

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

Complaint no. :	2282 of 2025
Date of Filing:	08.05.2025
Date of Decision:	12.12.2025

Navneet Kaur Puri
R/o: M3M Woodshire, B5-501, Dwarka
Expressway, Sector-107, Gurugram

Complainant

Versus

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

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Hemant Phogat
Sh. Shivaditya Mukherjee

Advocate for the complainant
Advocate for the respondent

ORDER

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

A. Unit and project related details

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

S. 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 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.	3 rd floor (page no. 27 of complaint)
7.	Unit area admeasuring	300 sq. ft. (page no. 27 of complaint)
8.	Date of MOU	18.07.2019 (page no. 51 of complaint)
9.	Buyer's agreement	18.07.2019 (page no. 25 of complaint)
10.	Possession clause	5.2 The company shall complete the construction of the said building/complex within which the said space is located within 36 month from the date of this Agreement or from the start of construction, whichever is later and apply for grant of completion/occupation certificate.
11.	Assured return Clause	4. The Company shall pay a penalty of Rs.29,973/- per month on the said unit. On the total amount received with effect from 22.05.2020 Subject to TDS, cess or any other levy which is due and payable by the Allottee and which shall be adjusted in Total Sale Consideration, the balance total sale consideration which shall be payable by the Allottee to the Company in accordance with

		<i>the Payment Schedule annexed as Annexure-I. The Penalty shall be paid to the Allottee from the end of effective date II until the offer of possession letter date, on prorata basis. (page no. 53 of complaint)</i>
12.	Due date	18.01.2023 <i>Calculated from the date of agreement including grace period of 6 month due to covid-19)</i>
13.	Basic sale consideration	Rs. 32,78,772/- (as per BBA at page 43 of complaint)
14.	Amount paid by the complainant	Rs. 30,52,000/- (As per SOA at page no. 63 of complaint)
15.	Occupation certificate	14.08.2024 (page no. 45 of reply)
16.	Offer of possession	10.12.2024 (page no. 61 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainant had booked a commercial space in the area designated for food court bearing no. 92, on 3rd floor having its super area 300 Sq. ft. and covered area of 150 Sq. ft. in the upcoming project of the respondent named "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 27,25,008/- and total sale price of Rs. 32,78,772/- and the complainant had paid a sum of Rs. 33,02,000/-.
 - II. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 18.07.2019.
 - III. That the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and

to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.

- IV. That the complainant has abided by all the terms of MOU and builder buyer agreement dated 18.07.2019 and has made all the payments/ installments in a timely manner, as and when demanded by the respondent and there are no dues pending in respect of the basic sale price of the unit as per the payment schedule of the builder buyers agreement.
- V. That the respondent has also delayed the project and has committed to the complainant as per clause 3 of MOU dated 18.07.2019, that the project will be completed within 36 months from the date of execution of builder buyers agreement or start of construction whichever is later, but the respondent has failed to complete the project and handover the possession of the unit within the committed time period and the respondent has delayed the project.
- VI. That as per clause-4 of the MOU dated 18.07.2019, the respondent was/is under legal obligation and was bound to pay the penalty/Assured Return of Rs. 29,973/- on the total amount receipt w.e.f. 22.05.2020 until the offer of possession letter of the said unit.
- VII. That the respondent has failed to honour its own commitment of paying the monthly assured returns and has not paid a single installment towards the monthly assured returns. The complainant has been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns by visiting the respondent/ developer personally but the respondent/ developer has not paid any heed to the just and genuine demands of the complainant

and has been lingering on the demands of the complainant on one pretext or the other.

- VIII. That upon communication with the respondent/ developer, the complainant were given verbal assurance that the respondent/ developer will settle the due assured returns at the time of receiving of occupation certificate and offer of possession and now even after the receiving of occupation certificate as informed by the respondent/ developer, the respondent/ developer has clearly denied to pay the assured returns.
- IX. That the respondent in contravention to the terms of builder buyer agreement and MOU dated 18.07.2019 has raised unlawful demands via demand notice and offer of possession letter dated 10.12.2024 on account of development charges to the tune of Rs. 2,12,400/-, FTTH charge to the tune of Rs. 6,490/-, Labour cess to the tune of Rs. 7500/-.
- X. That upon receiving the demand notice and offer of possession letter dated 10.12.2024, the complainant paid the legitimate charges amounting to total of Rs. 2,50,000/- pertaining to EDC, IDC, and IFMS as per the payment schedule of the buyer's agreement dated 18.7.2019 and further confronted the respondent and requested them to waive off the unlawful demands raised in the offer of possession letter in pretext of development charges, labour cess, FTTH charges and execute the conveyance deed in favour of the complainant as the entire total sale price has been paid by the complainant and nothing due is left on the unit purchased by the complainant.
- XI. That the respondent further manipulated the complainant and again asked him to transfer an amount of Rs. 10,000/- in order to generate property ID for the purpose of executing conveyance deed in favour of

the complainant. That the complainant again relying upon the representation made by the respondent transferred the said amount in the account as provided by the respondent.

- XII. That the complainant further requested the respondent/ developer for the payment of due assured returns in respect of her unit but the respondent/ developer has failed to provide any satisfactory reply to the just and genuine demands of the complainant in respect of the payment of assured returns as well as getting the conveyance deed registered in favour of the complainant.
- XIII. That it is pertinent to mention herein that the respondent again with its malafide intention in order to extort more money illegally from the complainant, issued another letter dated 02.04.2025 for seeking fit out charge to the tune of Rs. 12,39,000/- with a intimation to make the payment, otherwise the complainant shall be liable for interest on the delayed payment.
- XIV. That the complainant immediately upon receiving the letter dated 02.04.2025, contacted the respondent and sought clarification upon the bogus demand for fit-out charges and further asked the respondent to waive off the fit out charges as the charges towards fit out were never disclosed to the complainant at the time of booking nor such charges are mentioned in the builder buyer's agreement or the MOU made between the parties, but the respondent has clearly denied to waive off the demand towards fit out charges and is pressurizing the complainant to pay the said charges otherwise she will not be able to receive lease rental for her unit and further will be liable for interest penalty upon the demands towards fit out charges.

- XV. That the respondent is completely ignoring the terms of the buyers agreement and is acting in an unlawful and arbitrary manner by making demands upon his whims and fancies which are not part of the buyers agreement with a sole intention to extort money out of the complainant in order to cause wrongful loss to the complainant and again issued a reminder letter dated 17.04.2025 for the payment of fit out charges.
- XVI. That the complainant have taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw the demands towards fit out charges, development charges, labour cess charges and FTTH charges as they are not part of the payment structure of the Buyers Agreement and to pay him the assured returns as per the terms of MOU dated 18.07.2019 but the respondent has completely ignored the just and genuine demands of the complainant.
- XVII. That till today the complainant has not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand letter dated 10.12.2024 and 02.04.2025 and therefore, the complainant is suffering from harassment and is going through a lot of mental and financial agony.
- XVIII. That the respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyers agreement, which is immoral and illegal and amounts to unfair trade practice.

C. Relief sought by the complainant:

4. The complainant in the present complaint is seeking the following relief(s).
- (i) Direct the respondent to pay the due monthly assured returns until the offer of possession letter of the unit.
 - (ii) Direct the respondent to withdraw and waive off the demands for Development charges, FTTH, Labour Cess charges made in demand notice and offer of possession letter dated 10.12.2024.
 - (iii) Direct the respondent to withdraw and waive off the demands for fitout charges made in demand notice letter dated 02.04.2025.
 - (iv) Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement dated 18.07.2019.
 - (v) Direct the respondent to execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

6. The respondent has contested the complaint on the following grounds.
1. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 300 sq. ft. super area in the project "NEO Square".

- II. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 92, on 3rd floor, admeasuring 300 sq. ft. super area.
- III. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.
- IV. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 18.07.2019.
- V. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 18.07.2019 was executed between the parties, recording the lease grant rights in favour of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- VI. That since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit and *vide* letter dated 01.10.2020 requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- VII. That the respondent, *vide* letters dated 05.11.2020 and 29.06.2022, duly called upon the complainant to discharge their contractual obligation by remitting the outstanding dues; however, despite such reminders, the

complainant failed to honour the said demands within the stipulated time.

- VIII. That the occupation certificate of the project was granted by the competent authority on 14.08.2024.
- IX. Thereafter, the respondent sent an offer of possession letter dated 10.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- X. Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminder dated 03.01.2025 requesting the complainant to do the needful.
- XI. That the respondent vide letters dated 02.04.2025 and 17.04.2025, requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- XII. That the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- XIII. That the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an MOU which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainant themselves have entrusted the respondent with the leasing rights of the units.

- XIV. That there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. That the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit. That under clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.
- XV. That as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the Unit, Fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU.
- XVI. That the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant,

inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the complainant, under clause 8(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the unit, then the complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. That in case the complainant fails to pay the same, then the respondent shall pay the expenses on behalf of the complainant and deduct the same from the lease rental payable to the complainant, along with a monthly interest of 2 per cent.

- XVII. That the complainant himself has agreed to pay the fit-out charges to be incurred on account of leasing the unit to any lessee. That the respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainant about the details of the lease and requested the complainant to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be utilised to make ready the space in terms of the requirements of the lessee for their business operation.
- XVIII. That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainant as per clause 8 (d) of the MOU. The expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit,

if not, then from the lease rental itself. Thus, as per clause 8 (d) of the MOU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing.

- XIX. That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the mou which are beneficial to him and denies the other.
- XX. That the units were sold as a bare shell, and they were to be made fit out ready at the time of possession. It is clear that the sale consideration for the units did not include any fit-out expenses therefore, the fit-out expenses were meant to be recovered as on the date of leasing rather than as on the date of booking. Much time has lapsed from the date of booking to the date of leasing, and the cost and also the preferences of the lessees have also undergone changes, and accordingly, the fit-out ready leases are as per the current market preferences and prices.
- XXI. That the respondent has always been transparent about the fit-out charges. That as and when the buyers have approached the respondent, clarifications and details with respect to fit-out charges were provided to such buyers.
- XXII. That payment of the fit-out charges is very crucial for leasing out the subject unit, as it is required for making the subject unit ready for occupation of the lessee to run its business. Without getting the subject unit ready as per the requirements of the lessee, it is not possible for any lessee to take the subject unit on lease. Furthermore, the subject unit is leased out along with other units as part of a larger space, therefore, the

unwillingness of the complainant towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the project, whose leasing of the units will be hampered due to the defaults of the complainant. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the project and the overall fate of the project, the complainant is bound to pay the fit-out charges.

- XXIII. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. The building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee.
- XXIV. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.
- XXV. That after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with

respect to 1st lease with the Lessees. However, the complainant failed to come forward and to do the needful.

- XXVI. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to Assured Return was not clear and accordingly, a Writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.
- XXVII. Without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. That 1st lease was executed as the building was completed and the fit-out works as per the requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.
- XXVIII. That it is an established practice in the Real Estate Sector, wherein the promoter executes a lease deed with a lessee for a future project even before the completion of the said project. In fact, there is no bar by any statutory provision on entering into such an understanding. There have been numerous such instances where renowned developers have adopted such a practice.
- XXIX. That the complainant under clause 9 (a) of the MOU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to

terms and conditions of the Lease, the amount of lease, usage or to who the unit is leased out.

- XXX. That under clause 9 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. That under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.
- XXXI. That the complainant is seeking payment of assured return on the basis of MOU, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the complainant cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the complainant are claiming his right under the MOU, then he should also be ready to fulfil his responsibility under the MOU. It is most humbly submitted that if the Ld. Authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to leasing of the unit, and payment of fit-out charges under the MOU should also be allowed.
- XXXII. That the complainant, vide the present complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016. That

- XXXIII. That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving Assured Return/Penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.
- XXXIV. That 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.
- XXXV. 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 has been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication and now coming up for hearing on 25.08.2025. Without prejudice to the rights of the respondent and submissions made herein, it is noted herein that the payment of assured return shall be subject to the outcome of the decision of the Hon'ble High Court of Punjab and Haryana.

- XXXVI. That in the present complaint, the complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the respondent. That though the respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainant shall be liable to make timely payment of maintenance charges and other related dues.
- XXXVII. That time was essence in respect to the complainant's obligation to make the respective payment, and, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.
- XXXVIII. That construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:
- **NGT ORDERS/ CONSTRUCTION BANS:** That the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
 - **Demonetization of Rs. 500 and Rs. 1000 currency notes:** The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The respondent awards its contracts to contractors who further hire

daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.

- **GST Implications:** It is pertinent to apprise to the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of respondent is situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant

stoppage of work due to the fear of riots and remobilisation of work workforce took considerable time of 3-4 months.

• **Cascading Impact of Default of the Buyer's on Project Progress:**

That due to persistent and simultaneous defaults by several buyers including the respondent faced severe financial constraints, which significantly hampered the timely progress of construction of the project. The financial model of the project was structured on the timely inflow of funds from buyers, which was disrupted due to non-payment of dues. This led to a shortage of working capital, affecting procurement, labour payments.

XXXIX. That from the facts indicated above, it is comprehensively established 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 stated hereinabove come within the meaning of force majeure, as stated above. 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 above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

XL. That the construction/ completion work of the project was hampered due to force majeure situations beyond the control of the respondent.

That the respondent despite facing the force majeure situations beyond its control, has completed the construction/development of the project, obtained the occupation certificate and offered possession of the subject unit in terms with MOU.

XLI. That the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. The complainant has vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainant is entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.

7. 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

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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.

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

F. Findings on the objections raised by the respondent:**F.I Objection regarding maintainability of complaint on account of complainant being the investors.**

12. The respondent took a stand that the complainant is the investor 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;"

13. 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 is the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 18.07.2019. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on the reliefs sought by the complainant:

G.I Direct the respondent to pay the due monthly assured returns until the offer of possession letter of the unit.

14. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
15. 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.

16. 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.

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

way of deposit or loan or in any other form by a company but does not include:

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

18. 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.
19. 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.
20. 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.
21. 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.

22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 18.07.2019, which is reproduced below for the ready reference:

4.
*The Company shall pay a Penalty of Rs. 29,973/- per month on the said unit, On the total amount received with effect from 22.05.2020 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.*

23. Thus, as per the abovementioned clause the assured return was payable @Rs.29,973/- per month w.e.f. 22.05.2020 till offer of possession.
24. In light of the above, the Authority is of the view that as per the MoU dated 18.07.2019, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent

on 14.08.2024 and subsequently unit was offered for possession on 10.12.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.29,973/- from the date i.e., 22.05.2020 till 10.12.2024 after deducting the amount already paid on account of assured return to the complainant.

G.II Direct the respondent to withdraw and waive off the demands for Development charges, FTTH, Labour Cess charges made in demand notice and offer of possession letter dated 10.12.2024.

G.III Direct the respondent to withdraw and waive off the demands for fitout charges made in demand notice letter dated 02.04.2025.

G.IV Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement dated 18.07.2019.

25. The complainant has raised objection towards the fit out charges raised by the respondent vide letter dated 10.12.2024 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The respondent submitted that as per the Clause 8 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

(d)
That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee, strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received.

26. Upon understanding of the said clause, it is clear that Clause 8(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.
27. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.

28. Further, the complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

• **Labour cess**

29. 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**

30. 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”

31. 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**

32. The respondent 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**

33. 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.

34. 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-

"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."

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

G.V Direct the respondent to execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainant.

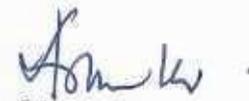


36. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
37. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the authority

38. 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 per month as per the MoU dated 18.07.2019 at the agreed rate i.e., @Rs.29,973/- per month from the date i.e., 22.05.2020 till offer of possession i.e., 10.12.2024 after deducting the amount already paid on account of assured return to the complainant.
 - ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

- iii. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. 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.*
- iv. 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.
39. Complaint as well as applications, if any, stands disposed off accordingly.
40. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025