BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No: 1102 of 2025
Date of Filing: 13.03.2025
Date of Order: 09.12.2025

Pratik Dutta and Smritikona Dutta
Both R/o: C9/ 9682 Vasant Kunj,
New Delhi 110070.

Complainants

Versus

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

Respondent

CORAM:

Shri Arun Kumar — **Chairman**
Shri Phool Singh Saini — **Member**

APPEARANCE:

Shri Garvit Gupta (Advocate) — **Counsel for Complainants**
Shri E. Krishna Dass and Gunjan Kumar (Advocates) — **Counsel for Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint 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.

A. Project and unit related details.

2. 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:

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	RERA Extension	109 of 2017/ 7(3)/33/2023/10 Valid upto 22.02.2024
8.	Unit and Floor no.	ATM-6, First Floor (page 38 of complaint)
9.	Unit area admeasuring	171 sq. ft. (Super Area) (page 38 of complaint)
10.	Date of buyer agreement	09.10.2017 (page 35 of complaint)
11.	Construction completion date as per buyer agreement	*5.2* *that the construction completion date shall be the date when the application for grant of completion/ occupation certificate is made.*
12.	Date of execution of MoU	09.10.2017 (As per page no.61 of the complaint)

13.	Possession Clause as per MOU dated 09.10.2017	Clause 3 of MOU ...The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The Company on grant of occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues. **[Emphasis supplied]** (As per page no. 63 of complaint)
14.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
15.	Due date of possession **[as per BBA]**	**09.04.2021** [09.10.2020+ 6 months] (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 09.10.2017, being later, plus grace period of 6 months) **(Note: Grace period of 6 months allowed as per *HARERA notification no. 9/3-2020 dated 26.05.2020*)**
16.	Assured return clause as per MOU	***Clause 4***

		... The Company shall pay a assured returns of ***Rs. 18,810/-*** *per month on the total amount received with effect from* ***19" oct 2019*** *before deduction of tax at source and GST,, cess or any other levs which is due and payable by the Allottee(s) to the company and ; 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 monthly assured return shall be paid to the allottee from the effective date* ***Clause 8 -*** *That the responsibility of paying assured returns to be paid by the company cease on offer of possession* ***[Emphasis supplied]*** *(As on page no.63-64 of complaint)*
17.	Total Basic sale consideration	Rs.16,32,024/- (As per pg. no. 63 in MoU attached with the complaint)
18.	Total sale consideration	Rs.24,62,535/- (as per statement of account on page number 75 of complaint)
19.	Amount paid by the complainant	Rs.21,23,548/- (As per statement of account on page number 75 of complaint
20.	Occupation certificate /Completion certificate	14.08.2024 (As per the DTCP site)
21.	Demand notice and offer of possession	08.11.2024 (page 73 of complaint)

22.	Revised letter – Fit-outs	Rs.3,68,750/- (As per reply pg. no.68)

B. Facts of the complaint.

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

i. That the complainants induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as they required the same in a time bound manner. this fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively given within the agreed time frame. However, the respondent demanded that the complainants would have to make the complete payment towards the basic sale consideration amount along with taxes. On the basis of the representations made by the respondent and on its demand, the complainants made the payment of more than the total basic price of the unit amounting to Rs.18,37,295/-.

ii. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the agreement to the respondent. The complainants repeatedly requested the respondent for execution of an agreement with balanced terms. During such discussions, the respondent assured the complainants that no illegality whatsoever, would be committed by them at that the interest payable by the respondent to the complainants would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed agreement and further threatened the complainants to forfeit the previous amount paid towards the unit if the agreement was not signed and submitted. The complainants were left with no other option but to sign the one-sided agreement for an allotment of ATM No. 6 on 1st floor

having super area of 171 sq. ft. unit. As per annexure-i of the said agreement, the basic sale consideration of the unit was Rs. 16,32,024/- and the total consideration of the unit was Rs.19,56,753/-. Even in the agreement, it was acknowledged by the respondent that the complainants had, till then, made the payment of Rs. 18,37,295/- to the respondents against the said unit.

iii. That on the same date, a Memorandum of Understanding (MOU) was executed between the respondent and the complainants. As per clause 4 of the MOU, it was reiterated that the basic sale consideration of the unit was Rs.16,32,024/- and that the complainants had made the payment of rs.18,37,295/- till then. The respondent had categorically assured at the time of the booking that it would be diligent in making payment towards the assured return and in adhering to its contractual obligations. It is submitted that as per clause 4 of the said MOU, it was agreed that the respondent would pay monthly assured return of Rs.18,810/- on the total amount received with effect from 09.10.2019 till offer of possession.

iv. The relevant portion of Clause 4 of the MOU is reproduced hereunder:

> *"4. The Company shall pay a monthly assured return of Rs. 18,810/- (Rupees Eighteen Thousand Eight Hundred Ten Only) on the total amount received with effect from 09- October- 2019....."*

v. Subsequently, the respondent vides its demand letter dated 22.10.2019 further demanded a sum of Rs.2,86,254/-. The said demand was duly paid by the complainants on 01.11.2019 vide cheque no. 005359. The respondent issued a receipt dated 05.11.2019 confirming the receipt of the said payment.

vi. That as per clause 3 of the MoU, the possession of the unit was to be handed over by the respondent within a maximum period of 36 months

from the date of execution of the agreement. The same is part of clause 3 of the said MOU and the relevant portion thereof is reproduced hereunder:

> *"3...The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from start of construction whichever is later and apply for grant of completion/Occupancy certificate....."*

vii. Thus, the due date to hand over the possession as per the terms of the MOU was 09.10.2020. The complainants visited the office of respondent in November, 2020 to enquire about the date of possession and payments of the monthly assured returns. It was informed that the possession of the unit would soon be handed over along with adjustment of the delayed payment interest and monthly assured rentals. The representatives of respondent assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over and that it would start making payment towards the monthly assured return as per its obligations as stated in the MOU. It was also assured that respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the Real Estate (Regulation and Development) Act, 2016. Although the complainants were reluctant to believe the representations made by the respondent, they decided to give one more chance to the respondent.

viii. That the complainants have paid a sum of Rs.21,23,549/- out of the total sale consideration of Rs.19,56,753/- as evident from the statement of account dated 19.10.2020. It is evident from a perusal of the said Statement of account that the complainants had paid Rs. 16,32,024/- against basic Sale price; Rs. 81,054/- towards EDC and IDC; Rs. 2,05,200/- towards PLC and Rs. 2,02,271/- towards GST and other taxes.

ix. That upon the grievances raised by the complainants regarding the non-payment of assured returns, it was assured and promised by the representatives of respondent vide its letter dated 29.01.2022 that the said amount would be adjusted along with interest at the time of possession. It was also stated that the said payment could be made as it had become illegal for it to withdraw the funds from the bank account and that its auditors are refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of the interest payments.

x. That the respondent finally, after a considerable delay vide its offer of possession dated 08.11.2024, intimated the complainants that the unit allotted to them was ready for possession as the respondent had obtained the occupation certificate. The respondent vides the said offer of possession now allotted unit no. 1-45 to the complainants against the allotment made by them. On-going through the terms of the offer of possession, the complainants realized that respondent had unilaterally increased the super area of the unit from 171 sq.ft. to 182 sq.ft. No intimation whatsoever was given by the respondent to the complainants about the said alleged increase in the super area and the first time any such information was made known to the complainants was only through the offer of possession letter dated 08.11.2024. It is submitted that despite making the payment towards the total sale consideration, the respondent, yet again, demanded additional amounts against EDC and IDC, basic sale price, the development charges, FTTH and labour cess.

xi. That, the complainants were in complete shock and were surprised to note that the respondent vide the said offer of possession letter illegally demanded an additional amount of Rs.4,51,849/-. The complainants had

already paid a sum of Rs.21,23,549/- out of the total sale consideration of Rs.19,56,753/- and the said fact is also evident from the Statement of Account attached along with the said offer of possession letter. Hence the question of making any additional payment of Rs.4,51,849/- does not even arise.

xii. Thus, the respondent unilaterally and in a completely malafide manner changed the total consideration of the unit from Rs.19,56,753/- to Rs. 24,62,535/-. The said act of the respondent, itself is illegal and unethical and hence, the said offer of possession containing illegal demands is liable to be revoked. Even this Hon'ble Authority while ascertaining the validity of offer of possession in its judgment titled 'Varun Gupta vs Emaar MGF Land Ltd', has held that the Respondent cannot make additional demands along with the offer of possession.

xiii. That the complainants challenged the imposition of illegal charges that were demanded by respondent under the garb of a so called 'legal' offer of possession. The complainants made vocal of their objections and sought clarifications from respondent. However, respondent failed to pay heed to any of the genuine queries raised by the complainants. The complainants were constrained to send emails dated 11.11.2024 and 03.01.2025 vide which the complainants informed the respondent that the complainants had paid the entire sale consideration amount to the respondent and the complainants further requested the respondent to make the payments of the assured returns. It is pertinent to mention here that the respondent failed to make the payments towards the assured return amount.

xiv. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the

respondent failed to handover the possession of the unit failed to make payment towards the assured return and delayed possession charges and hand over the possession and finally about a week ago when the respondent refused to compensate the complainants with the delayed possession interest amount and compensation. The complainants reserve their right to approach the appropriate forum to seek compensation.

C. Relief sought by the complainants

4. The complainants have sought the following relief(s):

I. Respondent be held liable to make payment to the complainants towards the assured return from 09.10.2019 onwards till valid offer of possession.

II. Respondent be held liable to make payment to the complainants against delayed interest on the amount paid by the complainants from the due date i.e., 09.10.2020 till the date of actual handing over of possession.

III. Direct the respondent to issue a valid offer of possession by revoking the illegal demands of additional basic sale price, development charges, FTTH charges and labour cess.

IV. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

V. To direct the Respondent to handover the possession of the allotted unit in a habitable condition.

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

VII. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.

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

D. Reply by the respondent

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

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

II. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", (*hereinafter referred to as the "Project")* situated at Sector-109, Gurugram, Haryana being developed by the Respondent.

III. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 12/08/2017, whereby seeking allotment of Unit No. 1-45, admeasuring 182.3400 Sq. Ft Super Area on the 1st Floor of the Project having a Basic Sale Price of Rs.9544/- (hereinafter referred to as the *"Unit")* The complainants, considering the future speculative

gains, also opted for the investment return plan being floated by the respondent for the instant project.

IV. That since the complainant had opted for the investment return plan, a memorandum of understanding dated:- 09/10/2017 *(hereinafter referred to as* "MOU") was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 09/10/2019 till offer of possession. it is also submitted that as per terms of the mou, the complainants herein had duly authorised the respondent to put the said unit on lease.

V. That by no stretch of imagination it can be concluded that the complainants herein are *"allottee/consumer."* That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

VI. That at this stage, it is categorical to highlight that the complainant is trying to mislead this hon'ble authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "investment agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession.

hence, the embargo of the real estate regulatory authority, in totality, does not exist.

VII. That the complainant voluntarily also executed the buyer agreement dated 09.10.2017 for shop no. 1-45 on 1st floor admeasuring 182.3400 sq. ft super area in the project.

VIII. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the mou between the parties. the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the mou, by virtue of which the complainant is raising their grievance.

IX. That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under buds act and various promotional offers of the company offering discounts while promoting the sale of its properties. it is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of buds act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the respondent had no other alternative but to stop the payment of any return etc.

X. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to reasons beyond the control of the respondent. that due to the above reasons the project in question got delayed from its scheduled timeline. however, the respondent is committed to compete the said project in all aspect at the earliest.

XI. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the mou between the parties. it is

submitted that the ld. authority is exercising its power and jurisdiction as provided under the provisions of the rera act, 2016. as per the provisions of the rera act, 2016, the ld. authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale (buyer's agreement). however, in the present matter the complainant is relying upon the terms of mou which is a distinct agreement than the buyer's agreement and thus, the mou is not covered under the provisions of the rera act, 2016. that the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the mou, by virtue of which the complainant is raising their grievance.

XII. It is also pertinent to mention herein that recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of *Vatika Ltd. vs Union of India & Anr. - CWP-26740-2022,* on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a *Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another"* has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

XIII. It is to be noted that the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and

further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. the complainant as per the records of the respondent had only paid Rs. 21,23,548/- against the total due amount of Rs. 24,62,535/-. it is to be noted that there is still an outstanding due of Rs. 4,51,849/- which is to be paid by the complainant against the unit booked as per the demand letter dated: 08.11.2024.

XIV. That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof. it is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 09/10/2019 till the offer of possession. it is also submitted that as per clause 8 (a) of the mou, the respondent herein had duly authorised the complainant to put the said unit on lease. that is because it contained a "lease clause" which empowers the complainant/developer to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.

XV. That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. that in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. it is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as vat, interest, registration charges, security deposit, duties, taxes, levies etc. when demanded. the same has been clearly agreed to in various clauses of the buyer agreement and MoU.

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

XVII. It is submitted that as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. and, in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions the respondent was entitled for extension of time period for completion. it is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

XVIII. It is pertinent to mention herein that since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. that due to the above reasons the project in question got delayed from its scheduled timeline. however, the respondent has completed the said project in all aspect and obtained the completion certificate from the office of DTCP.

7. All other averments made in the complaint were denied in toto.

8. 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

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

11. 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.*

12. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

I. **Respondent be held liable to make payment to the Complainants towards the assured return from 09.10.2019 onwards till valid offer of possession.**

II. **Respondent be held liable to make payment to the Complainants against delayed interest on the amount paid by the Complainants from the due date i.e., 09.10.2020 till the date of actual handing over of possession.**

F.I) Assured Returns

13. The complainant is seeking unpaid monthly assured returns on as per the terms of the MoU dated 09.10.2017 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

14. 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.

15. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or*

loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement.*

16. 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;*

17. 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.

18. 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.

19. 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.

20. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the addendum agreement.

21. 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 complainants besides initiating penal proceedings. So, the amount paid by the complainants 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. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 09.10.2017.

22. In the present complaint, the assured return was payable as per clause 04 and clause 08 of the MoU dated 09.10.2017, which is reproduced below for the ready reference:

> ***Clause 4.***
>
> *The Company shall pay a assured returns of* ***Rs. 18,810/-*** *per month on the total amount received with effect from 19" oct 2019 before deduction of tax at source and GST,, cess or any other levs which is due and payable by the Allottee(s) to the company and ; 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 monthly assured return shall be paid to the allottee from the effective date.*
>
> ***Clause 08.***
>
> *That the responsibility of paying assured returns to be paid by the company cease on offer of possession.*

23. Thus, as per the abovementioned clauses the monthly assured returns were payable **@Rs.18,810/-** per month w.e.f. 09.10.2019, till the possession.

24. In light of the above, the Authority is of the view that as per the MoU dated 09.10.2017, it was obligation on part of the respondent to pay the monthly assured return till the possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., **@Rs.18,810/-** from the date i.e., 09.10.2019 until the

possession after deducting the amount already paid on account of assured returns to the complainant.

F.II) Delay Possession Charges:

25. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges in F.II 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"*

26. The subject unit was allotted to the complainants vide MOU dated 09.10.2017. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 36 months from the date of execution of this agreement or from the start of construction whichever is later. The period of 36 months is calculated from the date of BBA i.e., 09.10.2017 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 09.04.2021 (09.10.2020 plus 6 months).

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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"*

28. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

29. 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;"*

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

31. 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 within stipulated time i.e., by 09.04.2021.

32. 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 09.10.2017. 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.18,810/- on the total amount received with effect from 09.10.2017 till the possession. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date

of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

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

34. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.18,810/- with effect from 09.10.2019 till the possession of the unit as mentioned in the MoU.

35. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

III. **Direct the Respondent to issue a valid offer of possession by revoking the illegal demands of additional basic sale price, development charges, FTTH charges and labour cess.**

IV. **Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.**

36. The complainants have raised objection towards the fit-out charges, development charges, and delay payment charges raised by the respondent vide letter dated 08.11.2024, and has sought waiver of the same on the

ground that such charges were not stipulated either under the builder buyer agreement and the memorandum of understanding dated 09.10.2017 executed between the parties. The Authority has considered the contention of the respondent raised in its written submissions and arguments dated 09.12.2025, wherein reliance has been placed upon clause 8(d) or 7(d) of the alleged MOU to justify the demand of fit-out charges from the complainant. However, on perusal of the entire record and the documents placed on file, including the BBA executed between the parties, this Authority finds that no such clause 8(d) or 7(d), as claimed by the respondent, exists in the said agreement. The respondent has failed to place on record any authenticated or executed document evidencing the existence of the aforesaid clause. Accordingly, the plea raised by the respondent on the basis of the alleged clause 8(d) is found to be factually incorrect, unsupported by the record, and is therefore rejected.

37. It is also evident that no prior intimation letter or demand letter specifying the nature of such fit-outs charges has been shared with the complainant while signing the BBA and MoU. In the absence of any documentary proof demonstrating transparency, disclosure or lease agreement at the time of leasing between the parties, the arbitrary imposition of fit-outs charges by the respondent cannot be sustained in the eyes of law, hence the same is set-aside.

38. Further, complainants are seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges in terms of demands.

- **Labour cess**

Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification

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

- **Development charges**

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

> ***"11.***
>
> ***That the Allottee agrees to pay all taxes, charges****. Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST.* ***Development charges,*** *Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like.* ***These shall be paid on demand*** *and in case of delay. these shall be payable with interest by the Allottee"*

In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and

release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

The respondent during proceedings dated 09.12.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

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

pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

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

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

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

39. The Authority has perused the demand letter dated 08.11.2024 issued by the respondent in respect of the unit situated on the first floor in the project "Neo Square", wherein an amount of Rs.21,23,548/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs.21,23,548/-, which includes basic sale price (BSP), external development charges (EDC), internal development charges (IDC) and service Tax/GST as clearly mentioned in the clause 4 of the MoU signed between the parties dated 09.10.2017.

40. The Authority further observes that the total basic sale consideration of the said unit is Rs.16,32,024/-, as expressly mentioned in clause 04 of the MoU

executed between the parties. Thus, it is evident on record that the amount paid by the complainant is substantially higher than the total basic sale consideration agreed between the parties.

41. In view of the above facts, the Authority is of the view that the levy of interest on delayed payment amounting to Rs.1,12,863/- as reflected in the demand letter dated 08.11.2024 is unjustified, especially when the complainant has already made payments exceeding the agreed basic sale consideration, subject to reconciliation strictly in accordance with the terms of the MoU and the provisions of the Act.

42. The respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

V. **To direct the Respondent to handover the possession of the allotted unit in a habitable condition.**

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

VII. **Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.**

43. Further the complainants are seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

44. 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 complainants/allottee in terms

of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

G. Directions of the Authority

45. 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 monthly assured return to the complainant at the agreed rate i.e., @Rs.18,810/- with effective date as per clauses 04 and 08 of the MoU i.e., 09.10.2019 till the possession of the unit, after deducting the amount already paid on account of assured returns to the complainants.

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 the said amount would be payable with interest @8.85% p.a. till the date of actual realization.

iii. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.

iv. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement.

v. 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 builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020***.

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/promoter is directed to handover possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

46. The complaint stands disposed of.

47. Files be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated : 09.12.2025