

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

Date of Order: 16.12.2025

|                            |                 |  |   |
|----------------------------|-----------------|--|---|
| <b>NAME OF THE BUILDER</b> |                 | <b>M/s Neo Developers Private Limited.</b>           |   |
| <b>PROJECT NAME</b>        |                 | <b>"Neo Square"</b>                                  |   |
| <b>S. No.</b>              | <b>Case No.</b> | <b>Case title</b>                                    | <b>Attendance</b>   |
| 1.                         | CR/1958/2025    | Kailash Yadav<br>V/S Neo Developers Private Limited  | Sushil Yadav<br>(Complainant)<br>E. Krishna Das and<br>Venkat Rao<br>(Respondent) |
| 2.                         | CR/1959/2025    | Ravinder Yadav<br>V/S Neo Developers Private Limited | Sushil Yadav<br>(Complainant)<br>E. Krishna Das and<br>Venkat Rao<br>(Respondent) |

**CORAM:**

Shri Arun Kumar

**Chairman**

Shri Phool Singh Saini

**Member****ORDER**

1. This order shall dispose of the aforesaid 2 complaints titled above filed before this Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Neo Square**" Sector 109, Gurugram being developed by the same respondent/promoter i.e., **M/s Neo Developers Pvt. Ltd.** The terms and conditions of the MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return, waiver of fit out charges and other reliefs.
3. The details of the complaints, reply status, unit no., date of agreement & MoU, AR clause, total sale consideration and total paid amount are given in the table below:

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

  

| S.no. | Complaint no./title/ date of filing complaint  | Unit No. and Unit super area  | Date of execution of BBA and MoU   | Assured return clause in the MoU  | Total sale consideration and Amount paid by the complainant  | Offer of possession letter date                                  |
|-------|--|---|--|---|--|--|
| 1.    | CR/1958/2025<br><br>Kailash Yadav<br>V/S NEO<br>Developers<br>Private Limited<br><br><b>DOF:</b><br>11.04.2025<br><br><b>RR:</b><br>NA | Unit no. -<br>Priority<br>Allotment<br>serial<br>no.37A on<br>first floor<br><br>And<br><br>500 Sq. ft.<br><br>(as per<br>page no. 13<br>of<br>complaint) | <b>BBA:</b><br>NA<br><br><b>MOU:</b><br>23.09.2013<br><br>(as per<br>page no. 11<br>of<br>complaint) | <i>Clause 3</i><br><br><i>That Company hereby has agreed to allot to the Allottee(s) premises measuring 500 sq. ft. (46.45 Sq. Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the Investment Return Plan and</i> | <b>T.S.C:</b><br>Rs.<br>69,94,909/-<br>(as per page no. 19 of complaint)<br><br><b>A.P.:-</b><br>Rs.<br>49,55,580/-<br>(as per page no. 19 of complaint) | <b>OOP</b><br>08.11.2024<br>(As per pg. no. 17 of the complaint) |



|    |  |   |  |  |  |   |
|----|--|---|--|--|--|---|
|    |  |   |  | <p>has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 9500/- per sq. ft., taking into consideration a return of Rs. 95/- per sq. ft. per month, subject to the terms of this MOU.</p> <p>Clause 16<br/>The builder in terms of its commitment to pay the assured return has handed over its postdated cheques taking into consideration the expected period of completion. The builder has handed over the post-dated cheques which shall not be dishonored for any of the reasons.<br/>(As per pg. no. 13 of the Complaint)</p> |  |   |
| 2. | CR/1959/2025<br><br>Ravinder Yadav<br>V/S NEO Developers Private Limited | Unit no. - Priority Allotment serial no.37B on first floor<br><br>And | <b>BBA:</b><br>NA<br><br><b>MOU:</b><br>23.09.2013 | Clause 3<br>That Company hereby has agreed to allot to the Allottee(s) premises measuring 500  | <b>T.S.C:</b><br>Rs.74,91,061/- (as per page no. 19 of complaint)<br><br><b>A.P.:-</b> | <b>OOP</b><br>08.11.2024 (As per pg. no. 17 of the complaint) |



|  |  |  |  |   |   |  |
|--|--|--|--|---|---|--|
|  | <p><b>DOF:</b><br/>11.04.2025</p> <p><b>RR:</b><br/>NA</p> | <p>541 Sq. ft.<br/>(as per<br/>page no. 07<br/>of<br/>complaint)</p> | <p>(as per<br/>page no. 11<br/>of<br/>complaint)</p> | <p><i>sq. ft. (46.45 Sq. Mt.) Super built up area on the First floor of Tower A of the said Project. The Allottee(s) has opted for the Investment Return Plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 9500/- per sq. ft., taking into consideration a return of Rs. 95/- per sq. ft. per month, subject to the terms of this MOU.</i></p> <p><i>Clause 16<br/>The builder in terms of its commitment to pay the assured return has handed over its postdated cheques taking into consideration the expected period of completion. The builder has handed over the post-dated cheques which shall not be dishonored for any of the reasons.</i></p> | <p>Rs.50,40,662/-<br/>(as per page no. 19 of reply)</p> |  |
|--|--|--|--|---|---|--|

|  |                                  |  |  |  |  |  |
|--|----------------------------------|--|--|--|--|--|
|  |                                  |  |  | (As per pg. no.<br>13 of the<br>complaint) |  |  |
| Reliefs sought by the complainant -  |                                  |  |  |  |  |  |
| <ol style="list-style-type: none"> <li>1. Direct the respondents to make payment towards assured return along with interest.</li> <li>2. Direct the respondent to pay delayed interest on amount paid.</li> <li>3. Direct the respondent to pay guaranteed return and lease rental as per MoU and to put the unit on lease.</li> <li>4. Direct the respondent to demarcate the unit and offer possession of the unit in habitable condition after obtaining the occupation certificate.</li> <li>5. Direct the respondent to refund the PLC charges.</li> <li>6. Declare the all-Demand notice of the respondent null and void.</li> </ol> |                                  |  |  |  |  |  |
| Direct the respondent to file fresh statement of account as per MOU  |                                  |  |  |  |  |  |
| <b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b>   |                                  |  |  |  |  |  |
| <b>Abbreviation</b>  | <b>Full form</b>                 |  |  |  |  |  |
| DOF:   | Date of filing of complaint      |  |  |  |  |  |
| BBA:   | Builder Buyer's Agreement        |  |  |  |  |  |
| MOU:   | Memorandum of Understanding      |  |  |  |  |  |
| TSC:   | Total Sale Consideration         |  |  |  |  |  |
| AP:  | Amount paid by the allottee/s    |  |  |  |  |  |
| RR:  | Reply received by the respondent |  |  |  |  |  |

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the assured return, revoking illegal demands and respondent not doing conveyance deed in favour of the complainant.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/1958/2025 titled as Kailash Yadav VS NEO Developers Private Limited.** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

#### **A. Project and unit related details.**

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

***CR/1958/2025 titled as Kailash Yadav VS NEO Developers Private Limited.***

| S. N. | Particulars            | Details   |
|-------|------------------------|---|
| 1.    | Name of the project    | Neo Square, Sector-109, Gurugram  |
| 2.    | Project area           | 2.71 acres  |
| 3.    | Nature of the project  | Commercial colony   |
| 4.    | RERA Registered or not | Registered<br>Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024   |
| 5.    | DTCP License no.       | 102 of 2008 dated 15.05.2008 valid upto 14.05.2025  |
| 6.    | Unit no.               | Priority No. 37-B on the 1 <sup>ST</sup> Floor<br>(As per pg. no. 12 of the Complaint)<br>Unit No. 1-12 on 1 <sup>st</sup> floor,<br>Revised Area 541.8200 Sq. Ft.<br>(As per pg. no. 12 of the Complaint)  |
| 7.    | Unit area admeasuring  | 500 Sq. Ft.<br>(As per pg. no. 13 of the Complaint)   |
| 8.    | Date of MoU            | 23.09.2013<br>(As per pg. no. 11 of the Complaint)  |
| 9.    | Due date of possession | 23.09.2016<br>(derived from Fortune Infrastructure judgment standard, since not expressly mentioned in MoU)   |
| 10.   | Assured return Clause  | Clause 3<br><i>That Company hereby has agreed to allot to the Allottee(s) premises measuring 500 sq. ft. (46.45 Sq. Mt.) Super built up area on the First floor of Tower A of the said Project. The Allottee(s) has opted for the Investment Return Plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 9500/- per sq. ft., taking into consideration a return of Rs. 95/- per sq. ft. per month, subject to the terms of this MOU.</i><br><br>Clause 16<br><i>The builder in terms of its commitment to pay the assured return has handed over its postdated</i> |

|     |                                |  |
|-----|--------------------------------|--|
|     |                                | <i>cheques taking into consideration the expected period of completion. The builder has handed over the post-dated cheques which shall not be dishonored for any of the reasons.</i> |
| 11. | Sale consideration             | Rs. 74,91,061/-<br>(As per pg. no. 19 of the Complaint)  |
| 12. | Amount paid by the complainant | Rs 50,40,662/-<br>(As per demand letter pg no. 19 of the Complaint)  |
| 13. | Occupation certificate         | 14.08.2024<br>(As per DTCP site)   |
| 14. | Demand and offer of possession | 08.11.2024<br>(As per pg. no. 17 of the Complaint)   |

### **B. Facts of the complaint.**

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

- i. That the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named "NEO SQUARE" Sector 109 Gurgaon, promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant, booked a unit admeasuring 500 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs 47,50,000/-.
- ii. Out of the total sale consideration of amount Rs49,55,580/-the complainant made full payment of Rs49,55,580/-to the respondent vide cheques, the details of which are mentioned in the statement of account para no 15 of the MOU. That as per MOU dated 23.09.2013 the respondent had allotted a commercial unit no 37a, first floor, tower b having super area of 500 sq. ft. to the complainant.
- iii. That the respondent orally agreed to deliver the possession of the shop within three years from the date of signing on MOU but respondent fails to deliver the possession of the said unit on the promised time.

- iv. That 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.
- v. That the per the clause 3 and 16 of the MOU, the respondent promised and committed to pay monthly return of Rs.47,500/- (Rupees Forty-Seven Thousand Five Hundred Only) to the complainant till possession of the said unit but respondent failed to kept their promise.
- vi. That the respondent stopped making payment of monthly return from May ,2019. It is pertinent to mention here that respondent has orally promised that they will adjust complainants' payments towards monthly interest at the time of possession.
- vii. That the monthly return is pending form last 69 months which is amounting Rs.32,77,500/- (Rupees Thirty-Two Lakh Seventy-Seven Thousand Five Hundred Only). Complainant has requested the respondent on many occasions to pay the said amount but respondent evade to pay the said amount.
- viii. That the respondent sent illegal demand notice to the complainant. it is also pertinent to mention here that respondent failed to adjust the balance monthly return in the demand notice which the respondent themselves promised to adjust monthly interest at the time of possession.
- ix. That complainant regularly visited the site but no one was present at the site to address the queries of the complainant. it appears that respondent has played fraud upon the complainant. the only intention of the respondent was to take payments for the tower without completing the work. the respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. that despite receiving all payment as demanded by the

respondent for the said unit and despite repeated requests and reminders over phone calls, emails and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.

- x. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

**C. Relief sought by the complainant**

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

- 1) Direct the respondents to make payment towards assured return along with interest.
- 2) Direct the respondent to pay delayed interest on amount paid.
- 3) Direct the respondent to pay guaranteed return and lease rental as per MoU and to put the unit on lease.
- 4) Direct the respondent to demarcate the unit and offer possession of the unit in habitable condition after obtaining the occupation certificate.
- 5) Direct the respondent to refund the PLC charges.
- 6) Declare the all-Demand notice of the respondent null and void.
- 7) Direct the respondent to file fresh statement of account as per MOU.

9. The respondent-promoter were given various opportunity for filing of reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 02.12.2025, the respondent proceeded ex-parte. In view of the above, the respondent is hereby proceeded ex-parte. Subsequently, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.

#### **D. Jurisdiction of the Authority**

10. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **D.I Territorial jurisdiction**

11. 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.

##### **D.II Subject matter jurisdiction**

12. 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.*

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

#### **E. Findings on the relief sought by the complainant.**

**I. Direct the respondents to make payment towards assured return along with interest.**

**II. Direct the respondent to pay delayed interest on amount paid.**

**E.1 Assured Returns**

14. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 23.09.2013 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
15. 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.
16. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
17. In the present complaint, the assured return was payable as per clauses 3 and 16 of the MoU dated 23.09.2013, which is reproduced below for the ready reference:

*Clause 3*

*"That Company hereby has agreed to allot to the Allottee(s) premises measuring 500 sq. ft. (46.45 Sq. Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the Investment Return Plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 9500/- per sq. ft., taking into consideration a return of Rs. 95/- per sq. ft. per month, subject to the terms of this MOU."*

*Clause 16*

*"The builder in terms of its commitment to pay the assured return has handed over its postdated cheques taking into consideration the expected period of completion. The builder has handed over the post-dated cheques which shall not be dishonored for any of the reasons. "*

Thus, as per the abovementioned clause the assured return was payable @Rs.95/- per square feet per month w.e.f. 23.09.2013, till the possession of the unit.

#### **Delay Possession Charges:**

18. In the 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"*

19. **Due date of possession:** The subject unit was allotted to the complainants vide MoU dated 23.09.2013. As per the documents available on record, nowhere in the MoU mentioned the period of possession/due date of possession hence the same cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725:*

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the*

*above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"*

20. In the instant case, the MoU executed between the parties on 23.09.2013. In view of the above-mentioned reasoning, the date of MoU ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession comes out to be 23.09.2016.

**21. 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"*

22. 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.

23. 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;”*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is liable to be paid to the complainants in case of delay possession charges.

25. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 23.09.2016. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainant on 08.11.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on

account of provisions in the MoU dated 23.09.2013. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of Rs.47,500/- on the total amount received with effect from 23.09.2013 till the possession of the unit. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 23.09.2016 up to the possession of the unit which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delay possession charges whichever is higher.

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

27. In the present complaint, as per clauses 3 and 16 of the MoU dated 23.09.2013, the amount on account of assured return was payable from 23.09.2013 up to the offer of possession of the unit. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on valid lease by the respondent till date.

Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.47,500/- per month from the date of MOU i.e. 23.09.2013 till the offer of possession on the said unit as per the memorandum of understanding dated 23.09.2013, after deducting the amount already paid on account of assured returns to the complainant.

**III. Direct the respondent to pay guaranteed return and lease rental as per MoU and to put the unit on lease.**

28. The complainant is 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 14 and 15 of the MoU dated 23.09.2013, 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 complainant on lease and to pay lease rental as per the terms of the memorandum of understanding dated 23.09.2013.

**IV. Direct the respondent to demarcate the unit and offer possession of the unit in habitable condition after obtaining the occupation certificate.**

**V. Direct the respondent to refund the PLC charges.**

**VI. Declare the all-Demand notice of the respondent null and void**

**VII. Direct the respondent to file fresh statement of account as per MOU.**

**VIII. Direct the respondent not to charge from the complainant which was not a part of MOU as complainant has already paid total consideration.**

29. All the above reliefs are taken up together as the same are inter connected with each other. The complainant has further sought relief regarding the waiver of various charges, penalties, rates, and other demands which, according to them, do not form part of the MoU. The impugned demand notice and offer of possession dated 04.10.2024 reflects components such as IFMS, development charges, FTTH

charges, interest amount on dues and labour cess, which have been objected to by the complainant. The Authority of the view that:

- **Labour cess**

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

- **EDC and IDC**

The undertaking to pay the External and Internal development charges were comprehensively set out in the MOU in clause 12. The said clause of the agreement is reproduced hereunder: -

**Clause 12**

*"That all other charges which are payable shall be enumerated in the Allotment Letter other than the basic sale consideration and service tax shall be payable by the Allottee(s) to the Company on or before notice of possession which shall include but not limited to IFMS, Security Deposit, Registration Fees, Stamp Duty Dues, Taxes, Levies, etc & EDC, IDC, PLC (Preference Location Charge) upon demand by company"*

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

• **FTTH Charges**

The Authority further observes that clause 12, as discussed hereinabove, does not contain any stipulation regarding levy or recovery of FTTH charges from the complainant. In the absence of any specific contractual consent or agreed term between the parties, such charges cannot be imposed by the respondent. Accordingly, the respondent is directed to raise demands strictly in accordance with the terms mutually agreed under the executed agreement and MoU.

• **Preference Location Charge**

The Authority observes that a reading of clause 12 of the MoU clearly stipulates that, apart from the basic sale consideration and applicable taxes, other charges as enumerated in the Allotment Letter shall be payable by the allottee on or before notice of possession, which expressly include PLC

(Preferential Location Charges). Therefore, the levy of PLC cannot be said to be dehors the contractual framework, as the parties had consciously agreed that such charges may be demanded upon notice of possession.

However, the validity of such demand is subject to the respondent substantiating, through documentary evidence and approved project demarcation plans, that the allotted unit indeed falls within a preferential location category as defined in the project layout and allotment terms. The respondent must further demonstrate that PLC was duly disclosed in the Allotment Letter and forms part of the agreed payment structure. In the absence of such documentary backing or where the unit does not qualify as a preferential location, the demand would not sustain. Conversely, where the respondent establishes that the unit is situated in a duly identified PLC category in accordance with the project plans and contractual terms, the levy of PLC shall be held to be valid and enforceable. However, if upon verification it is found that the allotted unit does not fall within the PLC-designated area of the project, or the respondent fails to substantiate such classification through cogent documentary evidence and approved demarcation plans, the levy of PLC shall be rendered untenable. In such circumstances, any amount already recovered towards PLC shall be liable to be refunded to the complainant forthwith, along with applicable interest, calculated from the date of receipt of such amount till the date of actual refund.

30. The respondent shall not charge anything from the complainant which is not part of the MoU dated 23.09.2013.

31. 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.

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

**F. Directions of the Authority**

33. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to pay the assured return to the complainant at the agreed rate of @Rs.95/- per Sq. Ft. (i.e., @Rs.47,500/-) per month subject to the clauses 03 and 16 of the MOU dated 23.09.2013 till the offer of possession letter of the concerned unit, after deducting the amount already paid on account of assured return to the complainant if any.
- II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- III. The respondent shall not charge anything from the complainant which is not part of the MoU dated 23.09.2013.
- IV. The respondent is not entitled to charge FTTH charges, holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the MOU as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.*

- V.The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.
- VI.The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.
- VII.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.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
36. Files be consigned to registry.

  
**Phool Singh Saini**  
(Member)

  
**Arun Kumar**  
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 16.12.2025**