

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

**Complaint no.** : 866 of 2025  
**Date of filing** : 20.02.2025  
**Date of decision** : 09.12.2025

Varinder Kumar Bhutani  
**R/o:** - 13/178 Malviya Nagar New  
Delhi South Delhi

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Shri Jagdish Kumar Bhutani  
Shri E. Krishna Dass (Advocate)

**Counsel for Complainant  
Counsel for Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

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

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 Valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	Registered 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
8.	Unit and Floor no.	Priority Serial No. 114 at third floor (As mentioned on page no.24 of the complaint)  Priority no.114 at first floor (Unit changed) (As mentioned on page no.56 of the complaint)
9.	Unit area admeasuring	400 sq. ft. (Super Area) (As mentioned in clause 2.1 of BBA page no.24 of the complaint)
10.	Date of execution of buyer's agreement	29.01.2020 (as per page 21 of the complaint)
11.	Date of execution of MoU's	29.01.2020



12.	Possession Clause	<p>Clause 5.2 of BBA &amp; Clause 3 of MOU ...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. The Company on grant of occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.</p> <p><b>[Emphasis supplied]</b></p> <p>(As per clause 5.2 of BBA at page 59 &amp; as per MOU at page no. 81 of complaint)</p>
13.	Assured return clause as per MOU	<p><b>Clause 4</b></p> <p><i>... The company shall pay a penalty of Rs.39,964/- per month on the said unit. On the total amount received, with effect from effective date-II (i.e., 15.12.2020) before deduction of Tax at Source... The penalty shall be paid to the allottee(s) from end of effective date-II until the offer of possession letter date, on prorata basis.</i></p> <p><b>[Emphasis supplied]</b></p> <p>(As per page no. 50 of complaint)</p>
14.	Date of start of construction	<p>The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the</p>

		construction was started in the month of December 2015.
15.	Due date of possession	<b>29.07.2023</b> [07.03.2022 + 6 months]  (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 29.01.2020, being later, plus grace period of 6 months) (Note: Grace period of 6 months allowed as per <i>HARERA notification no. 9/3-2020 dated 26.05.2020</i> )
16.	Basic Sale Consideration	Rs.20,00,000/-  (As mentioned in BBA on page no.24 of the complaint)
17.	Amount paid by the complainant	Rs.24,52,352/-  (as per page 58 of complaint)
18.	Payment Plan	Down Payment plan (As per pg. no. 39 of the complaint)
19.	Occupation certificate	14.08.2024 (As per DTCP site)
20.	Demand and possession letter	04.11.2024  (As per pg. no. 56 of the complaint)

**B. Facts of the complaint**

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

- a. That we, Varinder Kumar Bhutani S/o Late Shri Topan das Bhutani & Raghav Bhutani S/o Shri Varinder Kumar Bhutani both residents of 13/178, Malviya Nagar, New Delhi-10017 (hereinafter called Allotees) purchased under down payment plan unit priority No. 114 measuring 400 sq. ft. super built-up area in food court at third floor of Neo Square. details are given in the MOU dt. 29-01-2020 and BBA dt. 24-03-23 entered into with Neo developers private limited.

- b. That, we have paid a total sum of Rs. 24,52,352 (full cost of the unit) + rs. 3,89,686 (possession charges) = Rs. 28,42,038. The unit is now fully paid, including charges payable at the time of possession.
- c. That the offer of possession was received vide neo developers' letter dt. 04-11-24. They arbitrarily changed the location of our space from third floor to first floor, and asked us to pay possession charges.
- d. That, we brought to the company's notice vide our letter dt. 10-11-24 sent under speed post that they have to pay a penalty amount of Rs. 39,964 payable monthly from effective date i.e. 15-12-20 until the offer of possession letter dt. 04-11-24. this is as per mou entered into with the company. (para-4 refers).
- e. That the company did not reply to our letter dt. 10-11-24 inspite of calling them several times on phone / sending email. the company sent final notice dated 29-01-25 (annexed) asking for possession charges otherwise our unit would be cancelled and allotment terminated for non payment of possession charges.
- f. That we paid the possession charges of Rs. 3,89,686/- on 10-02-25.
- g. That the company shall pay a penalty of rs. 39,964/- (rupees thirty nine thousand nine hundred sixty four only) per month on the said unit, on the total amount received with effect from 15th dec 2020 (effective date-ii) subject to TDS, taxes, cess or any other levy which is due and payable by the allottee(s) and which shall be adjusted in total sale consideration; the balance total sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as annexure-
  - i. the penalty shall be paid to the allottee(s) from end of effective date ii
  - ii until the offer of possession letter date, on pro rata basis.



- h. That if the company offers possession before the effective date-ii then in that case allottee shall be liable to pay to the company, early lease facilitation charges of Rs. 39,964/- (rupees thirty-nine thousand nine hundred sixty-four only) per month calculated till the effective date-ii, subject to taxes, cess or any other levy which is due and payable by the company vide their letter dt. 01-02-22 had advised that they will adjust payments payable to us towards monthly returns / interest at the time of possession (annexed).
- i. The company entered into leasing of space in July 2020. The company had leasing rights and obtained consent of the allottees. However, no leasing rentals were paid to the Allotees. The lease would not have commenced as the OC was received during the period Sept.-Nov. 24 only. Moreover the company had arbitrarily changed our allocation of space from third floor to first floor. The lease agreement if any was for third floor and not first floor.
- j. That as per MOU dt. 29-01-2020 entered into with the allottees para 8(a) states that the responsibility of assured returns to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs. 81.75/- per sq. ft. per month.
- k. That the company did not pay even a single rupee to Allotees in shape of penalty / assured return / interest any time or from the date of entering into MOU.

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

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

- I. Direct the Respondent to pay pending Assured Return/Penalty.

II. Direction to the respondent to allot space as per the MOU and BBA at 3<sup>rd</sup> Floor instead of 1<sup>st</sup> floor.

5. The respondent-promoter were given various opportunity for filing of reply; the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 12.11.2025, the respondent proceeded ex-parte. Hence, in view of the same, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.

**D. Jurisdiction of the Authority**

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

**D.I Territorial jurisdiction**

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

**D.II Subject-matter jurisdiction**

8. 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.*

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
- E. Findings on the relief sought by the complainant.
- I. Direct the Respondent to pay pending Assured Return/Penalty**
- E.1) Assured Returns**
10. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 29.01.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
11. It is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
12. It is to be noted that the Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and

for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

13. 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.
14. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
15. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 29.01.2020, which is reproduced below for the ready reference:

*Clause 4.*

*"The Company shall pay a Penalty of **Rs. 39,964/-** per month on the said Unit, on the Total amount received with effect from **15th December 2020 (Effective Date II)** subject to TDS, Taxes, any other levy which is due and payable by the Allottee(s) and which shall be*

*adjusted in total sales consideration; the balance total sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as Annexure I. The penalty shall be paid to the Allottee(s) from end of effective date till the date of offer of possession letter date, on pro-rata basis."*

16. Thus, as per the abovementioned clause the assured return was payable @Rs.39,964/- per month w.e.f. 15.12.2020, till the offer of possession as per clause 4 of the MoU.
17. In light of the above, the Authority is of the view that as per the MoU dated 29.01.2020, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 04.11.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.39,964/- from the effective date as per clause 4 of the MoU i.e., 15.12.2020 till 04.11.2024.
18. On consideration of the documents available on the record and submissions made by the complainant, the complainant has sought the amount of unpaid amount of assured return/penalty as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 29.01.2020, the promoter had agreed to pay to the complainant allottee Rs.39,964/- with effect from 15.12.2020 till the offer of possession letter date.
19. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.39,964/- with effect from 15.12.2020 till the offer of possession letter date i.e., 04.11.2024.

**II. Direction to the respondent to allot space as per the MOU and BBA at 3<sup>rd</sup> Floor instead of 1<sup>st</sup> floor.**

20. The impugned demand notice and offer of possession dated 04.11.2024 reflects components such as IFMS, development charges, FTTH charges, interest amount on dues 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.

21. 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 and give a valid offer of possession. 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.
22. 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 complainant/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

**F. Directions of the Authority**

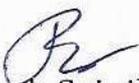
23. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
  - I. The respondent/promoter is directed to pay the penalty/assured return to the complainant at the agreed rate i.e., @Rs.39,964/- from the effective date as per clause 4 of the MoU i.e., 15.12.2020 till offer of possession letter date i.e., 04.11.2024.
  - II. The respondent/promoter is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if

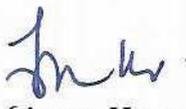
any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

- III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement.
- IV. The respondent is not entitled to charge holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.**
- 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. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to registry.

  
(Phool Singh Saini)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.12.2025**