

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

Complaint no.	:	2514 of 2025
Date of Filing:		20.05.2025
Date of Decision:		09.01.2026

Sangharsh Kukreja

R/o: 18/558, Gali no. 3, Ganga Nagar,
Rishikesh, Dehradun, Uttarakhand-249201

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Office: 32-B, Pusa Road, New Delhi - 110005

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sahil Bhardwaj

Sh. Venket Rao

Advocate for the complainant

Advocate for the respondent

ORDER

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	Priority no. 18, 3 rd floor (page no. 21 of complaint)
7.	Unit area admeasuring	304 sq. ft. (page no. 21 of complaint)
8.	MOU	20.09.2018 (page no. 44 of complaint)
9.	Buyer's agreement	20.09.2018 (page no. 18 of complaint)
10.	Possession clause	NA
11.	Assured return Clause	<i>4. The Company shall pay a monthly assured return of Rs.29,847/- per month on the said unit. On the total amount received with effect from 20.09.2019 before deduction of TAX at source, cess or any other levy which is due and payable by the Allottee to the Company and, the balance sale consideration which shall be payable by the Allottee 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 end of effective date II until the commencement of first lease on the said unit. This shall be paid from the effective date.</i> (page no. 47 of complaint)

12.	Due date	20.03.2022 <i>(as per "Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.")</i>
13.	Basic sale consideration	Rs. 17,02,400/- (as per payment plan at page no. 36 of complaint) Rs. 20,00,120/- (as per SOA at page 57 of complaint)
14.	Amount paid by the complainant	Rs. 17,02,398/- (as per SOA at page 57 of complaint)
15.	Occupation certificate	14.08.2024
16.	Offer of possession	04.12.2024 (page no. 55 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant while relying on the representations and warranties of the respondent and believing them to be true agreed to purchase the commercial space and accordingly was allotted a unit no. 18 at 3rd floor having super area of 304 sq. ft. at the rate of Rs. 5,000/- per sq. ft. for a total sales consideration of Rs. 15,20,000/- for which the complainant paid a total sum of Rs. 17,02,406/- in favour of the respondent.
 - II. That pursuant to the successful execution and acceptance of the builder buyer agreement, the respondent also executed a memorandum of understanding dated 20.09.2018 acknowledging the total payment of Rs. 17,02,406/- made by the complainant towards the total sales consideration



of the unit and further, specifically clarifying the terms of the guaranteed assured returns payable to the complainant. The respondent undertook to pay a monthly assured return of Rs. 29,847/- to the complainant, on the total amount received with effect from 20.09.2019 till the commencement of the first lease for the said unit.

- III. That after the commencement of the first lease, the complainant shall continue to receive the benefits in the form of assured return which are fixed at a rate of Rs. 73.63/- per sq. ft.
- IV. Thereafter, the complainant duly requested the respondent to proceed with the registration and execution of the builder-buyer agreement (BBA) entered into between the parties. However, much to the complainant's astonishment, the respondent vide a communication dated 01.10.2020, unilaterally asserted that the complainant must bear the registration fees for the BBA/memorandum of understanding (MOU), forcing upon the complainant to remit the said amount and stated that the registration of the BBA and MOU would only be effected upon such payment by the complainant.
- V. That the complainant categorically asserted that this amount has never been agreed among the parties at the time of acceptance of the buyer builder agreement between the parties and even in accordance with standard industry practice, it is the obligation on part of the respondent to bear the expenses for the registration of the BBA/MOU however, despite the request of the complainant, the respondent failed and neglected to get the BBA/MOU registered in favor of the complainant.
- VI. That thereafter, the respondent turned silent in terms of the status of the construction as well as the payment of the assured returns as agreed under the builder buyer agreement & MOU both dated 20.09.2018.



- VII. That being aggrieved from the situation, the complainant begin following up with the respondent in respect to the construction of the subject unit and the payment of the assured returns however the respondent, deliberately failed to furnish any reply with respect to the delay in the construction of the subject project or for the non-payment of the assured returns to the complainant.
- VIII. That it was only after an inexplicable delay of four (4) years, the respondent vide a belated communication dated 1st February 2022, attempted to justify its non-payment of the assured returns and the delay in the construction of the project, by citing extraneous circumstances of Covid 19 and RERA's norms which was nothing more than a sham as the respondent failed to provide any credible or tenable basis.
- IX. That thereafter the complainant yet again made multiple attempts to follow up with the respondent in respect of the assured returns and delivery of the possession but all went in vain and abruptly on 24.02.2025 the respondent issued a demand notice cum offer of possession dated 04.12.2024 and demanded a sum of Rs. 3,22,226/- and provided a mere 7 days to clear the said demand in favour of the respondent.
- X. That in response the complainant yet again inquire about the payment of the assured returns which the respondent has failed to disburse from the inception of the BBA and MOU agreed among the parties however, the respondent, rather than providing any clarification for its non-payment kept on issuing multiple reminders on 24.02.2025 as well as on 04.03.2025 to the complainant to make unjustified payments in its favour while deliberately avoiding to settle the payments with regards to the assured returns. Further, instead of honouring the commitments to pay the assured monthly returns, the respondent, using its dominant position also threatened the complainant that in case, the complainant does not comply

to demand letters raised by the respondent, then, the respondent shall terminate the allotment of the complainant.

- XI. That the respondent, based on its unilateral actions issued another letter dated 26.03.2025 to the complainant stating that the respondent has signed a lease with M/s. Ayaan Foods for its restaurant brands "Food Quest-Food court in India" and surprisingly raised an additional demand of Rs. 12,55,520/- for the fit-out of the lessee, calling upon the complainant to pay the same within 14 days and only after the payment for the fit-out, the complainant shall be provided with the possession of its unit and to the astonishment of the complainant and without any disclosure or prior discussion, the unit of the complainant was changed from that originally being unit no. 18 on the 3rd Floor to the 2nd Floor.
- XII. That the fit-out works or the interior finishing are part of the scope of work of the builder and not the allottee unless the contract specifies the same within the agreement executed between the parties.
- XIII. That the liability of fit-outs or the amendment within the allotment of the complainant were never discussed or agreed among the builder buyer agreement or the MOU, both dated 20.09.2018 however the respondent, acting on its own initiative as well as using its dominant position attempted to fasten the financial liability of providing fit outs as desired by the prospective lessee upon the complainant which is totally arbitrary and illegal and the same cannot be termed tenable in the eyes of law.
- XIV. That further, the respondent is using this illegal cover to strongarm the complainant to subdue to its illegal demands in exchange of the possession to which the complainant is lawfully entitled to. Further, the same is an after thought specifically aimed to hide its own shortcomings in delivering the possession of the subject unit to the complainant after a grave delay of 7

years as well as its sheer failure to pay the assured return to the complainant.

- XV. That even if it is assumed that the aforesaid liability is to be borne by the respondent, the demand notice dated 26.03.2025 sent by the respondent compel the complainant to pay an exorbitant sum of Rs. 12,55,520/- which if calculated comes equivalent to the assured returns of 42 (Forty-Two) months as fit-outs which is totally irrational as well as beyond any contractual obligations or accepted practice.
- XVI. That as on date the respondent has willfully and persistently defaulted in discharging its contractual obligation to pay the assured returns for the subject unit to the complainant. Despite repeated demands and the lapse of the stipulated timelines, the respondent has failed to remit even a single installment of the agreed assured returns.
- XVII. That the conduct on the part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that the respondent never ever had any intention to deliver the said retail space sold to the complainant on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondent at the time of sale of involved unit were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said retail space basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent, in its advertisements had represented falsely regarding the area, price, quality, delivery date of possession and the guaranteed assured returns and resorted to all kind of unfair trade practices while transacting with the complainant.
- XVIII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat, which amounts to unfair trade practice, which is immoral as well

as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.

- XIX. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his home on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made the life of the complainant miserable socially as well financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no-fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises which lured his to buy a unit in the aforesaid residential project of the respondent.
- XX. That the cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of said flat to the complainant and also not paid the assured returns along with the delay possession charges as well as the interest thereupon for causing delay in delivery of possession of said flat as agreed.
- XXI. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and/or any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

4. The complainant in the present complaint is seeking the following relief(s).
 - (i) Direct the respondent to handover the actual peaceful vacant possession of the original priority allotment bearing no. 18 at 3rd floor admeasuring 304 sq. ft. of the complainant agreed within the BBA as well as MOU both dated 20.09.2018.
 - (ii) Direct the respondent to pay interest at the prescribed rate on account of non-payment of the agreed assured return outstanding to be paid by the respondent to the complainant in respect of the said unit.
 - (iii) Pass an order in favor of the complainant, declaring the demand of Rs. 12,55,520/- as arbitrary, null and void and consequently, to direct the respondent to withdraw the demand letter dated 26.03.2025 seeking payments of the fit-outs from the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - I. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 304 sq. ft. super area in the project "NEO Square".
 - II. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 18, on 3rd floor, admeasuring 304 sq. ft. super area.
 - III. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured

return etc. However, the complainant failed to come forward to do the needful.

- IV. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 20.09.2018.
- V. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 20.09.2018 was executed between the parties, recording the lease grant rights in favour of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- VI. That since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit and *vide* letter dated 01.10.2020 requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- VII. That the occupation certificate of the project was granted by the competent authority on 14.08.2024.
- VIII. Thereafter, the respondent sent an offer of possession letter dated 04.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- IX. Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminder dated 14.02.2025, 24.02.2025 and 04.03.2025 requesting the complainant to do the needful.

- X. That the respondent vide letters dated 26.03.2025 requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- XI. That the respondent vide letters dated 28.02.2025, 02.04.2025 and 17.04.2025 requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- XII. That the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- XIII. That the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an MOU which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainant themselves have entrusted the respondent with the leasing rights of the units.
- XIV. That there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. That the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit. That under clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.
- XV. That as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the

sale consideration of the Unit, Fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU.

- XVI. That the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the complainant, under clause 7(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the unit, then the complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. That in case the complainant fails to pay the same, then the respondent shall pay the expenses on behalf of the complainant and deduct the same from the lease rental payable to the complainant, along with a monthly interest of 2 per cent.
- XVII. That the complainant himself has agreed to pay the fit-out charges to be incurred on account of leasing the unit to any lessee. That the respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainant about the

details of the lease and requested the complainant to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be utilised to make ready the space in terms of the requirements of the lessee for their business operation.

- XVIII. That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainant as per clause 7 (d) of the MOU. The expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental itself. Thus, as per clause 7 (d) of the MOU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing.
- XIX. That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the mou which are beneficial to him and denies the other.
- XX. That the units were sold as a bare shell, and they were to be made fit out ready at the time of possession. It is clear that the sale consideration for the units did not include any fit-out expenses therefore, the fit-out expenses were meant to be recovered as on the date of leasing rather than as on the date of booking. Much time has lapsed from the date of booking to the date of leasing, and the cost and also the preferences of the lessees have also

undergone changes, and accordingly, the fit-out ready leases are as per the current market preferences and prices.

- XXI. That the respondent has always been transparent about the fit-out charges. That as and when the buyers have approached the respondent, clarifications and details with respect to fit-out charges were provided to such buyers.
- XXII. That payment of the fit-out charges is very crucial for leasing out the subject unit, as it is required for making the subject unit ready for occupation of the lessee to run its business. Without getting the subject unit ready as per the requirements of the lessee, it is not possible for any lessee to take the subject unit on lease. Furthermore, the subject unit is leased out along with other units as part of a larger space, therefore, the unwillingness of the complainant towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the project, whose leasing of the units will be hampered due to the defaults of the complainant. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the project and the overall fate of the project, the complainant is bound to pay the fit-out charges.
- XXIII. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. The building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee.

- XXIV. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.
- XXV. That after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1st lease with the Lessees. However, the complainant failed to come forward and to do the needful.
- XXVI. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to Assured Return was not clear and accordingly, a Writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.
- XXVII. Without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. That 1st lease was executed as the building was completed and the fit-out works as per the requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.
- XXVIII. That it is an established practice in the Real Estate Sector, wherein the promoter executes a lease deed with a lessee for a future project even before the completion of the said project. In fact, there is no bar by any statutory

provision on entering into such an understanding. There have been numerous such instances where renowned developers have adopted such a practice.

- XXIX. That the complainant under clause 8 (a) of the MOU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the Lease, the amount of lease, usage or to who the unit is leased out.
- XXX. That under clause 8 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. That under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.
- XXXI. That the complainant is seeking payment of assured return on the basis of MOU, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the complainant cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the complainant are claiming his right under the MOU, then he should also be ready to fulfil his responsibility under the MOU. It is most humbly submitted that if the Ld. Authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to

leasing of the unit, and payment of fit-out charges under the MOU should also be allowed.

- XXXII. That the complainant, vide the present complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016. That
- XXXIII. That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving Assured Return/Penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.
- XXXIV. That a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of "Vatika Ltd. Vs Union of India & Anr."- CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the petitioner therein, seeking recovery of deposits till the next date of hearing.
- XXXV. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court, and the same has been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication and now coming up for hearing on 25.08.2025. Without prejudice to the rights of the respondent and submissions made herein, it is

noted herein that the payment of assured return shall be subject to the outcome of the decision of the Hon'ble High Court of Punjab and Haryana.

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

- awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.
- **GST Implications:** It is pertinent to apprise to the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
 - **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of respondent is situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work due to the fear of riots and remobilisation of work workforce took considerable time of 3-4 months.

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

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

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

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

- XLI. That the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. The complainant has vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainant is entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being the investors.

12. The respondent took a stand that the complainant is the investor and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainant are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a

person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainant is the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 20.09.2018. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on the reliefs sought by the complainant:

- (i) Direct the respondent to handover the actual peaceful vacant possession of the original Priority Allotment bearing no. 18 at 3rd Floor admeasuring 304 sq. ft. of the Complainant agreed within the BBA as well as MOU both dated 20.09.2018.
- (ii) Direct the respondent to pay interest at the prescribed rate on account of non-payment of the agreed assured return outstanding to be paid by the respondent to the complainant in respect of the said unit.
14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."

15. In the present complaint buyer's agreement was executed on 20.09.2018. However, there was no possession clause in the said buyer's agreement therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** :-

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

16. Accordingly, the due date of possession is calculated as 3 years from the date of execution of buyer's agreement i.e., 20.09.2018. Therefore, the due date of possession comes out to be 20.09.2021 further an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 20.03.2022.
17. **Admissibility of delay possession charges at prescribed rate of interest:** 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]

(1) 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.

18. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. 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., 09.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
20. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(z) "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;"*
21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter

which is the same as is being granted to the complainant in case of delay possession charges.

22. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The possession of the subject unit was to be delivered by 20.09.2021. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 20.03.2022. The occupation certificate for the said project was received on 14.08.2024 and subsequently unit was offered for possession on 04.12.2024. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
23. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest at prescribed rate i.e. 10.80% p.a. on the amount paid, for every month of delay from the due date of possession i.e., 20.03.2022 till valid offer of possession (04.12.2024) plus 2 months i.e., 04.02.2025 after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

24. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the allottee. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The occupation certificate has been obtained on 14.08.2024 and subsequently unit was offered for possession on 04.12.2024. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant 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.

(iii) Pass an order in favor of the complainant, declaring the demand of Rs. 12,55,520/- as arbitrary, null and void and consequently, to direct the respondent to withdraw the demand letter dated 26.03.2025 seeking payments of the fit-outs from the complainant.

25. The complainant has raised objection towards the fit out charges raised by the respondent vide letter dated 10.12.2024 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The respondent submitted that as per the Clause 7 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

(d)

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

company along with the monthly interest of 2% is recovered by the company from the rent received.

26. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.
27. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.
28. Further, the complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

- **Labour cess**

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

- **Development charges**

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

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

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

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

- **FTTH Charges**

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

- **Holding charges**

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

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

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

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

H. Directions of the authority

36. 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):

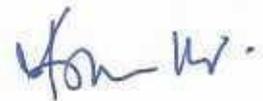
- i. The respondent is directed (in all the above mentioned complaints) to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 20.03.2022 till offer of possession after obtaining occupation certificate plus two months i.e., 04.02.2025 or actual handing over of possession, whichever is earlier as per section 18(1) of the Act read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any remains as per the buyer's agreement/MOU, after adjustment of delay possession

charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.

- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.80% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020*.
- vi. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.

37. Complaint as well as applications, if any, stands disposed off accordingly.

38. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2026