

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

Complaint No: 1623 of 2025
Date of Filing: 31.03.2025
Date of Order: 16.12.2025

Dishant Bhaskar

R/o: 142, Gali No. 23, Near Mata Mandir, Arjun
Nagar, Safdarjung Enclave, S.O. South West Delhi,
Delhi -110029.

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Regd. Office at: - 32-B, Pusa Road, New Delhi-
110005

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Shri Hemant Phogat (Advocate)

Shri Venkat Rao (Advocate)

Counsel for Complainant

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. N.	Particulars	Details
1.	Name of the project	“Neo Square”, Sector 109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
5.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021 plus 6 months of extension due to COVID-19 = 23.02.2022
6.	Unit no.	Unit no. ATM - 02 on second floor (As per clause 2.1 of the BBA at pg. no. 25 of the complaint) Unit no. 2-25 on second floor (As per pg. no. 53 of the complaint)
7.	Unit area admeasuring	145 Sq. Ft. on second Floor (old) (As per pg. no. 25 of the complaint) 182 Sq. Ft. on second floor (New) (As per pg. no. 53 of the complaint)

8.	Date of execution of agreement to sell	24.08.2016 (As per the pg. no. 21 of the complaint)
9.	Date of execution of MoU	24.08.2016 (An admitted fact by the respondent as per pg. no. 3 of the reply)
10.	Assured Return Clause as per BBA	<i>Clause 2.1 of BBA</i> <i>"That the Company hereby agrees to provide assured return and the Allottee hereby agrees to invest in the shop/restaurant (hereinafter referred to as "the said space") as detailed below at the rate mentioned against it and upon the terms and conditions set out hereunder as mutually agreed by and between the parties hereto"</i> (As per pg. no. 38 of the complaint)
11.	Due date of possession	24.08.2019 [3 years from the date of signing of the BBA - Calculated as per Fortune Infrastructure and Ors. Vs. Trevor D'lima and Ors. (12.03.2018) - SC); MANU/SC/0253/2018]
14.	Total sale consideration	Rs. 9,83,858/- (As per page no. 38 of reply)
15.	Amount paid by the complainant	Rs. 10,70,656/- (As per page no. 55 of reply)
17.	Occupation certificate /Completion certificate	14.08.2024 (As per the DTCP site)

18.	Offer of possession	09.11.2024 (As per pg. no. 65 of the complaint)
19.	Reminder letters	17.12.2024 and 19.02.2025 (As per pg. no. 59 of the complaint)

B. Facts of the complaint.

3. The complainant has made 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 bearing priority no. ATM 02, on 2nd floor having its super area 145 Sq. ft. which was later on revised to Unit No. 2-25 on 2nd floor with super area of 182. 340. 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. 8,84,500/- (Rupees eight lakh eighty-four thousand five hundred only) and total sale price of Rs. 9,83,858/- (Rupees nine lakh eighty-three thousand eight hundred fifty-eight only), and the complainant had paid a sum of Rs.12,70,656/-.
- ii. That 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.
- iii. That buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 24.08.2016. however, the copy of MOU has not been handed over to the complainant by the respondent.

- iv. That the complainant has abided by all the terms of builder buyer agreement dated 24.08.2016 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 revised the super area of the unit from 145 sq. ft. to 182.340 sq. ft. and unit No. ATM-02 to 2-25.
- vi. That the respondent has also delayed the project and has committed to the complainant at the time of booking that the project will be completed within 36 months from the date of execution of builder buyers agreement, 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.
- vii. That as per clause-2.1 of the buyer's agreement dated 24.08.2016, the respondent was/is under legal obligation and was bound to pay the assured return of Rs.13,936/- (Rupees thirteen thousand nine hundred thirty-six only) after deduction of TDS on the total amount receipt w.e.f. 05.09.2016 until the commencement of first lease on the said unit.
- viii. That the monthly assured return clause was also incorporated in the MOU made between the parties, but the respondent has retained the copy of the same and has not handed over the MOU to the complainant even after repeated request made from the complainant. The respondent also issued a letter dated 02.09.2016 wherein he has handed over the eight PDC cheques toward monthly assured returns at the rate of Rs.106.79/- per square feet for area measuring 145 sq. ft.
- ix. That further, the respondent in contravention to the terms of builder buyer agreement dated 24.08.2016 has raised unlawful demands via

demand notice and offer of possession letter dated 09.11.2024 on account of development charges to the tune of Rs.1,29,097/- (Rupees one lakh twenty-nine thousand ninety-seven only), FTTH charge to the tune of Rs. 6,490/- (Rupees Six Thousand Four Hundred Ninety only), Labour cess to the tune of Rs.4559/- (Rupees four thousand five hundred fifty-nine only) and also interest of Rs.63,774/- (Rupees sixty-three thousand seven hundred seventy-four only). The demands raised by the respondent in the said demand notice are not part and parcel of the payment schedule of the buyers agreement and these demands are being raised illegally and in an arbitrary manner by the respondent with the sole intention to extort more money from the complainant.

- x. That, it the complainant has requested the respondent to waive of the demands toward development charges, FTTH Charges and labour cess and the interest /penalty imposed, but the respondent has clearly denied to waive off the demand made in the demand notice and offer of possession dated 09.11.2024.
- xi. That it is further pertinent to mention herein that the respondent via e-mail, assured the complainant that the pending monthly assured returns shall be paid /adjusted at the time of offer of possession, but the respondent even after receiving of the occupation certificate and issued letter of offer of possession dated 09.11.2024 has denied to pay or adjust the pending monthly assured returns in respect of the unit of the complainant.
- xii. The 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 is further issuing the reminder letters dated 17.12.2024 and 19.02.2025 with a threat to cancel and terminate the allotment of the unit.

xiii. That complainant has taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyers agreement and to pay him the assured returns, but the respondent has completely ignored the just and genuine demands of the complainant.

xiv. That cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said unit and it further arose when respondent failed/neglected to pay the assured returns and further threaten the complainant to cancel the allotment of her unit vide letters dated 17.12.2024 & 19.02.2025 by raising unlawful demands in contravention to the terms of builders buyer agreement dated 24.08.2016. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant

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

- I. To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.
- II. To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 09.11.2024 on account of Development Charges, Labour Cess, FTTH charge and interest /penalty charges.
- III. To direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 24.08.2016.

IV. To direct the respondent to offer the possession of the unit and execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the basic 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 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 Id. 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. It is submitted 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 20/07/2016, whereby seeking allotment of unit no. 2-25, admeasuring 182.34 Sq. Ft Super Area on the 2nd floor of the project having a basic sale price of Rs. 5824.138/- (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: - 24/08/2016 (*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.
- V. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 24/08/2016 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.
- 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.
- VII. 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.

- VIII. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this hon'ble authority. Without prejudice to the rights of the Respondent, at the utmost *bonafide*, the Hon'ble Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.
- IX. The Occupation Certificate of the Project was granted by the Competent Authority on 14.08.2024.
- X. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 24.08.2016 for shop no. 2-25 on 2nd floor admeasuring 182.34 sq. ft super area in the project.
- XI. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act.
- XII. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- XIII. It is humbly submitted that under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of Assured Return, also the Ld. Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.
- XIV. It is noted herein that the development charges are reimbursement towards the cost incurred by the respondent towards providing facilities

in the project. It is noted herein that some of the reasons attributed to development charges are as follows:

- Change in government norms, which led to cost incurred towards Electrification;
- cost incurred towards the Electrical meter charges;
- cost incurred towards power backup charges;
- cost incurred towards Trane PO for Chillers, Chiller shifting, Cooling Towers, Pumps, Plant room works, including panels and other miscellaneous costs related to these facilities;
- cost towards STP,
- cost towards water connection charges.

XV. That from a bare perusal, it is evident that the complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.

XVI. That due to additional costs incurred by the respondent in providing the aforementioned facilities, the development charges are demanded from the complainant. Therefore, as per the agreed terms and conditions of the BBA, the complainant is bound to pay the development charges and the respondent is entitled to recover the same, so it is evident that there is no escalation in the price of the subject unit, the price remains frozen, that the development charges as and when could have been quantified, the respondent would have been in a position to charge.

XVII. 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.

XVIII. 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.

XIX. 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.10,70,656/- against the total due amount of Rs. 14,98,236/-. It is to be noted that there is still an outstanding due of Rs. 4,91,355/- which is to be paid by the complainant against the unit booked as per the demand letter dated: 09.11.2024.

- XX. 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 24/08/2016 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.
- XXI. 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.
- XXII. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.
- XXIII. That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs3500/- per Sq. Ft (Rupees Three Thousand Five Hundred Only) to the complainant which is sum of Rs. 7,53,073/- for getting the said unit fit out which is essential for getting

the said unit leased out. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.

XXIV. It is further pertinent to mention here that the complainant failed to clear the outstanding dues of Rs. 4,91,355/- payable against the unit.

XXV. 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.

XXVI. 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.

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 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 investor.

13. 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 BBA, 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"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the BBA 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 BBA dated 24.08.2016. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

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

15. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered

against the company for seeking recovery against deposits till the next date of hearing.

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

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

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

G. Findings on the relief sought by the complainant.

I. To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.

18. The complainant is seeking unpaid monthly assured returns on as per the terms of the BBA/MoU dated 24.08.2016 at the rates mentioned therein. It is

pleaded that the respondent has not complied with the terms and conditions of the said MoU.

19. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU and BBA 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.
20. 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.*
21. 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;*

22. 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.
23. 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.
24. 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.

25. The promoter 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 allottee arises out of the same relationship and is marked by the addendum agreement.
26. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MoU dated 24.08.2016.
27. The Authority observes that the buyer's agreement itself recognizes the existence and relevance of the Memorandum of Understanding executed between the parties. In this regard, the clause relating to "Overriding Effect and Modification" in the Buyer's Agreement specifically stipulates that the *Memorandum of Understanding dated 24.08.2016 shall have an overriding effect to the extent of any inconsistency in the terms of the present agreement.* Thus, the contractual framework between the parties clearly acknowledges that the terms contained in the said Memorandum of Understanding would prevail in case of any inconsistency with the provisions of the Buyer's Agreement, thereby forming an integral part of the contractual arrangement governing the rights and obligations of the parties.

28. The Authority observes that clause 2.1 of the buyer's agreement dated 24.08.2016 specifically mentioned that the respondent is under an obligation to pay an assured return to the complainant till the offer of possession on the said unit. From the perusal of the said clause, it is evident that the assured return is payable on the total amount received by the respondent w.e.f. 24.08.2016. Further, the Authority notes that the respondent, vide letter dated 02.09.2016, issued eight post-dated cheques towards the monthly assured return calculated at the rate of Rs.106.79 per square feet for the unit admeasuring 145 sq. ft., per month after deduction of TDS. Thus, the documents on record clearly establish that the respondent had acknowledged and undertaken to pay the assured return at the aforesaid rate to the complainant until the offer of possession on the said unit.
29. In the present complaint, the assured return was payable as per clause 2.1 of the BBA dated 24.08.2016, which is reproduced below for the ready reference:
- "2.1 That the Company hereby agrees to provide assured return and the Allottee hereby agrees to invest in the shop/restaurant (hereinafter referred to as "the said space") as detailed below at the rate mentioned against it and upon the terms and conditions set out hereunder as mutually agreed by and between the parties hereto"*
- "As per the agreement, you are entitled for assured return @Rs.106.79/- per sq. ft. for area measuring 145 Sq. ft. With this letter we are enclosing PDC cheques for Rs.1,00,804/- after deducting TDS"*
30. The Authority further observes that the respondent, in para 9 of the reply, has categorically admitted that the complainant had opted for the investment return plan and that, in terms of the memorandum of understanding dated 24.08.2016, the respondent was liable to pay assured returns to the complainant till the offer of possession of the unit. The said admission on the part of the respondent clearly establishes that the payment of assured

returns up to the stage of possession was an integral part of the contractual understanding between the parties. In view of this admitted position, the respondent cannot resile from its obligation, and therefore, the respondent is liable to pay the assured returns to the complainant till the offer of possession of the unit, strictly in accordance with the terms and conditions of the MOU dated 24.08.2016.

31. Thus, as per the abovementioned clauses the monthly assured returns were payable @Rs.13,936/- per month after deduction of TDS w.e.f. 24.08.2016, till the possession of the unit.
32. In light of the above, the Authority is of the view that as per the MoU dated 24.08.2016, 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.13,936/- per month after deduction of the TDS from the date i.e., 24.08.2016 till the possession of the unit after deducting the amount already paid on account of assured returns to the complainant.
33. 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.13,936/- per month after deduction of the TDS with effect from 24.08.2016 till the possession of the unit. *[It was inadvertently recorded in the proceedings dated 16.12.2025 that the respondent was required to pay assured returns till the commencement of the first lease, However the correct position is that the assured returns were payable till the offer of possession of the unit].*
34. 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 @8.80% p.a. till the date of actual realization.

- II. **To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 09.11.2024 on account of Development Charges, Labour Cess, FTTH charge and interest /penalty charges.**
- III. **To direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 24.08.2016.**

35. Complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges and Interest on delay payment 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 BBA in clause 11. The said clause of the MOU is reproduced hereunder: -

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

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

- **FTTH Charges**

The respondent during proceedings dated 16.12.2025 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

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

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

3. "134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the **holding** charges will not be

payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

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

- **Interest Payable**

The Authority, upon careful consideration of the pleadings and documents placed on record, observes that the respondent has levied an amount of Rs.63,774/- towards interest without substantiating the same with any cogent justification or calculation. It is further observed that the respondent has failed to demonstrate any delay or default on the part of the complainant in making payments towards the sale consideration as per the agreed payment schedule. In the absence of any evidence establishing delay attributable to the complainant and without furnishing a detailed basis for such levy, the charging of interest by the respondent is arbitrary, unjustified, and devoid of legal sanction. Accordingly, the said demand towards interest cannot be sustained and is liable to be set aside.

36. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the MoU/BBA dated 24.08.2016.

IV. To direct the respondent to offer the possession of the unit and execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the basic sale price in respect of the unit/ space has been paid by the complainant.

37. The Authority observes that the offer of possession dated 09.11.2024 has been issued after obtaining the occupancy certificate of the project and, therefore, constitutes a valid offer of possession. In terms of section 11(4)(b)

of the act, 2016, it is the statutory obligation of the promoter to obtain the occupancy certificate and make it available to the allottee, and possession can be lawfully offered only thereafter. Further, section 19(10) of the act casts a corresponding obligation upon the allottee to take possession of the unit within the prescribed period after issuance of the occupancy certificate. accordingly, the offer of possession made post grant of occupancy certificate is in consonance with the provisions of the act and is legally valid.

38. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainant/allottee in terms of the MoU 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.

H.Directions of the Authority

39. 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.13,936/- (after deduction of TDS) per month with effective date as per clauses 2.1 of BBA i.e., 24.08.2016 till the offer of possession of the unit, after deducting the amount already paid on account of assured returns to the complainant. *[Inadvertently, recorded in the proceedings*

- dated 16.12.2025 that the respondent was required to pay assured returns till the commencement of the first lease, However, the correct position is that the assured returns were payable till the offer of possession of the unit]*
- 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 @8.80% p.a. till the date of actual realization.
 - iii. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. 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.***
 - iv. The respondent/promoter is directed to handover possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. 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.
 - v. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.

vi. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.

40. The complaint stand disposed of.

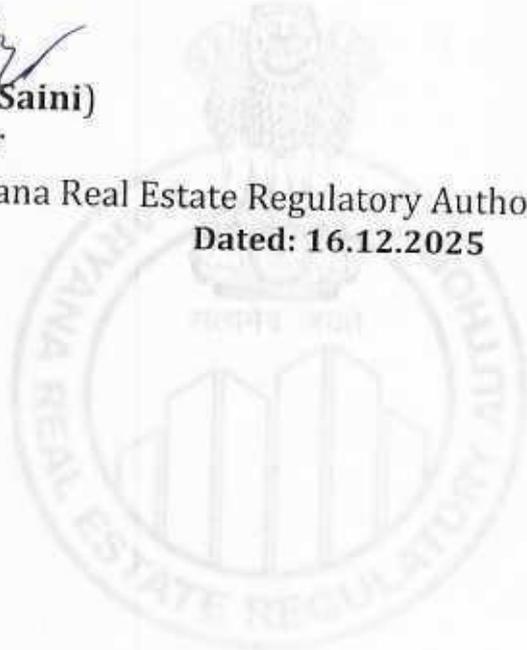
41. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025


HARERA
GURUGRAM