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/372/2025	Sunil Gulia V/S NEO Developers Private Limited	Gaurav Bhardwaj and Surbhi Garg Bhardwaj (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
2.	CR/1795/2025	Shikha Sikka V/S NEO Developers Private Limited	Rajiv Vig (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
3.	CR/968/2025	Kamla Arya V/S NEO Developers Private Limited	Bhajan Lal Jangra (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)

CORAM:	
Shri Arun Kumar	**Chairman**
Shri Phool Singh Saini	**Member**

ORDER

1. This order shall dispose of all the 3 aforesaid complaints titled above filed before this Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017

(hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant in the above referred matters are allottees of the project, namely, ***"Neo Square"*** Sector 109, Gurugram being developed by the same respondent/promoter i.e., ***M/s Neo Developers Private Limited***. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return/penalty, waiver of development charges, lease rentals and other reliefs.

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

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

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size of the unit	Date of execution of BBA /MoU	Assured Return/Penalty Clause of MoU	Total Sale Consideration and Total Amount paid by the complainant	Offer of possession
1.	**CR/372/2025** Sunil Gulia Vs. M/s Neo Developers Private Limited	Priority No. 93, 3rd floor 300 Sq. Ft. (As per page no.	**BBA:** 12.04.2019 (page 51 of complaint) **MOU:** 12.04.2019	***Clause 4*** *"The Company shall pay one time penalty calculated at the rate of @Rs.29,973/-*	**T.S.C:** Rs. 19,12,140/- (as per page no. 71 of complaint)	**O.O.P:** 05.11.2024 (page no. 89 of complaint)

	DOF: 30.01.2025 **Reply:** 27.08.2025	55 of complaint)	(As per page no. 79 of complaint)	*per month on the said Unit on the total amount received, with effect from 29.04.2019 (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 till the date of offer of possession letter date, on pro-rata basis."* (As per page no. 73 of complaint)	**A.P.:** Rs. 11,56,064/- (as per page no. 91 of complaint)	
2	**CR/1795/2025** Shikha Sikka Vs. M/s Neo Developers Private Limited **DOF:**	Priority No. 45 3rd Floor (8-meter height) 264 Sq. Ft.	**BBA:** 28.09.2018 (page 26 of complaint) **MOU:** 28.09.2018 (page 17 of complaint)	***Clause 4*** *–* *"The Company shall pay a penalty calculated at the rate of Rs.25,920/- per month on*	**T.S.C:** Rs. 16,77,952/- (as per page no. 45 of complaint)	**O.O.P:** 05.11.2024 (as per page no. 54 of the complaint)

	02.04.2025 **Reply:** 12.09.2025	(page no. 29 of complaint) (New Unit) Priority Allotments on 2nd floor		*the said Unit on the total amount received, with effect from 28.09.2020 (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 till the date of offer of possession letter date, on pro-rata basis."* *(As per pg. no. 18 of the Complaint)*	**A.P.:** Rs. 16,03,536/- (as per SOA as per page 40 and 56 of complaint)	
3.	**CR/968/2025** Kamla Arya Vs. M/s Neo Developers Private Limited **DOF:** 20.02.2025	Priority No. 91 Ground Floor 668 Sq. Ft. (page no. 51 of	**BBA:** 07.03.2019 (page 48 of complaint) **MOU:** 07.03.2019 (page 17 of complaint)	***Clause 4 –*** *"The Company shall pay a penalty calculated at the rate of Rs.97,361/- per month on the said Unit*	**T.S.C:** Rs. 1,14,36,412/- (as per page no. 65 of BBA of the complaint)	**O.O.P:** 02.12.2024 (as per page no. 74 of the complaint)

	Reply: NA	complaint)		*on the total amount received, with effect from 07.03.2020 (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 till the date of offer of possession letter date, on pro-rata basis."* *(As per pg. no. 35 of the Complaint)*	**A.P.:** Rs. 1,15,42,684/- (as per SOA as per page 40 and 56 of complaint)	

Relief sought by the complainant in abovementioned complaints: -

1. Direct the respondent to pay the unpaid assured return amount along with the interest.
2. Direct the respondent to pay delayed possession charges to the complainant on the principal amount paid by the complainant, from the due date of possession till the date of actual handing over of possession.
3. Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement.
4. Direct the respondent to not levy any holding charges from the complainant.

5. Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover. 6. The respondent be directed to revoke the illegal demands. 7. The respondent may kindly be directed to hand over the possession and execute the sale deed of the commercial space.

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 allottees
OOP	Offer Of Possession

4. The aforesaid complaints were filed by the complainant-allottees against the promoter on account of violation of the builder buyer's agreement/MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the assured returns/penalty, delayed possession charges, lease rental and to set aside other charges.

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/372/2025 titled as Sunil Gulia VS NEO Developers Private Limited.*** are being taken into consideration for determining the rights of the allottees qua the relief sought by them.

A. Unit and project related details

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

CR/372/2025 titled as Sunil Gulia VS NEO Developers Private Limited

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.	RERA Registered/ not registered	Registered 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
7.	Unit and Floor no.	Priority no.93 at 3rd floor (As mentioned in clause 2.1 of BBA page no.55 of the complaint)
8.	Unit area admeasuring	300 sq. ft. (Super Area) (As mentioned in clause 2.1 of BBA page no.55 of the complaint)
9.	Date of execution of buyer's agreement	12.04.2019 (as per page 51-78 of the complaint)
10.	Date of execution of MoU's	12.04.2019 (As per page no.79-88 of the complaint)
11.	Possession Clause	Clause 5.2 of BBA & 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. **[Emphasis supplied]** (As per clause 5.2 of BBA at page 59 & as per MOU at page no. 81 of complaint)

12.	Assured return clause as per MOU	*Clause 4* *... The company shall pay a penalty of Rs.29,973/- per month on the said unit. On the total amount received, with effect from effective date-II (i.e., 29.04.2019) 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 prorate basis.* *[Emphasis supplied]* (As per page no. 81-82 of complaint)
13.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
14.	Due date of possession	12.10.2022 [12.04.2021 + 6 months] (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 12.04.2019, being later, plus grace period of 6 months) (Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)
15.	Total sale consideration	Rs.19,12,140/- (As mentioned in payment schedule on page no.71-72 of the complaint)
16.	Amount paid by the complainant	Rs.11,56,064/-

		(as per account statement dated 05.11.2024 at page 91 of complaint)
17.	Payment Plan	Assured return plan (As per payment schedule on page no.71-72 of the complaint)
18.	Occupation certificate	14.08.2024 (As per the DTCP site)
19.	Demand notice and offer of possession	05.11.2024 (As per page no. 89-91 of the complaint)
20.	Reminder Letter	29.11.2024 (As per page no. 92 of the complaint)
21.	Legal Notice by complainant	11.12.2024 (As per page 93-98 of complaint)
22.	Final reminder	29.01.2025 (As per document provided with Application u/s 36 by the complainant)
23.	Letter for leasing of space	Rs.12,39,000/- (for Fit-out charges) Dated 02.04.2025 (As per document provided with Application u/s 36 by the complainant)

B. Facts of the complaint

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

I. That the respondent advertised about the launch of its commercial complex project namely "neo square" located in sector-109, Dwarka expressway Gurugram, Haryana. The said respondent painted rosy picture of the project in their advertisement making tall claims and

representing that the project is strategically connected with Dwarka expressway and surrounded with major residential development. The respondent further asserted that there will be accessibility to all important corners of NCR in matter of minutes. the project was advertised as encompassing various types of retail space, office space including multi brand retail store, restaurants, roof top sky lounge, 8 screen multiplex with gold glass etc.

II. That, the complainant booked a commercial unit via application bearing no. NEOD/NS01/593 in the said project by paying an amount of Rs. 2,36,959/- vide instrument bearing no.000054 dated 28.03.2019 drawn from HDFC Bank.

III. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company, the complainant further made payment of Rs. 2,50.000/- vide instrument bearing no. 000009 dated 11.04.2019, Rs. 3,00,000/- vide instrument bearing no. 000029 dated 11.04.2019 and Rs. 3,69,105/- vide instrument bearing no. 000055 dated 12.04.2019 drawn on HDFC bank towards the purchase of the said commercial space. it is pertinent here to mention that the complainant has made a total payment of Rs. 11,56,064 /- against the total sale consideration of Rs. 19,12,140/- prior to execution of Memorandum of Understanding and Builder Buyer Agreement.

IV. That thereafter, a buyer agreement was executed between the complainant and the respondent on 12.04.2019 to which the complainant raised several objections to various terms and conditions of the said buyer agreement but the respondent clearly stated that the execution of

buyer agreement is merely a formality. deposing faith upon the respondent, the complainant agreed to the said buyer agreement.

V. That pursuant to the afore-mentioned payment by the complainant, the respondent executed an mou dated 29.04.2019 with the complainant thereby allotting the afore-mentioned.

VI. That prior to execution of the said MOU, the complainant made 75% payment against the total basic sale price of Rs. 19,12,140/-. It is imperative to mention here that as per MOU the respondent shall pay a penalty of Rs. 29,973/- to the complainant on the total amount received till the date of offer of possession.

VII. That the aforesaid MOU contained various unfair clauses, one being where no specific date of offer of possession being committed by the respondent. Similarly, the MOU nowhere mentioned about the delay compensation charges to be payable in case of delay in offer of possession. On the contrary, in case of delay of payment by the buyer, the Memorandum of Understanding clearly laid down an interest @ 18% p.a. to be levied by the respondent. The said clauses are completely one sided and are liable to be declared as null and void.

VIII. That till date, the respondent failed in handing over of possession and monthly assured return of Rs.29,973/- on the total amount received as per the MOU.

IX. That later, vide letter dated 05.11.2024 titled as "Demand Notice and Offer of Possession", the respondent informed the complainant about grant of occupation certificate and offered the possession of the unit bearing no. priority no. 93 to the complainant. Subsequently, the respondent requested the complainant to clear the pending dues as per annexure – I of the said letter dated 05.11.2024. However, to the utter

shock of the complainant, as per the said annexure – i of the aforementioned letters, the respondent raised an additional demand of Rs. 9,85,977 /- whereas as per the annexure – i of the BBA, the pending dues amount to Rs.7,56,076/- It is to be noted that the Complainant had already made 75% payment in 2019. The respondent again exerted undue pressure upon the complainant to pay CAM charges and other fees as demanded by the maintenance service provider. It is pertinent to mention here that the respondent kept on sending reminder to the complainant.

X. That consequently, the complainant sent a legal notice to the respondent dated 11.12.2024 regarding the illegal demand raised of payment due as per the Annexure – I of the aforementioned letter. Furthermore, the complainant clearly mentioned that only 25% payment has left as per the BBA executed on 12.04.2019, but to no avail. It is pertinent to mention here that the respondent never replied to the aforesaid notice raising concerns over additional demand raised of Rs. 2,29,901/-.

XI. That the present complaint has been filed in order to seek delayed possession charge and assured returns on the principal amount paid by the Complainant along with interest at the rate prescribed as per RERA Act, 2016 and HRERA Rules, 2017 from the due date of possession, along with other reliefs mentioned herein below. Hence, this complaint.

C. Relief sought by the complainant:

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

I. Direct the respondent to pay the unpaid Assured return amount along with the interest

II. Direct the Respondent to pay delayed possession charges to the Complainant on the principal amount paid by the Complainant,

from the due date of possession till the date of actual handing over of possession.

III. Direct the Respondent not to charge any amount beyond the amount as mentioned in Builder Buyer Agreement.

IV. Direct the Respondent to not levy any holding charges from the Complainant.

V. Direct the Respondent to not levy any maintenance charges from the Complainant till date of actual handover.

VI. The respondent be directed to revoke the illegal demands.

VII. The respondent may kindly be directed to hand over the possession and execute the sale deed of the Commercial Space.

VIII. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

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

a. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the Provisions of the Real Estate (Regulation & Development) Act, 2016. It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between builders and buyers and the reliefs sought by the complainant cannot be construed to fall within the ambit of RERA Act. That the complainant herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.

b. That the complainant with the intent to invest in the Real Estate sector as an investor, approached the Respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the Respondent. That after being fully satisfied with the Project and the approvals thereof, the Complainant decided to apply to the Respondent by submitting a booking application form dated 03/04/2019, whereby seeking allotment of unit no. 93, admeasuring 300 sq. ft super area on the 1st floor of the project having a basic sale price of Rs. 5016/- (rupees five thousand sixteen only) (hereinafter referred to as the *"unit")* the complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

c. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated:- 12/04/2019 executed between the Parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 12/04/2020 till offer of possession. It is also submitted that as per terms of the MOU, the complainant herein had duly authorized the respondent to put the said unit on lease.

d. no stretch of imagination it can be concluded that the complainant herein are "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.

e. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 12.04.2019 for Shop No. 93 on 1st floor admeasuring 300 Sq. Ft super area in the project.

f. That it is submitted that the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under Section 13. It is submitted that Section 13 nowhere mentions the agreements pertaining to assured return are covered under the RERA act, 2016, it is imperative that a strict interpretation is given to its provisions while deciding the matters pertaining to assured return.

g. A perusal of the above provisions would show that the RERA 2016 only envisages the enforcement of the Act and rules /regulations made there under. It is submitted 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

h. That the respondent has duly honored its obligations in good faith and made payments of assured returns as per the contractual terms. The complainant, by concealing these material facts, is attempting to mislead this authority and misuse the benevolent provisions of the RERA Act

i. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

j. 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.

k. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the Agreement of Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

l. 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.

m. 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.

n. 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.

o. 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.

p. 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.

q. 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:

r. "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."

s. 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.

t. 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.

u. 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.

v. 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.

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

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

y. That the demand of VAT is done as per Clause 11 of the Buyer's Agreement. The said clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainant are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

z. 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. No.	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.	7th of April, 2015 to 6th 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.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had

		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.			Completely Stopped Construction activity.
4.	7th 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 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely		9 days	On account of passing of the aforesaid order,

	17th Nov, 2017	prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.			no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.	1st Nov to 10th 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.	24th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which

					consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as *"MC Mehta vs. Union of India"* completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and 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.	3rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3rd 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.

aa. 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 has been provided in the agreement.

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 maintainability of complaint on account of complainant being the investors.

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

> *"2(d) **"allottee"** in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainant are the allottees as the subject unit was allotted to them by the promoter vide said MoU and BBA dated 12.04.2019. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F. II. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return.

18. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs.

Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

19. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

> *"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"*

20. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainant.

i. Direct the respondent to pay the unpaid assured return amount along with the interest.

ii.Direct the Respondent to pay delayed possession charges to the Complainant on the principal amount paid by the Complainant, from the due date of possession till the date of actual handing over of possession.

G.1) Assured Returns

21. The complainant is seeking unpaid assured returns/penalty on monthly basis as per the terms of the MoU dated 12.04.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

22. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

23. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement*

subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement.

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

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

25. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

26. It is to be noted that the Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

27. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

28. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding dated 12.04.2019.

29. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 12.04.2019, which is reproduced below for the ready reference:

> ***Clause 4***
> *"The Company shall pay a Penalty of* ***Rs.29,973/-*** *(Rupees twenty Nine Thousand Nine Hundred Seventy three only) per month on the said Unit, On the total amount received with effect from* ***29-04-2019*** *(Effective Date-II) Subject to TDS, Taxes, cess or any of their levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale consideration; the balance total sale*

consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- I. The penalty shall be paid to the Allottee(s) from end of effective date II until the offer of possession letter date, on prorate basis."

30. Thus, as per the abovementioned clause the assured return/penalty was payable **@Rs.29,973/-** per month w.e.f. 29.04.2019, till the offer of possession.

31. In light of the above, the Authority is of the view that as per the MoU dated 12.04.2019, it was obligation on part of the respondent to pay the assured return/penalty till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 05.11.2024. Accordingly, the respondent/promoter is liable to pay assured return/penalty to the complainant at the agreed rate i.e., @Rs.29,973/- from the effective date as per clause 4 of the MoU i.e., 29.04.2019 till 05.11.2024.

G.II) Delay Possession Charges:

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

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —
.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

33. The subject unit was allotted to the complainant vide MOU/BBA dated 12.04.2019. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 36 months

from the date of execution of this agreement or from the start of construction whichever is later. The period of 36 months is calculated from the date of BBA i.e., 12.04.2019 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 12.10.2022.

34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

35. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 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.

36. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
38. On consideration of documents available on record and submissions made by the complainant, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 12.10.2022.
39. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
40. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 12.04.2019. The assured return/penalty in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of @Rs.29,973/- on the total amount received with

effect from 29.04.2019 till the offer of possession letter i.e., 05.11.2024. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs.29,973/- per month whereas the delayed possession charges are payable approximately Rs.10,452/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

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

42. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 12.04.2019, the promoter had agreed to pay to the complainant allottee

@Rs.29,973/- with effect from 29.04.2019 till the offer of possession letter date.

43. Therefore, considering the facts of the present case, the respondent is liable to pay the amount of assured return as per the clause 4 of the MoU at the agreed rate i.e., @Rs.29,973/- with effect from 29.04.2019 till the offer of possession letter date i.e., 05.11.2024.

iii. Direct the respondent not to charge any amount beyond the amount as mentioned in Builder Buyer Agreement.

iv. Direct the respondent to not levy any holding charges from the complainant.

v. Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.

vi. The respondent be directed to revoke the illegal demands.

44. All the above reliefs are taken up together as the same are inter connected with each other. Further, in all the complaints, complainant is seeking relief with regard to the waiver of the illegal Fit-out charges, development charges, labour Cess, FTTH charges and Interest Payable.

45. It is to be noted that the respondent, vide its demand notice and offer of possession letter dated 05.11.2024, and thereafter through subsequent reminder letters, has raised various demands upon the complainant towards development charges, labour cess, FTTH charges, EDC/IDC, VAT, interest on delayed payment, etc. Upon perusal of the record and the applicable contractual documents, this Authority observes that while certain statutory and development-related charges may be leviable strictly in accordance with the terms of the BBA and MoU and subject to actual proof of payment to the competent authorities, the respondent cannot raise blanket or composite demands without placing on record any justification, calculation sheet, or

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

- **Labour cess**

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

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

"11.

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

In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the 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 respondent during proceedings dated 09.12.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

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

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

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

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

- **Interest Free Maintenance Security**

The Authority observes that the MoU dated 12.04.2019 executed between the parties specifically provides for payment of additional charges, including IFMS @Rs.225/- per sq. ft. It is evident that the parties had agreed that the

said IFMS charges shall be payable separately, in addition to the basic sale consideration, at the time of offer of registration. Accordingly, the levy of IFMS charges, as stipulated in the MoU, is held to be applicable in this case.

- **Fit-Out charges**

47. It is pertinent to note that prior to the filing of the present complaint, no demand towards fit-out charges had been raised by the respondent nor any relief sought has been asked by the complainant. However, during the pendency of the proceedings, the respondent issued a leasing out letter on 02.04.2025, wherein the demand for fit-out charges of Rs.12,39,000/-, which is on record in the reply dated 30.09.2025 and has directed the complainant to make the said payment in favour of a third party, namely *H5 Hospitality LLP*, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. However, on perusal of the MoU executed between the allottee and the promoter, the Authority finds that Clause 8(d) exists in the present MoU and is reproduced herein below:

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

48. The Authority observes that clause 8(d) of the MoU clearly mandates that any expenditure incurred on account of infrastructural or any changes, if demanded by the tenant, can be recovered from the allottee only after issuance of a written notification by the promoter on the registered e-mail address of the allottee. The said clause does not confer any unfettered or unilateral right upon the promoter to incur expenses on its own accord and thereafter recover the same from the allottee without prior intimation. Such conduct is contrary to the express terms of clause 8(d) as well as the statutory obligations cast upon the promoter under Section 11(4)(d) of the Act, which require the promoter to act in a reasonable and responsible manner. The view of the Authority in this regard is that if the respondent seeks to levy fit out charges, it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainants.

- **Interest on delayed payment:**

49. The Authority has perused the offer of possession letter dated 05.11.2024, wherein an amount of Rs.3,511/- has been levied towards interest on delayed payment. Upon examination of the MoU on record, it is noticed that the complainant has already paid a sum of Rs.11,56,064/-, which is less than the total basic sale consideration of the said unit is Rs.19,12,140/-, as expressly stipulated in the possession linked payment plan of the MoU executed between the parties. Hence, in terms of the MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 05.11.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU. Accordingly, the complainant is liable to pay the remaining applicable charges, as agreed between the parties, along with interest, if any, on delayed payment attributable to the allottees.

vii. The respondent may kindly be directed to hand over the possession and execute the sale deed of the Commercial Space.

50. The Authority hereby directs the respondent not to cancel the unit and shall hand over symbolic and constructive possession of the unit in question to the complainant within a period of 30 days from the date of this order. The Respondent is further directed to ensure that the possession is delivered in absolute completeness, strictly adhering to the amenities and specifications as promised in the Agreement to Sale and the sanctioned project brochures.

51. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the Authority -

52. 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.29,973/- from the effective date as per clause 4 of the MoU i.e., 29.04.2019 till offer of possession letter date i.e.,05.11.2024, after deducting the amount already paid on account of assured returns to the complainant.

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/promoter is directed to handover 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.

IV. The respondent is not entitled to charge FTTH and holding charges 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 recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

VI. The respondent shall charge interest on delayed payment from the complainant, if any.

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

VIII. 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.

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

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

55. File be consigned to registry.

Phool Singh Saini
(Member)

Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.12.2025