

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

Date of Order: 16.12.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Attendance
1.	CR/1467/2025	Kamlesh V/S NEO Developers Private Limited	Garvit Gupta and Harshita Setia (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
2.	CR/1701/2025	Shakti Verma V/S NEO Developers Private Limited	Garvit Gupta and Harshita Setia (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
3.	CR/1670/2025	Santosh Devi V/S NEO Developers Private Limited	Garvit Gupta and Harshita Setia (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
4.	CR/1465/2025	Jyoti Shokeen V/S NEO Developers Private Limited	Garvit Gupta and Harshita Setia (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
5.	CR/1481/2025	Renu V/S NEO Developers Private Limited	Garvit Gupta and Harshita Setia (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
6.	CR/2374/2025	Gaurav Bajaj and Rajni Bajaj V/S NEO Developers Private Limited	Garvit Gupta And Harshita Setia (Complainant)

			E. Krishna Dass and Dushyant Yadav (Respondent)
7.	CR/2324/2025	Vikas Gupta V/S NEO Developers Private Limited	Sushil Yadav (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
8.	CR/2772/2025	Binod Prasad Shaw V/S NEO Developers Private Limited	Megha Shaw (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
9.	CR/1819/2025	Poonam Madaan V/S NEO Developers Private Limited	Hemant Phogat (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
10.	CR/1821/2025	Bela Sehgal and Tushi Gupta V/S NEO Developers Private Limited	Hemant Phogat (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
11.	CR/793/2025	Baldev Singh V/S NEO Developers Private Limited	Gaurav Bhardwaj and Surbhi Garg Bhardwaj (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
12.	CR/1454/2025	Perminder Singh Smagh V/S NEO Developers Private Limited	Gaurav Bhardwaj and Surbhi Garg Bhardwaj (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
13.	CR/1562/2025	Janki Poddar V/S NEO Developers Private Limited	Deepti Gupta, Yatee Gupta and Sanjay Gaba (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
14.	CR/1563/2025	Jai Prakash Poddar and Chandeshwar Yadav	Deepti Gupta, Yatee Gupta and Sanjay Gaba

		V/S NEO Developers Private Limited	(Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
15.	CR/1756/2025	Sudha Devi V/S NEO Developers Private Limited	Megha Gupta, Sanjay Gaba and Yatee Gupta (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
16.	CR/798/2025	Shalaj Arpan Singh V/S NEO Developers Private Limited	Harshit Batra (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
17.	CR/4576/2025	Kapil Rana V/S Neo Developers Private Limited	Gaurav Bhardwaj and Surbhi Garg Bhardwaj (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)
18.	CR/3176/2024	Achal Kumar Kochar V/S NEO Developers Private Limited	Shajat Kataria (Complainant) E. Krishna Dass and Dushyant Yadav (Respondent)

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman
Member
ORDER

1. This order shall dispose of all the 18 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.

- 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.
- The details of the complaints, reply status, unit no. & unit size, date of execution of the BBA and MoU, 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 4 of MoU	Total Sale Consideration and Total Amount paid by the complainant	Offer of possession
1.	CR/1467/2025 Kamlesh V/S NEO Developers Private Limited DOF: 13.03.2025 RR: 27.08.2025	Priority No. 149, 3 rd floor 300 Sq. Ft. (As per page no. 39 of complaint)	BBA: 21.11.2020 (page 36 of complaint) MOU: 21.11.2020 (As per page no. 62 of complaint)	<i>Clause 4</i> <i>"The Company shall pay one time penalty calculated at the rate of Rs.37,125/- per month on the said Unit on the total amount received, with effect from 19.11.2021</i>	T.S.C: Rs. 36,31,898/- (as per page no. 24 of complaint) A.P.: Rs. 35,64,400/- (as per page no. 41 of complaint)	O.O.P: 26.12.2024 (page no. 76 of complaint)

				<p>(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.”</p> <p>(As per page no. 65 of complaint)</p>		
2.	<p>CR/1701/2025</p> <p>Shakti Verma V/S NEO Developers Private Limited</p> <p>DOF: 28.03.2025</p> <p>RR: 08.08.2025</p>	<p>Virtual No. 32, 5th floor</p> <p>200 Sq. Ft.</p> <p>(As per page no. 55 of complaint)</p>	<p>BBA: 24.11.2020 (page 33 of complaint)</p> <p>MOU: 24.11.2020 (As per page no. 79 of complaint)</p>	<p>Clause 4</p> <p>“The Company shall pay one time penalty calculated at the rate of Rs.14,738/- per month on the said Unit on the total amount received, with effect from 10.11.2021 (effective date II), subject to</p>	<p>T.S.C: Rs. 12,49,000/- (as per page no. 50 of complaint)</p> <p>A.P.: Rs. 10,10,621/- (as per page no. 60 of complaint)</p>	<p>O.O.P: 27.11.2024 (page no. 69 of complaint)</p>

				<p><i>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."</i></p> <p>(As per page no. 60 of complaint)</p>		
3.	<p>CR/1670/2025</p> <p>Santosh Devi V/S NEO Developers private Limited</p> <p>DOF: 28.03.2025</p> <p>RR: 08.08.2025</p>	<p>Priority No. 31, 5th floor</p> <p>200 Sq. Ft. (As per page no. 38 of complaint)</p>	<p>BBA: 17.10.2020</p> <p>{page 35 of complaint}</p> <p>MOU: 17.10.2020 (As per page no. 58 of complaint)</p>	<p><i>Clause 4</i></p> <p><i>"The Company shall pay one time penalty calculated at the rate of Rs.16,376/- per month on the said Unit on the total amount received, with effect from 16.10.2021 (effective date II), subject to TDS, Taxes, cess or any</i></p>	<p>T.S.C: Rs. 11,65,000/- (as per page no. 51 of complaint)</p> <p>A.P.: Rs.7,36,960/ - (as per page no. 26 of complaint)</p>	<p>O.O.P: 09.10.2024 (page no. 67 of complaint)</p>

				<p><i>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."</i></p> <p>(As per page no. 60 of complaint)</p>		
4.	<p>CR/1465/2025</p> <p>Jyoti Shokeen V/S NEO Developers Private Limited</p> <p>DOF: 13.03.2025</p> <p>RR: 27.08.2025</p>	<p>Priority No. 150, 3rd floor 300 Sq. FL.</p> <p>(As per page no. 45 of complaint)</p>	<p>BBA: 21.11.2020 (page 42 of complaint)</p> <p>MOU: 21.11.2020 (As per page no. 79 of complaint)</p>	<p><i>Clause 4</i></p> <p><i>"The Company shall pay one time penalty calculated at the rate of Rs.37,125/- per month on the said Unit on the total amount received, with effect from 19.11.2021 (effective date II), subject to TDS, Taxes, cess or any other levy which is due</i></p>	<p>T.S.C.: Rs. 36,31,898/- (as per page no. 60 of complaint)</p> <p>A.P.: Rs. 35,64,400/ (as per page no. 46 of complaint)</p>	<p>O.O.P-: 26.12.2024 (page no. 84 of complaint)</p>

				<p><i>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"</i> (As per page no. 72 of complaint)</p>		
5.	<p>CR/1481/2025</p> <p>Renu V/S NEO Developers Private Limited</p> <p>DOF: 13.03.2025</p> <p>RR: 27.08.2025</p>	<p>Priority No. 148, 3rd floor</p> <p>300 Sq. Ft.</p> <p>(As per page no. 55 of complaint)</p>	<p>BBA: 21.11.2020 (page 38 of complaint)</p> <p>MOU: 21.11.2020 (As per page no. 64 of complaint)</p>	<p><i>Clause 4</i></p> <p><i>"The Company shall pay penalty calculated at the rate of Rs.37,125/- per month on the said Unit on the total amount received, with effect from 18.11.2021 (effective date II), subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s)</i></p>	<p>T.S.C.: Rs. 36,31,898/- (as per page no. 56 of complaint)</p> <p>A.P.: Rs. 35,64,400/- (as per page no. 81 of complaint)</p>	<p>O.O.P: 24.12.2024 (page no. 79 of complaint)</p>

				<p>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 1. 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. 68 of complaint)</p>		
6.	<p>CR/2374/2025</p> <p>Gaurav Bajaj and Rajni Bajaj V/S NEO Developers Private Limited</p> <p>DOF: 15.05.2025</p> <p>RR: 26.08.2025</p>	<p>Priority No. 96, 3rd floor</p> <p>300 Sq. Ft.</p> <p>(As per page no. 50 of complaint)</p>	<p>BBA: 30.08.2019 (page 46 of complaint)</p> <p>MOU: 30.08.2019 (As per page no. 74 of complaint)</p>	<p>Clause 4</p> <p>*The Company shall pay penalty calculated at the rate of Rs.29,973/- per month on the said Unit on the total amount received, with effect from 31.08.2020 (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</p>	<p>T.S.C: Rs. 15,00,000/- (As per pg. no. 78 of the complaint)</p> <p>A.P.: Rs. 4,68,384/- (as per page no. 91 of complaint)</p>	<p>O.O.P: 04.12.2024 (page no. 100 of complaint)</p>

				<p><i>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 1. 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.</i></p> <p>(As per page no. 76 of complaint)</p>		
7.	<p>CR/2324/2025</p> <p>Vikas Gupta V/S NEO Developers Private Limited</p> <p>DOF: 09.05.2025</p> <p>RR: 27.08.2025</p>	<p>Priority No. 28, 3rd floor</p> <p>264 Sq. Ft.</p> <p>(As per page no. 55 of complaint)</p>	<p>BBA: 18.01.2019 (page 24 of complaint)</p> <p>MOU: 18.01.2019 (As per page no. 12 of complaint)</p>	<p><i>Clause 4</i></p> <p><i>"The Company shall pay penalty calculated at the rate of Rs.25,920/- per month on the said Unit on the total amount received, with effect from 18.01.2020 (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</i></p>	<p>T.S.C: Rs. 22,02,784/- (as per page no. 42 of complaint)</p> <p>A.P.: Rs. 5,51,739/- (as per page no. 57 of complaint)</p>	<p>O.O.P: 04.12.2024 (page no. 55 of complaint)</p>

				<p><i>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 1. 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."</i></p> <p>(As per page no. 15 of complaint)</p>		
8.	<p>CR/2772/2025</p> <p>Binod Prasad Shaw V/S NEO Developers Private Limited</p> <p>DOF: 04.06.2025</p> <p>RR: 02.09.2025</p>	<p>Priority No: 5th floor or similar</p> <p>200 Sq. Ft. (As per page no. 55 of complaint)</p>	<p>BBA: 25.04.2019 (page 44 of complaint)</p> <p>MOU: 25.04.2019 (As per page no. 72 of complaint)</p>	<p>Clause 4</p> <p><i>"The Company shall pay penalty calculated at the rate of Rs.14,482/- per month on the said Unit on the total amount received, with effect from 25.04.2020 (effective date if), 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</i></p>	<p>T.S.G: Rs. 12,71,176/- (as per page no. 63 of complaint)</p> <p>A.P.: Rs. 12,26,176/- (as per page no. 50 of complaint)</p>	<p>O.O.P: 21.09.2024 (page no. 88 of complaint)</p>

				<p><i>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."</i></p> <p>(As per page no. 73 of complaint)</p>		
9.	<p>CR/1819/2025</p> <p>Poonam Madaan V/S NEO Developers Private Limited</p> <p>DOF: 07.04.2025</p> <p>RR: 08.10.2025</p>	<p>Priority No. 1409, 14th floor</p> <p>772 Sq. Ft. (As per page no. 55 of complaint)</p>	<p>BBA: 25.07.2020 (page 23 of complaint)</p> <p>MOU: 25.07.2020 (As per page no. 79 of complaint)</p> <p>Endorsement letter 04.10.2023</p> <p>(Inadvertently the date of MOU mentioned as 25.05.2019 in pod dated 16.12.2025)</p>	<p>Clause 4</p> <p><i>"The Company shall pay penalty calculated at the rate of Rs.55,755/- per month on the said Unit on the total amount received, with effect from 26.07.2021 (effective date I), 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</i></p>	<p>T.S.C: Rs. 54,79,104/- (as per page no. 26 of complaint)</p> <p>A.P.: Rs. 47,20,778/- (as per page no. 28 of complaint)</p>	<p>O.O.P: 20.09.2024 (page no. 97 of complaint)</p>

				<p><i>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."</i></p> <p>(As per page no. 73 of complaint)</p>		
10.	<p>CR/1821/2025</p> <p>Bela Sehgal and Tushi Gupta V/S NEO Developers Private Limited</p> <p>DOF: 07.04.2025</p> <p>RR: 08.10.2025</p>	<p>Priority No. 1420, 14th floor 770 Sq. Ft. (As per page no. 24 of complaint)</p>	<p>BBA: 10.06.2020 (page 21 of complaint)</p> <p>MOI: 10.06.2020 (As per page no. 47 of complaint)</p>	<p>Clause 4</p> <p><i>"The Company shall pay a one-time penalty calculated at the rate of Rs. 59,290/- (Rupees Fifty-Nine Thousand Two Hundred Ninety Only) per month on the said Unit, totalling Rs. 7,11,480/- (Rupees Seven Lakh Eleven Thousand Four Hundred Eighty Only) for the period of 12 months, with effect from 21st May 2021 (Effective Date-II) till 20th May 2022 (End Date-II), subject to TDS, taxes, cess, or any other levy</i></p>	<p>T.S.C: Rs. 70,78,486/- (as per BBA at page no. 37 of complaint)</p> <p>A.P: Rs. 69,58,605/-</p> <p>(as per SOA and receipts at page no. 59-61-62 of complaint)</p>	<p>O.O.P: 20.09.2024</p>



				<i>which is due and payable by the Allottee(s). (As per page no. 50 of complaint)</i>		
11.	CR/793/2025 Baldev Singh V/S NEO Developers Private Limited DOF: 31.12.2025 RR: 26.08.2025	Priority No. 89, 3 rd floor 500 Sq. Ft. (As per page no. 55 of complaint)	BBA: 25.05.2019 (page 47 of complaint) MOU: 25.05.2019 (As per page no. 73 of complaint)	<i>Clause 4</i> <i>"The Company shall pay one time penalty calculated at the rate of Rs.49,955/- per month on the said Unit on the total amount received, with effect from 29.09.2020 (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</i>	T.S.C: Rs. 28,00,000/- (as per page no. 67 of complaint) A.P.: Rs. 28,00,000/- (as per page no. 91 of complaint)	O.O.P: 04.12.2024 (page no. 90 of complaint)

				<i>pro-rata basis.</i> (As per page no. 76 of complaint)		
12.	CR/1454/2025 Perminder Singh Smagh V/S NEO Developers Private Limited DOF: 20.03.2025 RR: 26.08.2025	Priority No. 130, 3 rd floor 500 Sq. Ft. (As per page no. 49 of complaint)	BBA: 09.07.2020 (page 46 of complaint) MOU: 09.07.2020 (As per page no. 69 of complaint)	<i>Clause 4</i> <i>"Seeing the delay in construction, the Company shall pay a one-time penalty calculated at the rate of Rs. 61,875/- (Rupees Sixty One Thousand Eight Hundred Seventy-Five Only) per month on the said Unit, totalling Rs. 7,42,500/- (Rupees Seven Lakh Forty-Two Thousand Five Hundred Only) for the period of 12 months, with effect from 09.07.2021 (Effective Date-II) till 09.07.2022 (End Date-II), subject to TDS, taxes, cess, or any other levy which is due and payable by the Allottee(s). (As per page no. 71-72 of complaint)</i>	T.S.C: Rs. 32,92,180/- (as per page no. 64 of complaint) A.P.: Rs. 6,32,800/- (as per page no. 81 of complaint)	O.O.P: 04.11.2024 (page no. 79 of complaint)
13.	CR/1562/2025 Janki Poddar V/S NEO Developers Private Limited DOF: 28.03.2025 RR:	Priority No. 95 3 rd Floor 300 Sq. Ft. (page no. 59 of complaint)	BBA: 03.09.2019 (page 55 of complaint) MOU: 03.09.2019 (page 35 of complaint)	<i>Clause 4</i> <i>"The Company shall pay a penalty calculated at the rate of Rs.29,973/- per month on the said Unit</i>	T.S.C: Rs. 19,06,764/- (as per page no. 74 of BBA of the complaint) A.P.:	O.O.P: 04.11.2024 (as per page no. 74 of the complaint)



	18.11.2025			<p>on the total amount received, with effect from 19.08.2020 (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 1. 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. 38 of the Complaint)</p> <p>(Inadvertently the effective date II is mentioned as 03.09.2019 in FOD dated 16.12.2025)</p>	<p>Rs. 16,80,000/- (as per SOA as per page 83 of complaint)</p>	
14.	CR/1563/2025 Jai Prakash Poddar and	Priority No. 94, 3 rd floor 600 Sq. Ft.	BBA: 03.09.2019 (page 57 of complaint)	<p>Clause 4 “The Company shall pay penalty</p>	<p>T.S.C: Rs. 38,13,528/-</p>	<p>O.O.P- 04.02.2025 (page no. 89 of complaint)</p>

	<p>Chandeshwar Yadav V/S NEO Developers Private Limited</p> <p>DOF: 28.03.2025</p> <p>RR: 18.11.2025</p>	(As per page no. 55 of complaint)	<p>MOU: 03.09.2019 (As per page no. 40 of complaint)</p>	<p><i>calculated at the rate of Rs.59,946/- per month on the said Unit on the total amount received, with effect from 25.08.2020 (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."</i> (As per page no. 41 of complaint)</p>	(as per page no. 72 of complaint)	<p>A.P: Rs. 33,60,000/- (as per page no. 91 of complaint)</p>
15.	<p>CR/1756/2025</p> <p>Sudha Devi V/S NEO Developers Private Limited</p>	<p>Priority No. 100, Third floor 500 Sq. Ft.</p>	<p>BBA: 09.10.2019 (page 69 of complaint)</p> <p>MOU: 09.10.2019</p>	<p>Clause 4</p> <p><i>"The Company shall pay a Penalty of Rs. 49,955/- (Rupees Forty</i></p>	<p>T.S.C: Rs. 31,66,564/- (as per page no. 104 of complaint)</p>	<p>O.O.P: 05.11.2024 (page no. 124 of complaint)</p>



	<p>DOF: 28.03.2025</p> <p>RR: 18.11.2025</p>	<p>(As per page no. 75 of complaint)</p>	<p>(As per page no. 38 of complaint)</p>	<p><i>Nine Thousand Nine Hundred Fifty Five Only) per month on the said Unit, On the total amount received with effect from 10th Oct 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 page no. 43 of complaint)</i></p> <p><i>(Inadvertently, the rate of Penalty is mentioned as Rs 49,919/- in</i></p>	<p>A.P.: Rs. 17,81,064/- (as per page no. 127 of complaint)</p>	
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				<i>POD dated 16.12.2025)</i>		
16.	CR/798/2025 Shalaj Arpan Singh V/S NEO Developers Private Limited DOF: 25.02.2025 RR: 20.08.2025	Priority No. 805, 8 th floor 501 Sq. Ft. (As per page no. 46 of complaint)	BBA: 19.10.2019 (page 43 of complaint) MOU: 19.10.2019 (As per page no. 31 of complaint)	<i>Clause 4</i> <i>"The Company shall pay penalty calculated at the rate of Rs.36,277/- per month on the said Unit on the total amount received, with effect from 20.10.2020 (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 1. 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."</i> (As per page no. 73 of complaint)	T.S.C: Rs. 28,05,600/- (as per page no. 62 of complaint) A.P.: Rs. 14,92,579/- (as per page no. 48 of complaint)	O.O.P: 03.12.2024 (page no. 75 of complaint)

17.	CR/4576/2025 Kapil Rana V/S Neo Developers Private Limited DOF: 09.09.2025 RR: Defence Struck Off	Priority No. 33, 2 nd floor 264 Sq. Ft. (As per page no. 50 of complaint)	EBA: 09.02.2021 (page 47 of complaint) MOU: 09.02.2021 (As per page no. 74 of complaint)	Clause 4 <i>"The Company shall pay penalty calculated at the rate of Rs.25,920/- per month on the said Unit on the total amount received, with effect from 09.02.2021 (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."</i> (As per page no. 73 of complaint)	T.S.C.: Rs. 18,25,792/- (as per page no. 66 of complaint) A.P.: Rs. 9,24,152/- (as per page no. 91 of complaint)	O.O.P.: 04.12.2024 (page no. 84 of complaint)
18.	CR/3176/2024	Priority No.	BBA: 10.01.2020	Clause 4	T.S.C.:	O.O.P.:



	<p>Achal Kumar Kochar V/S NEO Developers Private Limited</p> <p>DOF: 18.07.2024</p> <p>RR: 06.02.2025</p>	<p>G-59, Ground floor 492 Sq. Ft.</p> <p>(As per page no. 24 of complaint)</p>	<p>(page 21 of complaint)</p> <p>MOI: 10.01.2020 (As per page no. 51 of complaint)</p>	<p><i>"The Company shall pay penalty calculated at the rate of Rs.84,565/- per month on the said Unit on the total amount received, with effect from 09.02.2021 (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."</i></p> <p>(As per page no. 54 of complaint)</p>	<p>Rs. 72,46,668/- (as per page no. 39 of complaint)</p> <p>A.P: Rs71,35,984 /- (as per page no. 20 of complaint)</p>	<p>Not Applicable</p>
<p>Relief sought by the complainant in abovementioned complaints:-</p> <p>1. Respondent be directed to make payment towards the penalty from effective date till the date of issuance of valid offer of possession along with interest as per law.</p>						

2. Respondent is liable to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession till the date of issuance of the valid offer of possession.
3. Direct the Respondent to revoke the offer of possession and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.
4. The Respondent be directed not to charge the labour cess of Rs. 7,500/- and to not increase the amount of EDC/IDC charges to be paid from Rs.1,42,200/- to Rs.1,59,264/-. Further, the Respondent be directed not to charge Development charges of Rs. 2,12,400/- from the Complainant or any amount towards development charges from the Complainant.
5. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. 12,39,000/- towards the same from the Complainant.
6. To direct the Respondent to not charges any illegal charges and not to execute the illegal terms of the MOU and the BBA;
7. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental at the rate of Rs. 101.25/- per sq.ft. per month.
8. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
9. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
10. To direct Respondent to execute the conveyance deed.
11. Payment of Rs. 1,00,000/- as compensation towards mental agony caused to the complainant.
12. Direct the Respondent to pay the cost of legal expenses incurred by the Complainant;

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

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply Received
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 like development charges, labour cess and fit-out 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/1467/2025**

titled as Kamlesh 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/1467/2025 titled as Kamlesh 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.	RERA Extension	109 of 2017/ 7(3)/33/2023/10 Valid up to 22.02.2024
8.	Unit and Floor no.	Restaurant Priority no.149, Third Floor (page 39 of complaint)
9.	Unit area admeasuring	300 sq. ft. (Super Area) (page 39 of complaint)
10.	Date of buyer agreement	21.11.2020 (page 36 of complaint)
11.	Possession clause	<i>Clause 5.2 of BBA and clause 3 of the MoU</i> ...The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the

		<p>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>[Emphasis supplied] (As on page no. 43 and 64 of complaint)</p>
12.	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 construction was started in the month of December 2015.</p>
13.	Due date of possession	<p>21.05.2024 [21.11.2023 + 6 months] (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 21.11.2020, 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)</p>
14.	Date of execution of MoU	<p>21.11.2020 (As per page no.62 of the complaint)</p>

15.	Assured return clause as per MOU dated 21.11.2020	<p>Clause 4 <i>... The Company shall pay a Penalty of Rs.37,125/- (Rupees Thirty Seven Thousand One Hundred Twenty Five Only) per month on the said Unit, On the total amount received with effect from 19th Nov 2021 Effective Date-II) Subject to TDS, Taxes, cess or any other levys 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 prorata basis.</i></p> <p><i>B (a) 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. 101.25/- Per Sq. Ft. per month.</i></p> <p>[Emphasis supplied]</p>
16.	Total sale consideration	Rs.38,58,289/- (as per statement of account on page number 78 of complaint)
17.	Basic Sale Consideration	Rs.30,40,299/- (As mentioned in BBA at page 39 and as per clause 4 of MoU at page 64 of the complaint)
18.	Amount paid by the complainant	Rs.35,64,400/-

		(As per statement of account on page number 78 of complaint)
19.	Occupation certificate /Completion certificate	14.08.2024 (As per the DTCP site)
20.	Demand notice and offer of possession	26.12.2024 (page 76 of complaint)
21.	Reminder letters	04.02.2025, 25.02.2025 (page on page number 79 and 80 of complaint)
22.	Letter with regard to the leasing out of the unit to world of Shalom Restaurants private limited	28.02.2025 (Rs.12,39,000/- for Fit-out charges) (page 81 of the complaint)

B. Facts of the complaint

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

- I. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as she required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively offered within the agreed time frame and thereafter the unit would be leased to the third party by the respondent. On the basis of the representations made by the respondent, the complainant decided to make the booking in the said project of the respondent vide booking application form. It is pertinent to mention here that the complainant had paid an amount of Rs.35,64,400/- and accordingly the respondent acknowledged the said amount vide its receipts dated 23.10.2020 and 19.11.2020.

- II. That the respondent vide its welcome letter dated 23.10.2020 confirmed the allotment of one unit admeasuring 300 sq. ft. on 3rd Floor, Food Court in the said project of the respondent.
- III. That the complainant made vocal her objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. During such discussions, the respondent assured the complainant that no illegality whatsoever, would be committed by them and that the interest payable by the respondent to the complainant would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the buyer's agreement was not signed and submitted. Hence, the complainant had no other option but to sign the buyer's agreement on 21.11.2020. As per clause 2.1 of the buyer's agreement the complainant was allotted a unit bearing priority No. 149, third floor admeasuring 300 sq. ft. in the said project. furthermore, as per annexure-i of the said buyer's agreement, the basic sale consideration including GST of the unit was Rs.34,22,198.88/- and the total consideration of the unit was Rs.36,31,898/- inclusive of the taxes, EDC, IDC and IFMS.
- IV. That on the said date, a memorandum of understanding (MOU) was also executed between the respondent and the complainant. As per the terms of the MOU, it was agreed that the respondent will make payment to the complainant under the nomenclature of 'Penalty' of Rs. 37,125/- per month from 19.11.2021 (Effective date-II as per Clause 4 of MOU) onwards till offer of possession which shall be adjusted in the Total Sale

consideration and after adjustment, the balance sale consideration shall be payable by the complainant to the respondent in accordance with the payment plan. The respondent had categorically assured at the time of the execution of the said MOU that it would be diligent in making payment towards the penalty amount and in adhering to its contractual obligations. It is submitted that as per clause 4 of the said MOU, it was agreed that the respondent would pay a penalty of Rs. 37,125/- per month. The relevant portion of Clause 4 of the MOU is reproduced hereunder: -

"4. ..The Company shall pay a Penalty of Rs.37,125/- (Rupees Thirty Seven Thousand One Hundred Twenty Five only) per month on the said Unit. On the total amount received with effect from 19th Nov 2021 (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 until the offer of possession letter date, on prorata basis".

- V. Furthermore, it was further agreed vide clause 8(a) of the said mou that the respondent would make payment of lease rentals at assured lease @ Rs.101.25/- per sq. ft. per month rent to the complainant from commencement of first lease. Furthermore, it was decided as per clause 9(a) of the mou that the respondent was to finalize the terms for leasing the premises with a perspective lessee.
- VI. That as per clause 3 of the MOU and 5.2 of the buyer's agreement, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of the MOU/Buyer's agreement or the date of start of construction.
- VII. Thus, the due date to offer the possession as per the terms of the MOU was 21.11.2023. The complainant visited the office of respondent in

February 2022 to enquire about the date of possession and pending payment of the monthly penalty. It was informed that the possession of the unit would soon be offered along with adjustment of the delayed payment interest and monthly penalty. The representatives of respondent assured the complainant that the possession of the unit would be offered over to her very shortly as the construction was almost over and that it would soon start the payment towards the monthly penalty as per its obligations as stated in the MOU. It was also assured that respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted real estate (Regulation and Development) Act, 2016. The respondent vide its email dated 09.02.2022 assured the complainant that they had applied for the occupation certificate in 2021, however they are yet to finish certain additional work. The respondent also assured the complainant that it will adjust the payments towards the monthly interest at the time of possession.

VIII. Furthermore, the complainant by way of an email dated 05.08.2022 to the respondent sought clarification regarding the possession of the unit and the monthly interest. In response to this inquiry, the respondent vide email dated 09.08.2022 assured the complainant that the respondent is in process of applying for the occupancy certificate and the finishing work is going on in full swing. Although the complainant was reluctant to believe the representations made by the respondent, she decided to give one more chance to the respondent.

IX. That the respondent finally, after a considerable delay vide its offer of possession dated 26.12.2024, intimated the complainant that the unit allotted to her was ready for possession as the respondent had obtained the occupation certificate. On-going through the terms of the offer of

possession, the complainant realized that respondent had failed to adjust the amount of the monthly penalty as assured by the respondent. Hence, the said offer of possession was in complete contrast to the terms of the MOU. The respondent in a completely illegal manner had demanded Rs. 2,94,252/- vide the said offer of possession. As per clause 4 of the MOU, it was agreed that the amount of penalty would be adjusted in the total sale consideration. As per the terms of the MOU, the penalty amount from 19.11.2021 till 26.12.2024, calculated at the rate of Rs. 37,125/- is Rs.13,73,625/-. The respondent completely sidelined its own obligations and failed to adjust any such amount in the remaining sale consideration.

X. Furthermore, the respondent vides the said offer of possession has also wrongly demanded labour cess of Rs. 7500/- and has unilaterally increased the charges towards the charges towards EDC/IDC from Rs. 1,42,200/- to Rs.1,59,264/-. It is submitted that the Respondent has no authority or power to demand the labour cess as sought to be done by it and the same is illegal and invalid as per the observation of this Hon'ble Authority in judgment titled 'Varun Gupta vs Emaar MGF Land Ltd'. Furthermore, as per Annexure-I of the buyer's agreement, it was mutually agreed that the EDC would be Rs. 1,26,300/- and IDC would be Rs. 15,900/-. However, a bare perusal of the said offer of possession makes it evident that the development charges (now demanded of Rs.1,59,264/-) have been increased without any justification, consent or logic. Thus, there has been a unilateral increase in the EDC/IDC to the extent of Rs. 17,064/-.

XI. Furthermore, when the respondent had already demanded Rs. 1,59,264/- towards EDC and IDC, there is no occasion for it to further demand Rs. 2,12,400/- from the complainant under the garb of 'development' charges. It is a settled law that development charges are already part of

EDC and IDC and hence cannot be demanded. Hence, the respondent is liable to revoke the development charges of Rs. 2,12,400/- and the complainant is not liable to pay the same.

XII. Hence, the said offer of possession dated 26.12.2024 is illegal and does not stand the test of law. The said offer of possession dated 26.12.2024 is liable to be recalled and a fresh offer of possession is to be issued by the respondent to the complainant wherein no additional amount would be demanded from the complainant and the penalty amount would be adjusted. The respondent cannot demand the labour cess amount and increased development charges as sought to be done by it and the same are to be considered and adjudicated as illegal.

XIII. That furthermore, there is an inordinate delay of approx. 15 months calculated from the due date of possession up to March 2025 and till date basic requirements including offer over of possession after sending a valid offer of possession and adjustment of the amount of the monthly penalty has not been completed due to default of respondent. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. After the receipt of the said offer of possession dated 26.12.2024, the complainant visited the site and was shocked to check the status of the unit allotted to them. The unit was not at all in a habitable condition and it was apparent that the common areas of the project was incomplete and lifts were not even operating. The complainant requested the respondent to rectify the defaults and update on the payment which the respondent was to make to them as per the terms of the MOU. However, the respondent failed to respond to the said queries of the complainant. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount

of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances. Rather, the respondent has sent reminder letters dated 14.02.2025 and 25.02.2025 to the complainant to clear the dues demanded at the time of offer of possession.

- XIV. That, the complainant was in complete shock and was surprised to note that the respondent vide letter dated 28.02.2025 illegally demanded an additional amount of Rs.12,39,000/- towards fitout charges. The complainant was never informed that the respondent had any right to demand any such fitout charges from the complainant. The parameter of fitout charges never found mentioned in buyer's agreement or in the MOU and the complainant was informed about the same for the first time at the time of receipt of the letter dated 28.02.2025 only.
- XV. Importantly, vide letter dated 28.02.2025, the respondent has admitted that the respondent would offer the possession of the unit to the complainant only after the complainant makes the payment towards the said illegal charges.
- XVI. That the complainant has already made the payment of Rs.35,64,400/- against the sale consideration of the unit and the same is evident from the perusal of annexure-1 of the statement of account attached along with the offer of possession. The complainant has been duped of her hard-earned money paid to the respondent regarding the unit in question. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.
- XVII. That the respondent by adopting unfair trade practices, misuse of funds, failed to offer a valid offer of possession of the unit allotted to the complainant as well as the other allottees. The respondent has extracted sale consideration of the unit from the complainant as well as from other

allottees and miserably failed to offer a valid the possession. Instead of abiding by the terms of the contract, the respondent is now threatening the complainant to cancel the allotment and also forfeiting the already paid substantial amount.

- XVIII. That the complainant fear that the respondent would deliberately not lease out the said unit of the complainant. In this scenario, it is important for this hon'ble authority to order that in case the respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of occupation certificate or to demarcate the unit and handover the physical possession of the unit to the complainant.

C. Relief sought by the complainant:

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

- I. Respondent be directed to make payment towards the penalty from effective date till the date of issuance of valid offer of possession along with interest as per law.
- II. Respondent is liable to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession till the date of issuance of the valid offer of possession.
- III. Direct the Respondent to revoke the offer of possession and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.
- IV. The Respondent be directed not to charge the labour cess of Rs. 7,500/- and to not increase the amount of EDC/IDC charges to be paid from Rs.1,42,200/- to Rs.1,59,264/-. Further, the Respondent be directed not to charge Development charges of Rs.

- 2,12,400/- from the Complainant or any amount towards development charges from the Complainant.
- V. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. 12,39,000/- towards the same from the Complainant.
 - VI. To direct the Respondent to not charges any illegal charges and not to execute the illegal terms of the MOU and the BBA.
 - VII. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental at the rate of Rs. 101.25/- per sq.ft. per month.
 - VIII. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
 - IX. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
 - X. To direct Respondent to execute the conveyance deed.
 - XI. Payment of Rs. 1,00,000/- as compensation towards mental agony caused to the complainant.
 - XII. Direct the Respondent to pay the cost of legal expenses incurred by the Complainant.

- XIII. 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. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant have not approached this hon'ble authority with clean hands and are trying to suppress material facts relevant to the matter. The complainant are making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.
 - b. That the complainant has filed this present complaint by concealing the material fact about the demand being raised by the respondent company with respect to the fit out of the unit allotted to the complainant.
 - c. That by way of filing the present complaint the complainant is trying to negotiate on the fit-out demand being raised by the respondent and also to gain some more time to make the payment.
 - d. That it is pertinent to mention here that, the respondent after making the dues of the DTCP and other formalities of the department which also includes the completion of construction have obtained the Completion Certificate/ Occupancy Certificate from the department of DTCP.
 - e. The respondent seeks to raise the following objections/submissions, each of which have been taken in the alternative and are without prejudice to the other. Nothing contained in the reply on merits below may, unless

- otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainant in the complaint.
- f. At the outset, the complainant have erred gravely in filing the present complaint and misconstrued the provisions of the real estate (Regulation & Development) Act, 2016 (hereinafter referred to as "**RERA Act**"). 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.
- g. It is submitted 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.
- h. 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 24/10/2020, whereby seeking allotment of Unit No. 149, admeasuring 300 Sq. Ft Super Area on the 3rd Floor of the Project having a Basic Sale Price of Rs. 10134.33/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.
- i. That upon the request of the complainant through the above said application form dated 24/10/2020, respondent vide welcome letter dated 23.10.2020 as well as allotment letter allotted unit bearing no. 805

- on 8th floor as per the terms and conditions forming part of the application form & buyer's agreement.
- j. That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 21/11/2020 (*hereinafter referred to as "MOU"*) was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof.
 - k. It is pertinent to mention herein that as per terms of the "mou", the returns were to be paid from 19/11/2021 till offer of possession. it is also submitted that as per terms of the mou, the complainant herein had duly authorised the respondent to put the said unit on lease.
 - l. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 21.11.2020 for shop no. 149 on 3rd floor admeasuring 300 sq. ft super area in the project.
 - m. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the ld. 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.
 - n. 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.
 - o. 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
- p. 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
- q. 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.
- r. 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.
- s. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promoter and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the

Agreement of Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

- t. 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.
- u. 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.
- v. 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.
- w. 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.
- x. 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.

y. 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:

z. "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."

aa. 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.

bb. 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.

cc. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act. That for

any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.

dd. 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.

ee. 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.

ff. 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.

gg. 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.

hh. 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.

ii. 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	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had

		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.			abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution 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.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 th Nov.2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not

					feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing, (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction

		the excavation, civil construction was directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.			activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices, which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native

		<i>vs. Union of India</i> completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.			towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend

					curfew and then complete curfew.
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- jj. 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.1 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 21.11.2020. 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. Respondent be directed to make payment towards the penalty from effective date till the date of issuance of valid offer of possession along with interest as per law.

ii. Respondent is liable to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession till the date of issuance of the valid offer 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 21.11.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

22. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the

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

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

(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including

(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.

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

(i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for an 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 21.11.2020.

29. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 21.11.2020, which is reproduced below for the ready reference:

Clause 4

"The Company shall pay a Penalty of Rs.37,125/- (Rupees twenty Nine Thousand Nine Hundred Seventy three only) per month on the said Unit, On the total amount received with effect from 19-11-2021 (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 prorata basis."

30. Thus, as per the abovementioned clause the assured return/penalty was payable @Rs.37,125/- per month w.e.f. 19.11.2021, till the offer of possession.
31. In light of the above, the Authority is of the view that as per the MoU dated 21.11.2020, 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 26.12.2024. Accordingly, the respondent/promoter is liable to pay assured return/penalty to the complainant at the agreed rate i.e., @Rs.37,125/- from the effective date as per clause 4 of the MoU i.e., 19.11.2021 till 26.12.2024.

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 21.11.2020. 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., 21.11.2020 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 21.05.2024.

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., 16.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% 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., 10.80% 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 21.05.2024.
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?

To answer the above proposition, it is worthwhile to consider that the assured return/penalty is payable to the allottees on account of provisions in the MoU dated 21.11.2020. 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/penalty of @Rs.37,125/- on the total amount received with effect from 19.11.2021 till the offer of possession letter i.e., 26.12.2024. If we compare this assured return/penalty with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return/penalty is much better i.e., assured return/penalty in this case is payable as Rs.37,125/- per month whereas the delayed possession charges are payable approximately Rs.32,079/- per month. By way of penalty/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/penalty 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.

40. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
41. 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 21.11.2020, the promoter had agreed to pay to the complainant allottee Rs.37,125/- with effect from 19.11.2021 till the offer of possession letter date.
42. 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.37,125/- with effect from 19.11.2021 till the offer of possession letter date i.e., 26.12.2024.

iii. Direct the Respondent to revoke the offer of possession and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.

iv. The Respondent be directed not to charge the labour cess of Rs. 7,500/- and to not increase the amount of EDC/IDC charges to be paid from Rs.1,42,200/- to Rs.1,59,264/-. Further, the Respondent be directed not to charge Development charges of Rs. 2,12,400/-

from the Complainant or any amount towards development charges from the Complainant.

v. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. 12,39,000/- towards the same from the Complainant.

vi. To direct the Respondent to not charges any illegal charges and not to execute the illegal terms of the MOU and the BBA.

43. 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.
44. It is to be noted that the respondent, vide its demand notice and offer of possession letter dated 26.12.2024, 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**

45. 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 16.12.2025 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 21.11.2020 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**

46. It is pertinent to note that prior to the filing of the present complaint, demand towards fit-out charges had been raised by the respondent. The respondent issued a leasing out letter on 28.02.2025, wherein the demand for fit-out

charges of Rs.12,39,000/- (including GST as applicable), which is on record in the reply dated 27.08.2025. 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 clauses 8(d), 8(b) and 9(b) of the MoU (as applicable in the case). In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.

- **Interest on delayed payment:**

47. The Authority has perused the offer of possession letter dated 26.12.2024, wherein some amount 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. 35,64,400/-, which is less than the total basic sale consideration of the said unit is Rs.36,31,898/-, 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 are 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 26.12.2024. 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 allottee.

- **Maintenance Charges**

In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

48. Further, the respondent shall not charge anything which does not form a part of buyer's agreement or MoU.

vii. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental at the rate of Rs. 101.25/- per sq.ft. per month.

viii. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.

49. The complainants are seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clause 8(a) of the MoU dated 21.11.2020, it was agreed that the respondent would make payment of lease rentals at Rs.101.25/- per sq. ft. per month to the complainant from commencement of first lease. Further, vide clause 9(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a prospective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 21.11.2020.

ix. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

x. To direct Respondent to execute the conveyance deed.

50. Since the subject units form part of a commercial project, individual physical possession cannot be granted to the allottees. However, the Respondent is directed to hand over possession of the subject unit to the Complainant and is further restrained from creating any third-party rights or interests in respect of the said unit.

51. 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.

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

is also obligated to participate towards registration of the conveyance deed of the unit in question.

53. 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.

54. In CR/2324/2025, The Authority observes that upon perusal of the payment plan annexed with the BBA dated 18.01.2019, there is no stipulation permitting the respondent to levy Preferential Location Charges (PLC) in the payment plan. In the absence of any specific clause in the agreed payment plan authorizing such levy, the demand raised towards PLC is found to be beyond the contractual terms binding upon the parties. In the event the respondent has already recovered any amount towards PLC without contractual basis or where such charges are not applicable to the allotted unit, the same shall be refunded to the complainant, along with applicable interest.

xi. Payment of Rs. 1,00,000/- as compensation towards mental agony caused to the complainant.

xii. Direct the Respondent to pay the cost of legal expenses incurred by the Complainant.

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

Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority -

56. 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.37,125/- from the effective date as per clause 4 of the MoU i.e., 19.11.2021 till offer of possession letter date i.e., 26.12.2024, 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 @8.80% p.a. till the date of actual realization.
 - III. 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.
 - IV. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge 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.*

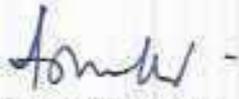
- V. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- VI. The respondent shall charge interest on delayed payment from the complainant, if any.
- VII. The respondent is directed to get the conveyance 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.
57. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
58. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
59. File be consigned to registry.



Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025



Arun Kumar
(Chairman)