Complainant.
 4. To set aside the power of the Respondent to enter into Lease Deed or handing over the possession to a third party.
 5. To direct the Respondent to not charge what is not part of the MOU and BBA which includes the demand of Development Charges, FTTH, Labour Cess, Fit-out charges, Interest etc. which was raised via demand letters dated 10.10.2024.
 6. Set aside the illegal demand of VAT made by the Respondent vide letter dated 22.01.2020, 30.10.2020, 15.09.2021, and 30.09.2021.
 7. To set aside the letter dated 24.03.2025 which has raised illegal demand of Fit out charges.
 8. Restrain the Respondent from terminating or cancelling the Unit of the Complainant.
 9. Declare that the endorsement made by the Respondent changing the originally allotted unit and floor of the Complainant is illegal, null, and void.
 10. Direct the Respondent to Allot the unit to the Complainant on the 3rd floor where the food court has been constructed now.

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
MOU:	Memorandum of Understanding
TSC:	Total Sale Consideration
AP:	Amount paid by the allottee/s
RR:	Reply received by the respondent

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 assured return, revoking illegal demands and respondent not doing conveyance deed in favour of the complainant.
5. 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/2263/2025 titled as Rajesh 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. Project and unit related details.

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

CR/2263/2025 titled as Rajesh Singh VS NEO Developers Private Limited.

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial 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.	Buyer's agreement	16.01.2017 (As per pg. no. 26 of the Complaint)
7.	Unit no.	Priority No. 42 on the 5th Floor (As per pg. no. 29 of the Complaint)
8.	Unit area measuring	300 Sq. Ft. (As per pg. no. 29 of the Complaint)
9.	Date of MoU	16.01.2017 (As per pg. no. 52 of the Complaint)
10.	Possession clause	Clause 3 of the MoU <i>'The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate.'</i>
11.	Due date of possession	16.01.2020

		(As per the clause 3 of the MoU - 36 months from the date of signing of the BBA)
12.	Assured return Clause	<p><i>Clause 4.</i></p> <p><i>"The Company shall pay a monthly assured return of Rs. 19,500/- on the total amount received with effect from 12.11.2016 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 by the Allottee(s) to the company in accordance with the Payment Schedule annexed as Annexure 1. The monthly assured return shall be paid to Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."</i></p> <p><i>(As per pg. no. 54 of the complaint)</i></p>
13.	Sale consideration	Rs. 12,00,000/- (As per pg. no. 29 of the Complaint)
14.	Amount paid by the complainant	Rs. 13,18,988/- (As per SOA cum demand letter pg. no.79 of the Complaint)
15.	Occupation certificate	14.08.2024 (As per DTCP site)
16.	Offer of possession	10.10.2024 (As per pg. no. 77 of the Complaint)
17.	Reminders for payment/VAT	30.03.2017, 30.10.2020, 15.09.2021, 30.09.2021 (As per pg. no. 65-74 of the Complaint)
18.	Fit-outs demand raised on 24.03.2025	Rs.8,85,000/- (As per pg. no. 83 in the complaint)

B. Facts of the complaint.

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

- i. That in or around December, 2016, the complainant came across the project of "M/s Neo Developers Private Limited namely "Neo Square" (hereinafter

referred to as "the Project") situated in Sector 109, Dwarka Expressway, Gurugram. The complainant met with representatives of the company who explained the project to the complainant. Later, the complainant was introduced to Mr. Ashish Anand, Director, when they visited the office of respondents situated at Gurgaon. Mr. Ashish Anand, the director and employees of the company explained the project to complainant wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.

- ii. That the director and employees of the company finally induced the complainant to purchase the unit in their assured return plan wherein the company would make the payment at the rate of Rs. 65 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainant at the time of booking or at the time of execution of memorandum of understanding (MOU). Mr. Ashish Anand, director of the company, assured the complainant that there would be no delay in making payment towards the assured return under any circumstances whatsoever.
- iii. That complainant entered into memorandum of understanding and buyer agreement on 16.01.2017. Mr. Ashish Anand, director of the company explained the site plan wherein it was provided that the "fifth floor" of the building consists of commercial space. The commercial space could be used as a food court/ entertainment. Mr. Ashish Anand, Director of the company again assured that there will be no delay in making payment towards the assured return under any circumstances and the property would be constructed and delivered within 36 months period from entering of the mou since company has already entered into agreements with big brands such as pizza hut, McDonald's, kfc, Nike, inox cinema etc.

- iv. Further, it was assured that the assured return would be paid till the property is not leased out. Mr. Ashish Anand, director, and its employees assured the complainant that the project would be state-of-the-art and that the company had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. In view of the above assurance an impression was given to complainant that since the project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the food court in future. Based on the above inducement and assurance of Mr. Ashish Anand, Director and the employees of the company, the complainant purchased a space for food court on the fifth floor and executed the memorandum of understanding and builder buyers' agreement dated 16.01.2017, having area admeasuring 300 sq. ft. super built-up area at the rate of Rs. 4000/- per sq. ft. wherein commercial unit priority (food court) no. 42 was assigned on 5th floor.
- v. The complainant paid a sum of Rs.12,54,000/- (Rupees Twelve Lakh Fifty-Four Thousand Only) towards consideration of the commercial unit priority (food court) no. 42, through two cheques i.e., cheque bearing no. 553603 dated 08.11.2016 (drawn on SBI bank) amounting to Rs. 6,27,000/- and cheque bearing no. 553604 dated 08.11.2016 (drawn on SBI Bank) amounting to Rs. 6,27,000/- which were duly accepted by the company.
- vi. It was agreed under the MOU that a monthly return of Rs. 19,500/- (Rupees Nineteen Thousand Five Hundred only) shall be payable as Assured Return from 12.11.2016. The price of the unit @ Rs. 4000/- per sq. ft was arrived after adjusting ten months assured return in advance. Because of the said reason only the assured return with respect to the unit of the complainant

commenced on 12.11.2016 i.e., after ten months after entering into BBA and MOU.

vii. The relevant clause of the MoU dated 16.01.2017 is reproduced hereunder for the reference:

"Clause 4. That against the total basic sale consideration of Rs.12,00,000/- (Rupees Twelve Lacs Only) determined as per Clause 3 above, the Allottee(s) has, paid unto Company upon and / or prior to the execution of this MOU, an amount of Rs.12,54,000/- (Rupees Twelve Lacs Fifty Four Thousand Only) (includes BSP & Service Tax), towards advance / part consideration of the unit, the receipt whereof, Company hereby admits and acknowledges."

"The Company shall pay a monthly assured return of Rs.19,500/- (Rupees Nineteen Thousand Five Hundred Only) on the total amount received with effect from 12 Nov- 2016 before 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 by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1. 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."

viii. The respondent raised the demand towards VAT amounting to Rs. 60,000/- (Rupees Sixty Thousand Only) on 30.03.2017 for commercial unit priority (restaurant) no. 42 on the fifth floor. The complainant has paid a sum of rs. 60,000/- (rupees sixty thousand only) through cheque bearing no. 691812 (drawn on IndusInd bank) dated 10.05.2017. Subsequently, the respondent again raised demand towards VAT from complainant on several occasion for the same unit despite the fact that the same was paid at the time of very first demand in 2017.

ix. That the truth of the assurances made by the directors and employees of the company surfaced when the company started delaying the monthly assured

returns and ultimately, the payments of assured return were completely stopped since July, 2019.

- x. That the mala fide intentions of the company also became conspicuous when the company stopped paying any assured return as per MOU and BBA. This unilateral decision of the respondent was sent to the complainant vide letter dated 18.12.2019. such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the agreement entered between the parties since the payment towards the assured return was integral part of the agreement. The said stopping of assured return was made citing restrictions under the RERA Act and guidelines. It was stated by the Respondent that 70% of the amount received from buyers must be deposited in a separate account for construction and land costs, making it illegal for them to withdraw funds for monthly interest cheques and therefore the assured return would be adjusted at the time of possession. the respondent also sent a letter dated 16.01.2020 wherein the respondent has unilaterally acknowledged that the assured return has been stopped and that the respondent would pay and adjust the assured return of Rs. 19,500/- at the time of possession. The respondent again sent a letter dated 01.02.2022 wherein it was reiterated that the construction work will be completed and that the assured return will be adjusted at the time of giving the possession to the complainant.
- xi. It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent-company and due to the said reason, the respondent-company is demanding VAT again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. The respondent issued a letter dated 22.01.2020 to deposit the VAT amounting to Rs. 90,480/- (Rupees

Ninety Thousand Four Hundred Eighty Only) for the unit. Neither any explanation was given as to why the said amount was not included earlier in march, 2017 when the payment was made towards the VAT nor any explanation was provided. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside. The respondent also sent reminder -1 letter dated 30.10.2020 for VAT payment of Rs. 1,15,050/- without any explanation as to the previous reminder and vat payment made by the complainant. The respondent again on 15.09.2021 send reminder-2 letter wherein again a different demand of Rs. 92,512/- was demanded from the complainant. Yet another reminder -3 letter dated 30.09.2021 for VAT payment of Rs. 92,512/- without any explanation was sent to the complainant. it is submitted that all these demands are bad in law as the payment towards the vat demand in 2017 was already duly made by the complainant.

- xii. That on 01.10.2020 the respondent sent an email of notice of registration of BBA and MOU. That the respondent also sent an email for invitation for starting the proceeding for assignment of lease dated 01.10.2020. It is submitted that no lease assignment could have been entered into, as the project was incomplete at the relevant time, and the unit could not have been leased out prior to obtaining the completion certificate and occupation certificate, which the respondent had not received at the time of sending the email dated 01.10.2020. Furthermore, the respondent's claim that the unit has been leased to a third party responsible for making assured return payments is highly unbelievable. It is inconceivable that a third party, who had not received possession of the unit, would have entered into an agreement with the respondent for a project lacking a completion certificate and would begin making payments to the buyer without first generating rental income from the unit.

- xiii. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of more than 5 years. There is no sign of construction of the Tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment Zone were shown in the brochure. It has also come into complainant's knowledge that the company has not even received the license from the concerned authorities to construct the tower/buildings. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and complete the project.
- xiv. The Respondent at the time of entering the MoU made misrepresentation with respect to the project and it is tower/building whereas the construction is not in conformity with the promises made to the Complainant. The builder has not completed the construction of other building/tower having inox cinema, food court, entertainment zone and service apartment etc. in accordance to the brochure of the site plan as given by the respondent.
- xv. The company has issued a demand notice and offer of possession via letter dated 10.10.2024 stating that the occupation certificate (OC) has been received and possession is now being offered, subject to clearance of outstanding dues which is to the tune of Rs 4,38,618/- (Rupees Four Lakh Thirty-Eight Thousand Six Hundred Eighteen Only) and required documentation. Despite previously committing to assured returns, the company unilaterally stopped monthly payments and is now demanding full payment for possession, warning that delays will incur holding charges, cam charges, and interest per the builder buyer agreement. The notice mandates execution of a common area maintenance agreement before possession and lists required documents, including identity proof, PAN card, NOC (if

financed), and power of attorney (if applicable). Possession will only be granted after payment of stamp duty, registration charges, and other applicable fees, raising concerns over the company's adherence to its financial commitments. The company also sent reminder letter - 1 dated 29.11.2024 and reminder letter -2 dated 02.01.2025 to the complainant for payment of the alleged amount due against the complainant. The respondent company also sent a letter dated 29.01.2025 titled as final reminder wherein it is stated that if the payment of Rs. 4,45,006/- (Rupees Four Lakh Forty-Five Thousand Six Only) is not made to the respondent, then there would be holding charges @Rs.10 per Sq. Ft. per month along with maintenance charges. The respondent in the abovementioned letter also states that if the complainant fails to clear the outstanding amount due against the, then the respondent company shall be constrained to cancel and terminate the allotment of the unit.

- xvi. It is submitted that the original annexure-1 for payment, annexed with the mou dated 16.01.2017, explicitly stated that at the time of offer of registration, the company would charge IFMS, Registration, Stamp Duty, Other Charges as applicable, and EDC+IDC (as and when demanded). However, the new demand raised via letter dated 10.10.2024 is not in consonance with the original Annexure-1 of the payment plan and is therefore illegal, null and void as the Company Respondent cannot charge as to what is not included in the MOU and BBA. This email is nothing but an attempt to unlawfully coerce the complainant into making an illegitimate payment, which is contrary to the terms and conditions of the BBA and the MOU executed between the parties as these payments are nowhere mentioned in the agreements signed.
- xvii. Despite receiving the OC, the respondent failed to handover the possession as well as convey the title of the property in favour of the

complainant. Further, without paying the assured return pending since July, 2019, the respondent is illegally demanding the money such as development charges, FTTH charges, interest by way of annexure- 1 of the demand letter dated 10.10.2024.

xviii. Besides this the illegal demands are raised by the respondent vide letter dated 24.03.2025 wherein the builder without first conveying the property in the name of the complainant proposed to lease out the unit to a third party without the permission of the complainant and without even seeking the consent on terms of the conditions for such lease deed. Illegal Demand of fitout charges of Rs. 8,85,000/- has been raised @Rs.2500/- per square ft. in order to set off the assured return due and payable by the Respondent. Neither date of commencement of the lease has been provided in order to enable the complainant to take the lease amount from the prospective lessee. Thus, it is apparent that builder is exploiting its dominant position and without fulfilling its promises directing the complainant to obey by the reciprocal promises so made, which can be avoided by the complainant. The respondent cannot force its decision to direct the complaint to pay the fitout charges, since the same are payable by the lessee who would install and get the interior done as per its choice. The MoU and BBA do not compel the complaint to make any such payment. Hence, the lease deed as well as the fitout charges demanded by the respondent are liable to be set aside being illegal and beyond the terms and conditions of the agreement.

xix. That the Respondent at various instances violated the terms and condition of the MoU by:

- Not paying the promised monthly assured return to the Complainant at initially promised rates.
- Not completing the project in terms of the MoU.

- Not handing over the peaceful and vacant possession of the above said allotted Unit after completion of the project.
- Proposing to lease out the property to third party as against the terms of MOU and BBA.
- Illegal VAT demands made time and again.
- Illegal Demands which include Development Charges, FTTH, Labour Cess, Interest etc., raised in contravention of Annexure -1 of the MOU dated 16.01.2017 signed by the parties.
- Illegal demand of Fit-out Charges which is not a part of the MOU and BBA.

xx. It is further submitted that there is a clear discrepancy in the record regarding the allotment of the unit. A letter dated 10.10.2024 states that the complainant's unit is allotted on the 12th floor. However, the lease letter dated 24.03.2025 mentions that office space on the 5th floor has been designated to the complainant. The complainant had purchased a space in the food court area on the 5th floor. If the food court is now being constructed on the 3rd floor, then it is the responsibility of the respondent to allot the complainant a unit on the 3rd floor itself.

xxi. It is also important to mention that the food court area originally allotted to the complainant had 50% covered area and 50% open super area, which was meant for public seating in the food court. On the other hand, an office floor does not have such a large open common area. Office floors are built with only a narrow passage for movement of people. Therefore, it is clear that the Respondent is trying to unjustly enrich itself by taking away the 50% open area. The respondent intends to sell this taken-away common area to third parties, causing wrongful loss to the complainant.

xxii. That the complainant is constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 65 per sq. feet amounting to Rs. 19,500 (Rupees Nineteen Thousand Five Hundred Only) for commercial unit priority (food court) no. 42 on 5th floor admeasuring 300 sq. feet, since july, 2019 till the handing over the possession/ lease out of the property after the completion of the construction. The respondent may be directed to complete the project as promised to the complainant and execute the sale deed in favour of the complainant with respect to the restaurant space purchased by him. To set aside the illegal demand of VAT by the respondent and compensation towards the delay in completing the project. Further, to set aside illegal demands which include development charges, FTTH, Labour Cess, fit-out charges etc., raised in contravention of Annexure -1 of the MOU dated 16.01.2017 signed by the parties. Also to set aside the fit-out charges which is illegally been demanded from the complainant. The complainant reserves the right to amend the submission made herein, to produce documents and alter the prayer as and when deem necessary or on the direction of this hon'ble tribunal.

C. Relief sought by the complainant

8. The complainant has sought the following relief(s):

- 1) Direct the Respondent to pay Assured Returns @Rs.65 per sq. feet per month amounting to Rs.19,500/- (Rupees Nineteen Thousand Five Hundred Only) for Commercial Unit Priority (Food Court) No. 42 on 5th Floor since July, 2019 till handing over the possession.
- 2) To direct the Respondent to pay the interest/delayed possession compensation as per RERA Act along with the interest.
- 3) Restrain the Respondent from entering the lease deed with 3rd party without seeking the consent of the Complainant.

- 4) To set aside the power of the Respondent to enter into Lease Deed or handing over the possession to a third party.
- 5) To direct the Respondent to not charge what is not part of the MOU and BBA which includes the demand of Development Charges, FTTH, Labour Cess, Fit-out charges, Interest etc. which was raised via demand letters dated 10.10.2024.
- 6) Set aside the illegal demand of VAT made by the Respondent vide letter dated 22.01.2020, 30.10.2020, 15.09.2021, and 30.09.2021.
- 7) To set aside the letter dated 24.03.2025 which has raised illegal demand of Fit out charges.
- 8) Restrain the Respondent from terminating or cancelling the Unit of the Complainant.
- 9) Declare that the endorsement made by the Respondent changing the originally allotted unit and floor of the Complainant is illegal, null, and void.
- 10) Direct the Respondent to Allot the unit to the Complainant on the 3rd floor where the food court has been constructed now.

D. Reply by the respondent

9. The respondent has contested the complaint on the following grounds:
 - i. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 300 sq. ft. super area in the project "*NEO Square*" (hereinafter referred to as the "project").
 - ii. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 42, on 5th Floor, admeasuring 300 sq. ft. super area, (hereinafter referred to as the "*Subject Unit/Unit*").

- iii. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.
- iv. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 16.01.2017 (hereinafter referred to as the "BBA").
- v. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 16.01.2017 (hereinafter referred to as the "MOU") was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges, etc.
- vi. That by no stretch of imagination it can be concluded that the complainant herein is "allottee/consumer." That the complainant are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.
- vii. It is noted herein 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 and *vide* letter dated 01.10.2020, requested the complainant to forward to complete the formalities with respect to leasing of the unit.

- viii. The Occupation Certificate of the project was granted by the competent Authority on 14.08.2024.
- ix. Thereafter, the respondent sent an offer of possession letter dated 10.10.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- x. Despite receiving the offer of possession, the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated 29.11.2024, 02.01.2025 and 29.01.2025 requesting the complainant to do the needful.
- xi. That the respondent *vides* letters dated 30.10.2020, 15.09.2021 and 30.09.2021 requested the complainant to make payment of vat charges as per the agreed terms and conditions of the MOU.
- xii. That the respondent *vide* letter dated 24.03.2025, requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- xiii. That the respondent *vide* letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- xiv. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- xv. That the complainant is an investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.
- xvi. That the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never

the intent between the parties. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an mou which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainant themselves has entrusted the respondent with the leasing rights of the units.

- xvii. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under section 31 of the Act. Further, the provisions of section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the act and rules/regulations made there under.
- xviii. 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.
- xix. 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 promoter 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.

- xx. 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.
- xxi. 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.
- xxii. On the basis of the above, it may be considered that there is no provision under the scheme of act 2016 for examining and deciding the issues relating

to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.

- xxiii. Also, a perusal of the Section 2(d) defining allottee as well as section 2 (zk) which defines "promoter" does not include any transaction regarding "assured return". Therefore, the assured return scheme is beyond the scope of the act, 2016 and jurisdiction of the authority.
- xxiv. 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.
- xxv. 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.

- xxvi. 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.
- xxvii. 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.
- xxviii. 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."*
- xxix. 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.
- xxx. 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.

- xxxi. 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.
- xxxii. 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.
- xxxiii. 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.
- xxxiv. 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.
- xxxv. 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.

- xxxvi. 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.
- xxxvii. 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.
- xxxviii. 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.
- xxxix. 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.

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

S. N o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction Activity. The Order had completely hampered the construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NCT were a big blow to the real estate sector as the construction

		Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.			activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excused 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 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary

		assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relating to the cost of restoration.			permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <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	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after

					the lifting of ban by the Hon'ble Apex Court.
10	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date.	To date (3 months nationwide lockdown)	Since the 3 rd 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.

- xli. 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.

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

12. 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

13. 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

14. 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.

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

F. Findings on the objections raised by the respondent.

F. I. Objection regarding the complainant being investor.

16. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter 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 buyer's agreement dated 16.01.2017, it is revealed that the complainant is buyer, and they have paid a total price of Rs.12,54,000/- to the promoter towards purchase of a 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;"

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

F. II Objection regarding the project being delayed because of force majeure circumstances.

18. 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, etc. As per MoU, the due date of possession was 16.01.2020. 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. **Direct the Respondent to pay Assured Returns @Rs.65 per sq. feet per month amounting to Rs.19,500/- (Rupees Nineteen Thousand**

Five Hundred Only) for Commercial Unit Priority (Food Court) No. 42 on 5th Floor since July, 2019 till handing over the possession.

- II. To direct the Respondent to pay the interest/delayed possession compensation as per RERA Act along with the interest.**

G.1 Assured Returns

19. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 16.01.2017 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
20. 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 promoter-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.
21. It is pleaded on behalf of respondent 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.*

22. 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;*

23. 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 promoter at the time of booking or immediately thereafter and as agreed upon between them.

24. 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.

25. 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.

26. The promoter is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the addendum agreement.
27. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
28. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 16.01.2017, which is reproduced below for the ready reference:

Clause 4

"The Company shall pay a monthly assured return of Rs.19,500/- on the total amount received with effect from 12.11.2016 before deduction of Tax at Source, 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 by the Allottee(s) to the Company in accordance with 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."

Thus, as per the abovementioned clause the assured return was payable @Rs.19,500/- per month w.e.f. 12.11.2016, till the commencement of first lease.

29. Further, it is observed that despite the assurances extended by the respondent/developer through its letters dated 18.12.2019 and 16.01.2020, wherein it was specifically contended that the assured returns would be settled/adjusted at the time of offer of possession, the respondent has failed to honour the said commitment. Even after the receipt of the Occupation Certificate, the respondent has neither paid nor adjusted the assured returns as promised. Accordingly, the contention of the respondent in the aforesaid letters stands belied by its own conduct.

30. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 10.07.2020. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the Competent Authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. The validity of the said lease can be considered only after obtaining the Occupation Certificate, i.e., on 14.08.2024.

31. In the present complaint, as per clause 4 of the MOU dated 16.01.2017, the amount on account of assured returns was payable from 12.11.2016 up to the commencement of the first lease which was executed on 10.07.2020 but the first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 10.10.2024.

Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainant at the agreed rate i.e., @Rs.19,500/-per month from the effective date i.e., 12.11.2016 till the commencement of the valid first lease of the unit after deducting the amount already paid on account of assured return to the complainant.

G.II Delay Possession Charges:

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

“Section 18: - Return of amount and compensation

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

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

33. Clause 3 of the MoU dated 17.08.2018 provides for handing over of possession and is reproduced below:

“The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate”

34. **Due date of possession:** As per clause 3 of the MoU, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later. Thus, the due date of possession come out to be 16.01.2020.

35. 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"

36. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

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

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

39. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 16.01.2020. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainant on 29.11.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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?

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 16.01.2017. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of Rs.19,500/- on the total amount received with effect from 12.11.2016 till the commencement of first lease. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of

assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 12.11.2016 up to the commencement of first lease which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay 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 delay possession charges whichever is higher.

40. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

41. In the present complaint, as per clause 4 of the MoU dated 16.01.2017, the amount on account of assured return was payable from 12.11.2016 up to the commencement of first lease. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on valid lease by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.19,500/- per month from the date i.e. 12.11.2016 till the commencement of the first lease on the said unit as per the memorandum of understanding dated 16.01.2017, after deducting the amount already paid on account of assured returns to the complainants.

- III. **Restrain the Respondent from entering the lease deed with 3rd party without seeking the consent of the Complainant.**
- IV. **To set aside the power of the Respondent to enter into Lease Deed or handing over the possession to a third party.**

42. The Authority has perused the terms and conditions of the MoU executed between the parties, particularly clauses 8(a) to 8(e), 9(a) & 9(b) and 10(i), wherein it is recorded that the said unit is a commercial unit and that the leasing of the unit is to be undertaken through the respondent. The said clauses further stipulate that the respondent shall have the right to finalize the terms of the lease, including the choice of lessee, usage, duration and quantum of rent, and the complainant/allottee has expressly undertaken not to raise any objection with respect to the lease terms, lease amount or the person/entity to whom the unit is leased out. It is also noted that the complainant has authorized the respondent company to execute the lease deed on behalf of the complainant in case of non-cooperation within the stipulated time, and the intimation by the company shall not be construed as seeking permission or approval from the allottee. It is also on record that the respondent on dated 01.10.2020 sent a letter to the complainant to visit and sign the relevant documents with respect to the lease of the said unit.

One of the clauses is given for the ready reference:

"8(a) That the Allottee(s) herein authorizes the Company to finalize the terms for leasing the said unit with any prospective lessee. The Allottee(s) undertakes not to object to the terms of the lease and further undertakes not to object as to whom the Lease shall be or what shall be the lease amount or usage. The choice of tenant usage duration of lease and quantum of rent shall be in exclusive domain of company and allottee(s) shall at no point of time object to or interfere in the same at any level.

43. In view of the aforesaid clauses contained in the BBA and MoU signed between the parties on dated 16.01.2017, the Authority observes that the leasing rights and related decisions vest with the respondent, as mutually agreed between the

parties, and are binding upon the complainant in terms of the executed documents.

- V. **To direct the Respondent to not charge what is not part of the MOU and BBA which includes the demand of Development Charges, FTTH, Labour Cess, Fit-out charges, Interest etc. which was raised via demand letters dated 10.10.2024.**
- VI. **Set aside the illegal demand of VAT made by the Respondent vide letter dated 22.01.2020, 30.10.2020, 15.09.2021, and 30.09.2021.**
- VII. **To set aside the letter dated 24.03.2025 which has raised illegal demand of Fit out charges.**

44. The complainant has further sought relief regarding the waiver of various charges, penalties, rates, and other demands which, according to them, do not form part of either the Buyers' Agreement dated 16.01.2017 or the MoU executed on the same date. The impugned demand notice and offer of possession dated 10.10.2024 reflects components such as IFMS, development charges, FTTH charges and labour cess, which have been objected to by the complainant. The Authority of the view that:

- **Labour cess**

Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be

charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Development charges**

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

Clause 11

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

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

department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

The Authority further observes that clause 11, as discussed hereinabove, does not contain any stipulation regarding levy or recovery of FTTH charges from the complainant. In the absence of any specific contractual consent or agreed term between the parties, such charges cannot be imposed by the respondent. Accordingly, the respondent is directed to raise demands strictly in accordance with the terms mutually agreed under the executed agreement and MoU.

45. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 16.01.2017.

46. It is pertinent to note that prior to the filing of the present complaint, demand towards fit-out charges had been raised by the respondent dated 24.03.2025, wherein the demand for fit-out charges of Rs.8,85,000/-, which is on record. Vide proceedings dated 09.12.2025 the counsel for the respondent submitted that as per the clause 7 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

Clause 7(d)

"That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense 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 rental 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 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received."

47. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes, which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

48. Therefore, if the respondent seeks to levy fit out charges, it must first provide a proper justification of demands by showing that the work was required for making the unit fit for lease. The fit out charges should be supported with proper details, including a break-up of expenditure and certification or report from an authorized architect, engineer or other competent professional confirming both the necessity and reasonableness of the work carried out. Only after such justification is provided respondent can charge from the complainant under the MoU.

- **VAT Charges**

49. The complainant has contended that the respondent has illegally charged amount from him towards VAT, a demand notice of Rs.1,57,500/- towards 'VAT outstanding' was sent by the developer to the complainant. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand

of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis-à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

- VIII. Restrain the Respondent from terminating or cancelling the Unit of the Complainant.**
- IX. Declare that the endorsement made by the Respondent changing the originally allotted unit and floor of the Complainant is illegal, null, and void.**
- X. Direct the Respondent to Allot the unit to the Complainant on the 3rd floor where the food court has been constructed now.**

50. The Authority observes that the complainant has already paid a sum of Rs.12,54,000/- which is more than the total basic sale consideration of Rs.12,00,000/- as clause 4 of the MoU. The due date of possession of the unit was 16.01.2020, whereas the respondent issued the offer of possession only on 10.10.2024, thereby reflecting a delay on the part of the respondent in offering possession. In view thereof, the respondent is not entitled to cancel the allotment of the unit on account of the aforesaid delay attributable to it.

51. Further, the Authority observes that the complainant has executed the BBA dated 16.01.2017 for the unit situated on the fifth floor as specifically mentioned

in the said BBA. Accordingly, the respondent is hereby directed to issue a valid offer of possession strictly in terms of the BBA dated 16.01.2017.

52. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

53. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days.

H.Directions of the Authority

54. 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 assured return to the complainant at the agreed rate of @Rs.19,500/-per month from the effective date in clause 4 of the MoU i.e., 12.11.2016 till the commencement of the valid first lease on the concerned units after deducting the amount already paid on account of assured return to the complainant if any.
- II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 16.01.2017.

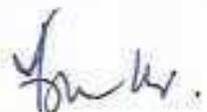
- IV. The respondent is directed to recover development charges as per clause 11 of the BBA only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- V. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.
- VI. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.
- VII. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.
55. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
56. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
57. Files be consigned to registry.



Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025



Arun Kumar
(Chairman)