



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

Order pronounced on: 06.01.2026

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/1638/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)
2.	CR/1639/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)
3.	CR/1640/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)
4.	CR/1641/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)
5.	CR/1642/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)
6.	CR/1643/2025	Manju Dubey and Aviral V/S NEO Developers Private Limited	Nipun Rao (Complainant) Venkat Rao (Respondent)

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of all the 6 complaints titled as above filed before this Authority in form CRA 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 executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Neo Square" being developed by the same respondent/promoter i.e., NEO Developers Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram

Clause-5.2 of BBA "That the company shall complete the construction of the said building/complex within which the said space is located within **36 months from the date of execution of this agreement or from the start of construction whichever is later** and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues."

1. Completion certificate- 14.08.2024

2. DTCP License no. 102 of 2008 dated 15.05.2008 valid upto 14.05.2025 - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.

3. Nature of Project- Commercial Colony

4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024



Sr. No.	Complaint no./title/ date of filing complaint	Assured return clause In MoU	Unit No. and area admeasuring	Date of execution of agreement for sale	Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/1638/2025 Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd DOF- 31.03.2025 RR- 26.11.2025	<i>Clause 3 "That Company hereby has agreed to allot to the Allottee(s) premises measuring 439 sq.ft. (40.78 Sq.mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU"</i> <i>(page no. 52-54 of complaint</i>	Priority No. Unit- 28 1st Floor 421 sq. ft. (Page no. 27 of complaint)	09.03.2021 (page no. 24 of complaint) And 29.04.2013 (page no.50 of complaint)	Offer of Possession- 29.11.2024 (As per pg. no. 43 of the reply)	TSP: Rs.26,97,350/- (as per payment plan at page 42 of complaint) AP: Rs.30,86,961/- (as per page no. 56 and 57 of complaint)	Assured returns, DPC, Possession, CD



<p>2.</p> <p>CR/1639/2025</p> <p>Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd</p> <p>DOF- 31.03.2025</p> <p>RR- 26.11.2025</p>	<p>Clause 3</p> <p><i>"That Company hereby has agreed to allot to the Allottee(s) premises measuring 421 sq.ft. (39.11 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU"</i></p> <p>(page no. 52-54 of complaint</p>	<p>Priority No. Unit-29 1st Floor</p> <p>411 sq. ft.</p> <p>(Page no. 27 of complaint)</p>	<p>09.03.2021 (page no. 24 of complaint)</p> <p>And 29.04.2013 (page no.50 of complaint)</p>	<p>Offer of Possession- 29.11.2024</p> <p>(As per pg. no. 43 of the reply)</p>	<p>TSP: Rs.26,33,284/- (As per payment plan at page 42 of complaint)</p> <p>AP: Rs.30,92,369/- (As per page no. 56 and 57 of complaint)</p>	<p>Assured return s, DPC, Possession, CD.</p>
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3.	<p>CR/1640/20 25</p> <p>Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd</p> <p>DOF- 31.03.2025</p> <p>RR- 26.11.2025</p>	<p><i>Clause 3</i></p> <p><i>That Company hereby has agreed to allot to the Allottee(s) premises measuring 411 sq.ft. (38.18 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.4450 /- per sq.ft. Towards BSP & Rs.356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU</i></p> <p><i>(page no. 52-54 of complaint</i></p>	<p>Priority No. Unit- 30 1st Floor 408 sq. ft.</p> <p>(page no. 27 of complaint)</p>	<p>09.03.2021 (page no. 24 of complaint)</p> <p>And</p> <p>29.04.2013 (page no.50 of complaint)</p>	<p>Offer of Possession - 29.11.2024 (As per pg. no. 43 of the reply)</p>	<p>TSP: Rs.26,14,059/- (As per payment plan at page 42 of complaint)</p> <p>AP: Rs.30,90,449/- (As per page no. 56 and complaint)</p>	<p>Assured return s, DPC, Posses sion, CD</p>
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4.	<p>CR/1641/2025</p> <p>Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd</p> <p>DOF- 31.03.2025</p> <p>RR- 26.11.2025</p>	<p>Clause 3</p> <p><i>"That Company hereby has agreed to allot to the Allottee(s) premises measuring 408 sq.ft. (37.90 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU"</i></p> <p><i>(page no. 52-54 of complaint</i></p>	<p>Priority No. Unit- 31 1st Floor 412 sq. ft. (Page no. 27 of complaint)</p>	<p>09.03.2021 (page no. 24 of complaint)</p> <p>And 29.04.2013 (Page no.50 of complaint)</p>	<p>Offer of Possession - 29.11.2024 (As per pg. no. 43 of the reply)</p>	<p>TSP: Rs.26,39,687/- (as per payment plan on page no. 42 of complaint)</p> <p>AP: Rs.29,22,782/- (as per SOA at page no. 45 of reply)</p>	<p>Assured returns, DPC, Possession, CD</p>
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5.	<p>CR/1642/2025</p> <p>Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd</p> <p>DOF- 31.03.2025</p> <p>RR- 26.11.2025</p>	<p>Clause 3</p> <p><i>"That Company hereby has agreed to allot to the Allottee(s) premises measuring 412 sq.ft. (38.27 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.4450 /- per sq.ft. Towards BSP & Rs.356 towards PLC taking into consideration a return of Rs.96 /- Per Sq.ft. per month, subject to the terms of this MOU"</i></p> <p><i>(Page no. 52-54 of complaint</i></p>	<p>Priority No. Unit- 32 1st Floor 423 sq. ft. (Page no. 27 of complaint)</p>	<p>09.03.2021 (Page no. 24 of complaint)</p> <p>And</p> <p>29.04.2013 (Page no.48 of complaint)</p>	<p>Offer of possession- 29.11.2024 (As per pg. no. 43 of the reply)</p>	<p>TSP: Rs.27,10,164/- (As per payment plan on page no. 40 of complaint)</p> <p>AP: Rs.28,91,136/- (As per SOA at page no. 73 of complaint)</p>	<p>Assured returns, DPC, Possession, CD</p>
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6.	<p>CR/1643/20 25</p> <p>Manju Dubey and Aviral V/s M/s Neo Developers Pvt. Ltd</p> <p>DOF- 31.03.2025</p> <p>RR- 26.11.2025</p>	<p>Clause 3 That Company hereby has agreed to allot to the Allottee(s) premises measuring 423 sq.ft. (39.29 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU (Page no. 52-54 of complaint</p>	<p>Priority No. Unit- 33 1st Floor 439 sq. ft.</p> <p>(Page no. 27 of com plaint)</p>	<p>09.03.2021 (page no. 24 of complaint)</p> <p>And</p> <p>29.04.2013 (page no.50 of complaint)</p>	<p>Offer of possession- 29.11.2024</p> <p>(As per pg. no. 43 of the reply)</p>	<p>TSP: Rs.28,12,677/ -</p> <p>(as per payment plan on page no. 47 of complaint)</p> <p>AP: Rs.32,01,6554 /- (as per SOA at page no. 73 of complaint)</p>	<p>Assure d return s, DPC, Posses sion, CD</p>
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

RR- Reply Received on

DOF- Date of filing complaint

TSP- Total Sale Price

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/1638/2024 titled as Manju Dubey and Aviral V/s Neo Developers Pvt. Ltd.* are being taken into consideration for determining the reliefs of the allottee(s) qua setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.
- A. Project and unit related details.**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

***CR/1638/2024 titled as Manju Dubey and Aviral
V/s Neo Developers Pvt. Ltd***

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 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.	Buyer's agreement	09.03.2021 (As per pg. no.24 of the Complaint)
7.	Unit no.	Priority No. Unit-28 1st Floor (As per pg. no. 27 of the Complaint)
8.	Unit area admeasuring	421 Sq. Ft. (As per pg. no. 27 of the Complaint)
9.	Date of MoU	29.04.2013 of unit 72 at first floor in Tower B (As per pg. no. 51 of the Complaint)
10.	Possession clause	5.2 of BBA <i>"That the Company shall complete the construction of the said Building / Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion / Occupancy Certificate. The Company on grant of Occupancy / Completion Certificate, shall issue final letters to the Allotte(s) who shall within 30 (thirty) days, thereof remit all dues."</i> (At pg. no. 35 of the Complaint)
11.	Due date of possession	09.09.2024 (As per possession clause no. 5.2 of the BBA plus 6 months covid extension)
12.	Assured return Clause	Clause 3 <i>"That Company hereby has agreed to allot to the Allottee(s) premises measuring 439 sq.ft. (40.78 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per Sq.ft. per month, subject to the terms of this MOU."</i>

		<p><i>Clause 17</i> <i>"The builder in terms of its commitment to pay the assured return shall hand over the postdated cheques for each financial year taking into consideration the expected period of completion/possession. These post dated cheques shall not be dishonored for any of the reasons."</i></p> <p><i>(As per pg. no. 52 & 54 of the complaint)</i></p>
13.	Overriding Effect and Modification	<p><i>Clause 20</i> <i>"That the Memorandum of understanding dated 29-April-2013 shall have the overriding effect to the extent of inconsistent terms in the present agreement."</i></p> <p><i>(At pg. no. 39 of the complaint)</i></p>
14.	Sale consideration	<p>Rs.18,73,450/- (As per pg. no. 29 of the Complaint)</p>
15.	Amount paid by the complainant	<p>Rs.26,35,136/- (As per pg. no. 56 of the Complaint)</p> <p>Rs. 30,86,961/- (As per the complainant in the CRA form)</p>
16.	Occupation certificate	<p>14.08.2024 (As per DTCP site)</p>
17.	Offer of possession	<p>29.11.2024 (As per pg. no. 78 of the Complaint)</p>
18.	Reminders for payment	<p>14.02.2025, 24.02.2025, 04.03.2025 (As per pg. no. 85-93)</p>

B. Facts of the complaint.

8. The complainants have made following submissions in the complaint:
- i. That on 29.04.2013, the complainant booked a unit in the said project by paying an amount of Rs.1,94,292/- on dated 29.04.2013.

- ii. That upon receiving such consideration amount the respondent executed a memorandum of understanding and allocated a unit no. 72 on first floor admeasuring an approximate super area of 439 Sq. Ft. in the said project. Further it was also agreed between the parties that a per month return of Rs. 96/- per Sq. Ft. (i.e., Amounting to Rs.42,144/-) will also be given by the respondent to the complainant as mentioned in para no. 3 of the said MOU till the commencement of the first lease of the said unit.
- iii. Thereafter as and when asked by the respondent the payment of Rs. 17,48,626/- and Rs. 1,68,401/- which was duly paid on dated 13.06.2013, then a payment of Rs. 1,77,241/- and Rs. 22,313/- was also paid on dated 31.12.2015 and further a payment of Rs. 2,91,753/- was paid on dated 15.07.2017 which can be clearly shown in statement of Accounts as annexed with the complaint.
- iv. That the respondent paid assured return in respect of the said unit from June 2013 till September 2019 and from then till now the complainant had not received a single penny from the respondent as an assured return.
- v. That in the month of December 2019 the complainant also received the letter from the respondent where in the clearly admitted by the respondent that they are liable to pay the monthly assured returns and they will adjust the monthly assured return against the said unit at the time of possession.
- vi. That then in the year 2021, the complainant received a builder buyer agreement for the purpose of execution, but the complainant raised several objections in the terms and conditions of the said builder buyer agreement, but the respondent said the execution of the said builder buyer agreement is merely a formality. Depositing faith upon the respondent the complainant executes the said builder buyer agreement. Thereafter a

builder buyer agreement was executed on dated 09.02.2021 in respect of the said unit and the allotted unit no. i.e., 72 was changed to unit no. 28 admeasuring 421 Sq. Ft. situated at "Neo Square" at first floor.

- vii. That in the month of december 2024 complainant contacted the respondent on several occasions regarding wrongful demand of edc, idc, vat etc and also some unfair and arbitrary clauses in the agreement. Also, a clarification was sought on the development of project and the date of delivery. however, no answer was received from the respondent.
- viii. That from 29.04.2013 till 06.12.2024, As per demand raised by the respondent and as per the payment plan, the complainant paid a sum of Rs. 26,35,136/- towards the said unit.
- ix. That, as per the BBA the respondent had to complete the construction of the said building/ complex, within which the said space is located within 36 months from date of execution of the agreement or from start of construction whichever is later.
- x. That in year 2025, the complainant visited the site and was shocked to see the status of the project as no construction was going on as per the promises and representations made by the respondent and the project was nowhere near completion.
- xi. That in year 2025, the complainant visited the site and was shocked to see the status of the project as no construction was going on as per the promises and representations made by the respondent and the project was nowhere near completion.
- xii. That thereafter again a demand of Rs. 4,51,825/- was demanded which was also duly paid by the complainant on dated 11.12.2024.

- xiii. That is from 29.04.2013 till now the complainant had apaid an amount of Rs.30,86,961/- in respect of the said unit and on the other hand the respondent never paid any assured return from September 2019 till now.
- xiv. That complainant kept pursuing the matter with the representatives of the respondent overdue course of time as to when will the project and why construction is going on at such a slow pace, but to no avail. But the respondent did not furnish any response in this regard and also failed to make the payment on account of assured return to the complainant. later complainant tried to contact directors of respondent Mr. Amit Bhola, Mr. Ashish Anand & Mr. Manish Bhola over phone call & email but no response has been received by the complainant.
- xv. That as per MOU, the respondent had agreed to pay a monthly assured return of Rs. 42,144/- on the total amount received with effect from 29.04.2013 as per MOU as well as buyer agreement dated 09.02.2021. The respondent failed to pay a monthly assured return of Rs. 42,144/- per month from September 2019 till now. Even after so many request and emails by the complainant regarding the matter. However, the respondent did not furnish any response in this regard.
- xvi. That the respondent has made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many months thereby causing wrongful loss to the complainant and wrongful gain to the respondent.
- xvii. That the present complaint has been filed in order to seek possession of said unit along with interest on account of delayed possession and the

assured return pending from September 2019 till the till possession of the Unit, along with other relief as mentioned in the relief clause of the complaint.

- xviii. That accordingly, the complainants herein are entitled to get interest on the paid amount at the rate as prescribed by the Haryana Real Estate (Regulation and Development) Rules, 2017 from due date of possession till the date of actual handing over possession.

C. Relief sought by the complainants

9. The complainants have sought the following relief(s):
- I. Direct the respondent to pay a monthly assured return of Rs 42,144/- per month against the payment of the said unit.
 - II. Direct the respondent to pay delayed possession charges on the principal amount paid by the complainant towards the said unit at prescribed rate of interest from the due date of possession till actual handing over possession.
 - III. Direct the respondent to handover the possession of the subject unit.
 - IV. Direct the respondent to execute the conveyance deed of the said unit in the name of the complainant after obtaining the OC.
10. 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

11. 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, requested the respondent to allot a unit/space, admeasuring 421 sq. ft. super area in the project "neo square" (hereinafter referred to as the "project).

- ii. That, considering the request of the complainant, the respondent booked a unit bearing priority no. 28, on 1st floor, admeasuring 421 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 09.03.2021.
- 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 29.04.2013 (hereinafter referred to as the "mou") 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. The occupation certificate of the project was granted by the competent authority on 14.08.2024.
- vii. Thereafter, the respondent sent an offer of possession letter dated 29.11.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- viii. That the respondent *vide* letter dated 04.07.2025 requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the mou.
- ix. That the respondent *vide* letter dated 24.04.2025 requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the mou.

- x. It is further submitted that the respondent had duly discharged its obligations by paying a sum of ₹28,70,855 /- rupees to the complainant towards assured return up to 25.08.2019. It is only subsequent to the Complainant's default in fulfilling his contractual obligations and in view of the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act), that the respondent was constrained to discontinue further payments under the assured return arrangement.
- xi. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- xii. That the present complaint has been preferred by the complainants before the Id. authority on frivolous and unsustainable grounds and the complainant has not approached the Id. authority with clean hands and is trying to suppress the material facts relevant to this matter. the complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the respondent. the instant complaint is not maintainable in the eyes of the law, is devoid of merit and is fit to be dismissed *in limine*.
- xiii. That is most humbly submitted 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 complainants themselves have entrusted the respondent with the leasing rights of the units.

xiv. That is important to bring it to the knowledge of the Ld. Authority that it is categorically agreed under the MOU that:

a) The unit is allotted to the complainant on the condition that the unit shall be leased through respondent;

b) The respondent shall be authorized to lease the unit;

c) The complainant has authorized the respondent to finalize the terms and conditions of the leasing with any prospective lessee;

d) If the complainant fails to execute the necessary documents/lease deed, then in those circumstances, the respondent shall execute the lease deed;

e) The complainant shall not raise any objection with respect to terms and conditions of the lease, the lease amount or to whom the units are leased out;

xv. That from a bare perusal of the aforementioned terms and conditions of the mou, it is evident that the complainant has invested in the instant project with the sole motive of earning lease rental by getting the subject unit lease through the respondent. it was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself. that the whole idea behind the leasing of the subject unit through the respondent was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the project who, by themselves, could not get big brands to take their units on lease. it is further submitted herein that the complainant has invested in the instant

project for earning lease rental can be verified from the fact that under clause 6 of the BBA, it is clearly mentioned that the terms and conditions pertaining to leasing of the unit are mentioned in the mou.

- xvi. That is reiterated herein that from the very beginning, the understanding between the parties was to lease out the unit through the respondent. that it was never agreed between the parties that physical possession of the unit shall be handed over to the complainant. That a mou recording the terms and conditions of the leasing and lease rental is executed between the parties. it is pertinent to mention herein that no protest in this regard has ever been raised by the complainant and the same was willingly and voluntarily agreed upon between the parties.
- xvii. That from a mere perusal of the aforementioned submissions, it is evident that physical possession of the subject unit and leasing the unit by himself was never the intent of the complainant. therefore, the present complaint is liable to be dismissed and it is evident from the BBA and mou entered into, the complainant may be directed to accept constructive possession and be in adherence of terms of mou with respect lease obligation thereunder.
- xviii. That is pertinent to mention herein that the complainant, *vide* his complaint, is raising an issue that he has already paid the entire sale consideration and that the respondent is raising additional demands.
- xix. That is most humbly submitted 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.

clause 11 of the BBA is reproduced herein below:

"11. DEVELOPMENT CHARGES, TAXES, CESSSES, LEVIES, ETC.

*That the Allottee agrees to pay all taxes, charges, levies, cessses, applicable as on dated under any name or category/heading and/or levied in future on the land and/or said the 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, BOCW 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."*

- xx. It is pertinent to mention herein 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.
- xxi. It is reiterated herein 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. 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.

- xxii. 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.
- 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. It is noted herein that 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. It is pertinent to mention herein 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.

- xxv. 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. It is noted herein 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.
- xxvi. It is reiterated herein 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.
- xxvii. It is noted herein 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. It is further noted herein 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.

- xxviii. That from a mere perusal of the aforementioned submissions, it is evident that the complainant himself has authorized the respondent to finalize the terms and conditions of the lease and categorically agreed to execute a separate lease deed, if required. Further, the complainant himself agreed that in case of his failure to execute a separate lease deed if required, the respondent shall be authorized to execute the lease deed on behalf of the complainant. Therefore, in view of the agreed terms and conditions of the mou, it is submitted herein that the lease deed executed by the respondent on behalf of the complainant are valid as the same are executed as per the terms and conditions of the mou.
- xxix. Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand 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 Id. 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.
- xxx. 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.
- xxxi. It is also pertinent to mention herein 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.

- xxxii. 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.
- xxxiii. It is a matter of fact, 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.
- xxxiv. It is pertinent to mention herein that in the present complaint, the complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the respondent. It is noted herein 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.
- xxxv. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent.



xxxvi. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated herein below:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.



3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.



5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again

					was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities

					had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.
			Total days	582 days	

xxxvii. 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.

xxxviii. That, it is evident 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. It is noted herein that 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.

12. 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

13. 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

14. 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

15. 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:



.....

(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.

16. 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.

F. Findings on the objections raised by the respondent.

F. I. Objection regarding the complainants being investor.

17. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter 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 buyer's agreement dated 09.03.2021, it is revealed that the complainants are buyers, and they have paid a total price of Rs.30,86,961/- to the promoter towards purchase of a 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;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants.

- I. Direct the respondent to pay a monthly assured return of Rs.42,144/- per month against the payment of the said unit.**
- II. Direct the respondent to pay delayed possession charges on the principal amount paid by the complainant towards the said unit at prescribed rate of interest from the due date of possession till actual handing over possession.**
- III. Direct the respondent to handover the possession of the subject unit.**
- IV. Direct the respondent to execute the conveyance deed of the said unit in the name of the complainant after obtaining the OC.**

19. The complainants are seeking unpaid monthly assured returns on as per the terms of the MoU dated 29.04.2013 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MoU.

20. The respondent has submitted that the complainants in the present complaint are claiming the reliefs on basis of the terms agreed under the MoU between the parties

which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.

21. It is pleaded on behalf of respondent 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.

22. 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 an immovable property

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

23. 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 promoter at the time of booking or immediately thereafter and as agreed upon between them.
24. 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.
25. The money was taken by the promoter 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 promoter 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.
26. 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 promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship.
27. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the

complainants besides initiating penal proceedings. So, the amount paid by the complainants to the promoter is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 09.03.2021.

28. In the present complaint, the assured return was payable as per clauses 03 and 17 of the MoU dated 29.04.2013, which is reproduced below for the ready reference:

Clause 3.

"That Company hereby has agreed to allot to the Allottee(s) premises measuring 439 sq.ft. (40.78 Sq.Mt.) Super built up area on the First floor of Tower B of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.4450 /- per sq.ft. Towards BSP & Rs. 356 towards PLC taking into consideration a return of Rs 96 /- Per sq.ft. per month, subject to the terms of this MOU."

Clause 17

"The builder in terms of its commitment to pay the assured return shall hand over the postdated cheques for each financial year taking into consideration the expected period of completion/possession. These post dated cheques shall not be dishonored for any of the reasons."

Thus, as per the abovementioned clause, the monthly assured returns were payable @Rs.42,144/- per month with effective date as per clauses 03 and 17 of the MoU i.e., 29.04.2013 till the possession of the unit, after deducting the amount already paid on account of assured returns to the complainants.

29. In light of the above, the Authority is of the view that as per the MoU dated 29.04.2013, it was obligation on part of the respondent to pay the monthly assured return till possession of the Unit. Accordingly, the liability of the respondent to pay

assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.42,144/- per month till the possession of the said unit as per the memorandum of understanding dated 29.04.2013, after deducting the amount already paid on account of assured returns to the complainants.

G.II Delay Possession Charges:

30. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

31. Clause 5.1 of the BBA dated 09.03.2021 provides for handing over of possession and is reproduced below:

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

32. **Due date of possession:** As per clause 5.1 of the BBA dated 09.03.2021, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later. Further, a grace period of 6 months is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having

completion date on or after 25.03.2020. Thus, the due date of possession come out to be 09.09.2024.

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”

34. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% per annum.
35. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

“(za) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the*

date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is liable to be paid to the complainants in case of delay possession charges.
37. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 09.09.2024. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainants on 29.11.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 09.03.2021. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee pay a monthly assured return of Rs.42,144/- on the total amount received with effect from 29.04.2013 till possession of the Unit. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 29.04.2013 till the possession of the Unit which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. Accordingly, the

interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delay possession charges whichever is higher.

38. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.
39. In the present complaint, as per clause 3 of the MoU dated 29.04.2013, the amount on account of assured return was payable from 29.04.2013 till possession of the Unit. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on lease by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.42,144/- per month from the date i.e. 29.04.2013 till the possession of the unit as per the memorandum of understanding, after deducting the amount already paid on account of assured returns to the complainants.
40. Further the complainants are seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

41. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

H. Directions of the Authority

42. 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 to pay assured return to the complainants at the agreed rate i.e., @Rs.42,144/- per month from the date i.e. 29.04.2013 till the possession of the said unit as per the memorandum of understanding dated 29.04.2013, after deducting the amount already paid on account of assured returns to the complainants.
 - ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
 - iii. The respondent is directed to supply a copy of the updated statement of account after adjusting assured returns within a period of 30 days to the complainant.
 - iv. The respondent/promoter is directed to handover possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement



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

- v. The respondent is further directed to not to charge anything from the complainants which is not part of the MoU and buyers' agreement.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of.
45. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2026