

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

Date of order: 16.12.2025

Name of the builder		M/s Neo Developers Private Limited
Project name		"Neo Square", Sector 109, Gurugram
S. No.	Case No.	Case title
1.	CR/4627/2024	Kusha Vikram Dhawan V/s M/s Neo Developers Private Limited
2.	CR/4628/2024	Vikram Dhawan and Kusha Dhawan V/s M/s Neo Developers Private Limited
3.	CR/4629/2024	A B Brookel Private Limited V/s M/s Neo Developers Private Limited
4.	CR/4637/2024	Renu Wadhara and Vikram Wadhara V/s M/s Neo Developers Private Limited

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Rajinder Singh (Advocate)

Complainants

Shri Venkat Rao (Advocate)

Respondent

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28

of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “the Rules”) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

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*”, situated at Sector 109, Gurugram being developed by the same respondent/promoter i.e., M/s Neo Developers Private Limited The terms and conditions of the buyer’s agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges, assured return, VAT Charges, assured rentals and other reliefs.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project name and location	“Neo Square”, sector 109, Gurugram, Haryana
Nature of the project	Commercial colony
Project area	3.08 acres
DTCP license no. and other details	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
Name of licensee	M/s Shri Maya Buildcon Private Limited & others
RERA Registered/ not registered	Registered 109 of 2017 dated 24.08.2017
Extension of RERA registration	<ul style="list-style-type: none"> • Extension No. 06 of 2022 dated 14.11.2022; • PROJECT CONTINUATION- RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 29.03.2023;

	<ul style="list-style-type: none"> PROJECT CONTINUATION- RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 14.10.2024 Valid up to 22.02.2025
Possession clause [As per BBA]	Not Available
Possession clause [As per MoU]	<i>Clause 3 of MOU</i> ...The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The Company on grant of occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues. <p style="text-align: right;">[Emphasis supplied]</p>
Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
Occupation certificate	14.08.2024 (As per document provided by the respondent in its reply)

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Total Sale Consideration / Total Amount paid by the complainant(s) / Total Assured return paid up to	Due date of possession, Offer of possession /Date of lease Deed
1.	CR/4627/2024 Kusha Vikram Dhawan V/S M/s Neo Developers Private Limited DOF: 24.09.2024	Priority no.34, 3rd floor [Restaurant] 250 sq. ft. (super area) (As per BBA at page no.27 of the complaint)	MOU: 20.03.2015 (As per page no.55 of complaint) BBA: 20.03.2015 (As per page no.22 of complaint)	TSC: Rs.22,40,613/- (As per payment schedule at page no.49 of the complaint) BSP: Rs.19,92,000/- (As per MoU at page no.57 and as per BBA at page no.49 of the complaint) AP:	Due date of possession: 15.12.2018 (Note: Due date to be calculated 36 months from the date of start of construction i.e., 15.12.2015, being later.) OOP: 22.03.2025

	RR: 24.04.2025			Rs.23,04,183/- (As per payment SOA dated 22.03.2025 at page no.117 of the reply) AR Paid: Rs.6,15,750/- [from May, 2017 - 15.02.2020] (as per details at page 117 of reply)	(As per page no. 111-114 of reply)
<p>Assured return clause as per MOU dated 20.03.2015:</p> <p>Clause 4 ... The company shall pay a monthly assured return of Rs.22,500/- on the total amount deposited till the signing of this MOU, with effect from 20.03.2017 before deduction of Tax at Source ... The monthly assured return shall be paid to the allottee from 20.03.2017 onwards until the commencement of the first lease on the said unit.</p> <p style="text-align: center;">Read with</p> <p>Clause 7(a) That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.</p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As on page no.57 & 58 of complaint)</p>					
2.	CR/4628/2024 Vikram Dhawan and Kusha Dhawan V/S M/s Neo Developers Private Limited DOF: 16.04.2025 RR: 28.08.2025	Priority no.33, 3rd floor [Restaurant] 250 sq. ft. (super area) (As per BBA at page no.25 of the complaint)	MOU: 25.01.2015 (As per page no.53 of complaint) BBA: 25.01.2015 (As per page no.20 of complaint)	TSC: Rs.22,40,688/- (As per payment schedule on page no.46 of the complaint) BSP: Rs.19,92,072/- (As per MoU at page no.55 and as per BBA at page no.46 of the complaint) AP: Rs.23,04,187/- (as per payment SOA dated 27.02.2025 at page no.117 of the reply) AR Paid: Rs.6,57,000/- [from 05.02.2017 - 15.02.2020] (as per details at page 120 of reply)	Due date of possession: 15.12.2018 (Note: Due date to be calculated 36 months from the date of start of construction i.e., 15.12.2015, being later.) OOP: 27.02.2025 (As per page no. 114-120 of reply)
<p>Assured return clause as per MOU dated 25.01.2015:</p> <p>Clause 4 ... The company shall pay a monthly assured return of Rs.22,500/- on the total amount deposited till the signing of this MOU, with effect from 25.01.2017 before deduction of Tax at Source ... The monthly</p>					

<p><i>assured return shall be paid to the allottee from 25.01.2017 onwards until the commencement of the first lease on the said unit.</i></p> <p style="text-align: center;">Read with</p> <p>Clause 7(a) <i>That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.</i></p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As on page no.55-56 of complaint)</p>					
3.	<p>CR/4629/2024</p> <p>A B Brookel Private Limited V/S M/s Neo Developers Private Limited</p> <p>DOF: 24.09.2024</p> <p>RR: 24.04.2025</p>	<p>Priority no.02, 3rd floor [Restaurant]</p> <p>250 sq. ft. (super area) (As per BBA at page no.31 of the complaint)</p>	<p>MOU: 15.09.2015 (As per page no.16 of complaint)</p> <p>BBA: 15.09.2015 (As per page no.26 of complaint)</p>	<p>TSC: Rs.13,02,500/- (As per payment schedule on page no.51 of the complaint)</p> <p>BSP: Rs.12,50,000/- (As per MoU at page no.18 and as per BBA at page no.51 of the complaint)</p> <p>AP: Rs.15,03,645/- (as per payment SOA dated 27.02.2025 at page no.120 of the reply)</p> <p>AR Paid: Rs.4,62,000/- [from 28.03.2018 – 25.09.2019] (as per details at page 123 of reply)</p>	<p>Due date of possession: 15.12.2018 (Note: Due date to be calculated 36 months from the date of start of construction i.e., 15.12.2015, being later.)</p> <p>OOP: 27.02.2025 (As per page no. 117-123 of reply)</p>
<p>Assured return clause as per MOU dated 15.09.2015:</p> <p>Clause 4 <i>... The company shall pay a monthly assured return of Rs.22,500/- on the total amount deposited till the signing of this MOU, with effect from 15.09.2017 before deduction of Tax at Source ... The monthly assured return shall be paid to the allottee from 15.09.2017 onwards until the commencement of the first lease on the said unit.</i></p> <p style="text-align: center;">Read with</p> <p>Clause 7(a) <i>That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.</i></p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As on page no.18-19 of complaint)</p>					
4.	<p>CR/4637/2024</p> <p>Renu Wadhara and Vikram Wadhara V/S M/s Neo Developers Private Limited</p>	<p>Priority no.311, 3rd floor [Restaurant]</p> <p>800 sq. ft. (super area) (As per BBA at page no.35 of complaint)</p>	<p>MOU: 17.01.2017 (As per page no.22 of complaint)</p> <p>BBA: 17.01.2017 (As per page no.32 of complaint)</p>	<p>TSC: Rs.33,44,000/- (As per payment schedule on page no.50 of the complaint)</p> <p>BSP: Rs.32,00,000/-</p>	<p>Due date of possession: 17.01.2020 (Note: Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 17.01.2017, being later.)</p>

DOF: 24.09.2024	RR: 24.04.2025			(As per MoU at page no.24 and as per BBA at page no.50 of the complaint) AP: Rs.35,04,000/- (as per payment SOA dated 27.02.2025 at page no.111 of the reply) AR Paid: Rs.22,01,040/- [from 05.02.2017 - 29.02.2020] (as per details at page 114 of reply)	OOP: 27.02.2025 (As per page no. 108-113 of reply)
Assured return clause as per MOU dated 17.01.2017: Clause 4 <i>... The company shall pay a monthly assured return of Rs.72,000/- on the total amount deposited till the signing of this MOU, with effect from 17.01.2017 before deduction of Tax at Source ... The monthly assured return shall be paid to the allottee until the commencement of the first lease on the said unit.</i> <p style="text-align: center;">Read with</p> Clause 7(a) <i>That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.</i> <p style="text-align: right;">[Emphasis supplied]</p> (As on page no.25 of complaint)					
Relief sought by the complainant(s) in abovementioned complaints: - <ol style="list-style-type: none"> 1. Direct the respondent to pay assured return @Rs.90/- per sq. ft. per month amounting to Rs.22,500/- for unit no.34, since July, 2019 till handing over the possession/ leasing out the property after completion; 2. To execute the sale deed after the completion of the project and after receiving of the completion certificate and occupation certificate, in favor of the complainant; 3. Set aside the illegal demand of VAT made by the respondent vide letter dated 22.01.2020 and 30.10.2020; 4. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant; 5. To direct the respondent to pay the interest as per RERA Act; 6. Pass such other order as the Hon'ble Authority deems fit in the fact and circumstances of the case. 					
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:					
Abbreviation	Full form				
DOF	Date of filing of complaint				
RR	Reply received				
BBA	Builder buyer's agreement				
MOU	Memorandum of understanding				
TSC	Total sale consideration				
BSP	Basic sale price				

AP	Amount paid by the allottee(s)
AR Paid	Assured return paid by the respondent
OC	Occupation certificate
OOP	Offer of possession

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement /MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the delayed possession charges, assured return, VAT, assured rentals and other charges.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case bearing no. **CR/4627/2024** titled as ***Kusha Vikram Dhawan V/s M/s Neo Developers Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

6. 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/4627/2024 titled as ***Kusha Vikram Dhawan V/s M/s Neo Developers Private Limited***

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	Registered 109 of 2017 dated 24.08.2017
8.	RERA extension	• Extension No. 06 of 2022 dated 14.11.2022;

		<ul style="list-style-type: none"> PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 29.03.2023; PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 14.10.2024 Valid up to 22.02.2025
9.	Unit and Floor no.	Priority no.34 at 3 rd floor [Restaurant] (As per page no.27 of the complaint)
10.	Unit area admeasuring	250 sq. ft. (Super Area) (As per page no.27 of the complaint)
11.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Date of execution of MoU [Kanta Chaddha & Kusha Vikram Dhawan]	20.03.2015 (As per page no.55 of the complaint)
13.	Possession Clause [As per MoU]	Clause 3 of MOU <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 Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.</i> [Emphasis supplied] (As on page no.57 of complaint)

14.	Assured return clause [As per MoU]	<p>Clause 4 ... The company shall pay a monthly assured return of Rs.22,500/- on the total amount deposited till the signing of this MOU, with effect from 20.03.2017 before deduction of Tax at Source ... The monthly assured return shall be paid to the allottee from 20.03.2017 onwards until the commencement of the first lease on the said unit.</p> <p style="text-align: center;">Read with</p> <p>Clause 7(a) That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.</p> <p style="text-align: right;">[Emphasis supplied] (As on page no.57 & 58 of complaint)</p>
15.	Date of execution of buyer's agreement [Kanta Chaddha & Kusha Vikram Dhawan]	20.03.2015 (As per page no.22 of the complaint)
16.	Possession clause [as per BBA]	Not available
17.	Due date of possession [As per MoU]	15.12.2018 (Note: Due date to be calculated 36 months from the date of start of construction i.e., 15.12.2015, being later.)
18.	Transfer of unit in favor of complainant [i.e., Kusha Vikram Dhawan]	01.04.2019 (As per page no.17 of complaint)
19.	Basic Sale Consideration	Rs.19,92,000/- (As per clause 3 of MoU at page no.57 of complaint)
20.	Total Sale Consideration [BSP + EDC/IDC + IFMD + ST]	Rs.22,40,613/- (As per payment schedule on page no.49 of the complaint)
21.	Amount paid by the complainant	Rs.23,04,183/-

		[Rs.20,65,938/- Plus Rs.1,32,720/- Plus Rs.1,05,525/-] (As per clause 4 of MoU at page no.57 of complaint and as per receipt at 65 & 68 of the complaint) also (as per payment SOA dated 22.03.2025 at page no.117 of the reply)
22.	Assured return paid by the respondent	Rs.6,15,750/- [from May, 2017 - 15.02.2020] (as per details at page 117 of reply)
23.	Payment Plan	Assured return plan (As per payment schedule on page no.49 of the complaint)
24.	Occupation certificate /Completion certificate	14.08.2024 (For Tower-C) (as per page 108 - 110 of reply)
25.	Offer of possession	22.03.2025 (as per page 111-114 of reply)
26.	Revised demand notice and offer of possession	22.03.2025 (as per page 111-114 of reply)
27.	Fit out charges of Rs.10,32,500/- as mentioned in Annexure-II @Rs.3,500/- per sq. ft. plus GST	22.03.2025 (as per page 115 of reply)

B. Facts of the complaint: -

7. The complainants have made following submissions in the complaint:
- That the complainant purchased the said unit on 20.03.2015 and is a law-abiding citizen, taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
 - That the respondent i.e., M/S Neo Developers Private Limited is engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
 - That the restaurant unit was originally purchased by Mrs. Kanta Chadda and the complainant. Mrs. Kanta Chadda was the mother of the complainant and

after her unfortunate demise in December 2018, subsequently the restaurant unit was endorsed in the name of the complainant only which was confirmed by a letter dated 01.04.2019 by the respondent to the complainant. The complainant has also purchased a unit in the same project in January, 2015 along with her husband.

- iv. That in or around October, 2014, the complainant came across the project of "M/s Neo Developers Private Limited namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram, the complainant, met representative of the company who explained the project to the complainant.
- v. That the director and employees of the company finally induced the complainant to purchase the unit in their assured return plan wherein the company would make the payment at the rate of Rs.90/- per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainant at the time of booking or at the time of execution of memorandum of understanding (MOU). Mr. Ashish Anand, Director of the company, assured the complainant that there will be no delay in making payment towards the assured return under any circumstances whatsoever.
- vi. That complainant entered memorandum of understanding with the company on 20.03.2015 and builder buyer agreement executed on 20.03.2015. Mr. Ashish Anand Director of the company explained the site plan wherein it was provided that the third floor of the building consists of Restaurant and Food Court, which is above the floors consisting of retail stores. It was explained that the 3rd floor would be solely dedicated to modern restaurants, lounge and food court which is above the floor consisting of retail stores. Mr. Ashish Anand, Director of the company again reassured that there will be no delay in making payment towards the Assured Return under any circumstances and the property would be constructed and delivered within 36 months

period from entering of the MoU since Company has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC, Nike, Inox Cinema etc. Based on the above inducement and assurance of Mr. Ashish Anand and the employees of the Company, the complainant purchased a commercial unit (restaurant) on the Third floor and executed the Memorandum of Understanding dated 20.03.2015 having area admeasuring 250 sq. ft. super built-up area at the rate of Rs.7,968/- per sq. ft. wherein Commercial Unit No. 34 was assigned on 3rd floor. The price of the unit @ Rs.7,968/- per sq. ft. was arrived after adjusting the two-year Assured Return in advance. Because of the said reason only the Assured Return with respect to the unit of the Complainant commenced on 20.03.2017 i.e., after two years after entering into BBA and MOU.

- vii. The complainant paid a sum of Rs.20,65,938/- towards consideration of the Commercial Unit no. 34, through two cheques, firstly vide cheques no. 060000 Rs.2,50,000/- dated 21.01.2015 drawn on Bank of Maharashtra and secondly vide cheque no. 064561 for Rs.1,815,938/- dated 07.03.2015 & drawn on Bank of Maharashtra which were duly accepted by the Company. It was agreed under the MOU that a monthly return of Rs.22,500/- shall be payable as assured return from 20.03.2017.
- viii. The respondent on 27.04.2018 sent an e-mail and raised the cumulative demand of Rs.1,32,720/- of EDC and IDC for unit no. 34 on 3rd floor of the project. The said demand was duly fulfilled by the complainants by making the cumulative payments of Rs.1,32,720/- through Cheque No. 091300 drawn on Bank of Maharashtra.
- ix. The company demanded VAT from complainant, several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to

Rs.1,05,525/- on 30.03.2017 for Unit No. 34. The complainant has paid a sum of Rs.1,05,525/- vide Cheque No – 133212, dated 02.05.2017.

- x. That the truth of the assurances made by the Directors and employees of the company surfaced when the company started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped and are due since July, 2019. That the mala fide intentions of the Company also became conspicuous when the company communicating its unilateral decision of not paying any assured return till the completion of the project. such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the agreement entered between the parties since the payment towards the assured return was integral part of the Agreement.
- xi. It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent and due to the said reason, the respondent is demanding VAT again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. Despite making the payment towards the VAT as demanded by the company vide its letter dated 30.03.2017, another demand was raised on 22.01.2020 wherein a sum of Rs.1,58,314/- was demanded as VAT outstanding. Surprisingly another demand was raised on 30.10.2020 by the company to deposit the VAT amounting to Rs.1,84,003/- for the unit. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside.
- xii. That the company sent an Email dated 09.04.2020 to the complainant in order to oblivate itself from its responsibility of paying monthly assured return, the company invoked Force Majeure clause despite the fact that no such clause pertaining to Force Majeure exist either in MOU or in Agreement.

The company is forcing complainant to sign lease assignment form by which the company intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliterated from its responsibility to pay the monthly assured return and threatens that if the complainant do not sign the Lease Assignment Form, then the Company will forfeit our unit in accordance with MOU. This shows that the Company from the inception had no intention to pay the Assured Return to the buyers and had prepared biased MOU to suit its whims and wishes.

- xiii. That on 01.10.2020 the respondent sent an Email Registration of BBA and MOU. That the respondent also sent an email for Invitation for starting the proceeding for assignment of Lease dated 01.10.2020. Further the respondent sent an email dated 10.10.2020 for Reminder for signing the Lease Assignment Form. That no lease assignment can be entered since the project is not complete and the Unit can be leased out only after receiving the completion certificate and occupation certificate of the project. It is an absurd argument that the respondent has leased the unit to the third party who is responsible to make the payment towards the assured return. It is highly unbelievable that a third party who has not received the possession of the unit has involved into agreement with the respondent for a project in which occupancy certificate and completion certificate has not been received and would start making the payments to the buyer without first generating the rent from the unit.
- xiv. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of more than 6 years. The structure of only office building is constructed but which is also

nowhere near to completion. The building wherein food court and restaurants as were explained at the time of entering MOU, has been constructed up to 2nd floor only and there is no sign of construction of the Tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment Zone were shown in the brochure. It has also come into Complainant's, knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building. The company has further cheated by selling Food Court and Restaurant units to other buyers on 2nd and 5th floor as well. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and complete the project.

- xv. The respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. Further, by refusing to give assured return, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement rather illegal and unreasonable demands with respect to the VAT has been raised again and again.
- xvi. The complainant has filed the complaint before Economics Offences Wings Delhi on 26.03.2021. Wherein FIR no.0046/2022 has been filed under sections 406/420/120B against the respondent.
- xvii. The respondent under the garb of Force-majeure is delaying the completion of the project. It is submitted that no fresh construction has been carried out in the project since 2019. The completion certificate of the respondent has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the Senior Town Planner, Gurugram that the

project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.

- xviii. That the respondent is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainant by misguiding them, keeping them in dark and putting their future at risk by rendering them income less.
- xix. That the complainant is constrained to file the present complaint seeking the payment of assured return at the rate of Rs.90/- per sq feet amounting to Rs.22,500/- for unit admeasuring 250 sq feet, since July, 2019 till the handing over the possession/ lease out of the property after the completion of the construction. The respondent may be directed to complete the project as promised to the complainant and execute the Sale deed in favour of the complainant with respect to the restaurant space purchased by him, Further, to set aside the illegal demand of VAT by the respondent and compensation towards the delay in completing the project. The complainant reserves the right to amend the submission made herein, to produce documents and alter the prayer as and when deem necessary or on the direction of this Hon'ble tribunal.
- xx. The cause of action to file the present complaint first arose when the builder failed to construct and handover the possession after 36 months from entering the MoU and BBA. It further arose when the respondent stopped making payments towards the assured return in July, 2019. It further arose when the force-majeure clause was enforced illegally by the respondent.
- xxi. The complainant declares that he has not filed any other complainant, petition etc. before any other Court or Tribunal seeking same or similar relief.

C. Relief sought by the complainant(s):

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

- I. Direct the respondent to pay assured return @Rs.90/- per sq. ft. per month amounting to Rs.22,500/- for unit no.34, since July, 2019 till handing over the possession/ leasing out the property after completion;
 - II. To execute the sale deed after the completion of the project and after receiving of the completion certificate and occupation certificate, in favor of the complainant;
 - III. Set aside the illegal demand of VAT made by the respondent vide letter dated 22.01.2020 and 30.10.2020;
 - IV. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant;
 - V. To direct the respondent to pay the interest as per RERA Act;
 - VI. Pass such other order as the Hon'ble Authority deems fit in the fact and circumstances of the case.
9. 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:

10. The respondent has contested the complaint on the following grounds:
- i. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant have not approached this Authority with clean hands and are trying to suppress material facts relevant to the matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.
 - ii. At the outset, the complainant has erred gravely in filing the present Complaint and misconstrued the provisions of the Act, 2016. It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularisation of real estate projects, and the dispute resolution

between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of RERA Act. That the complainants herein, have failed to provide the correct/complete facts that they are investors and not allottees. Therefore, the same are reproduced hereunder for proper adjudication of the present matter.

- iii. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 21.01.2015, whereby seeking allotment of Unit/ Priority Unit No. 34, admeasuring 250 sq. ft. super area on the 3rd floor of the project having a basic sale price of Rs.19,92,000/-. The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.
- iv. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 20.03.2015 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. That as per clause 4 of the MOU, the returns were to be paid from 20.03.2017 and as per clause 7 of the MOU, the returns were to be paid till commencement of first lease. That as per clause 8(a) of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.
- v. That by no stretch of imagination it can be concluded that the complainants herein are "Allottee/Consumer." That the complainant is simply investors who approached the respondent for investment opportunities and for

a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

- vi. That at this stage, it is categorical to highlight that the complainant is trying to mislead this Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "Investment Agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of this Authority, in totality, does not exist.
- vii. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. Without prejudice to the rights of the respondent, at the utmost bonafide, the Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.
- viii. That the complainant voluntarily also executed the buyer agreement dated 20.03.2015 for unit/priority no.33 on third floor admeasuring 250 sq. ft super area in the project against the basic sale consideration Rs.19,92,000/-, after having full knowledge and being well satisfied and conversant with the terms and conditions of the buyer's agreement.
- ix. That the as per Clause 3 of the 'MOU, the Respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of Construction, whichever is later and apply for grant of Completion/Occupancy Certificate. That as per Clause 5.2 of the

Agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made.

- x. That the respondent upon the application has already received occupation certificate from the competent authority dated 14.08.2024.
- xi. That the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. That the respondent vide notice demand and offer of possession letter dated 22.03.2025 issued offer of possession to the complainants along with account statement for the outstanding dues.
- xii. That the complainant as per the records of the respondent had only paid Rs.23,04,183/- against the total due amount of Rs.26,93,361/-. It is to be noted that there is still an outstanding due of Rs.598,969/- against the unit, Rs.10,32,500/- against fit out charges and Rs.1,24,610/- against stamp duty and registration charges, totalling to Rs.17,56,079/-. That the respondent has already made a payment of Rs.6,15,750/- as assured return to the complainant.
- xiii. It is a matter of fact, that time was essence in respect to the complainant obligation for making 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. That the timely payment of the instalments as stated in Payment Plan (Annexure - I) and applicable stamp duty, registration fee, maintenance charges, service tax, BOCW Cess, and other charges and taxes payable under this agreement and/or law as and when demanded is the essence of this agreement".
- xiv. That the respondent herein had been running behind the complainant for the timely payment of dues towards the Unit in question. That in spite of being

aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. That though the complainant may have cleared the Basic Sale Price of the said commercial property, however, they are still liable to pay all other charges such as fit out charges, IFMS, FTTH, Labour Cess, Development Charges, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer's agreement and MoU.

- xv. That the complainant failed to clear the outstanding dues of Rs.17,56,079/-, has not obliged its duties as per the MoU & buyer's agreement and has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault. It is relevant to mention that the complainant herein has clearly violated the duties of an allottee provided under Section 19(6) of the Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the allottee and the builder.
- xvi. That as per clause 11 of the buyer's agreement. The aforesaid mentioned clause clearly states that the allottee is liable to pay all the taxes, levies, charges, cesses and all other taxes, charges etc.
- xvii. That without prejudice, 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 honoring such commitments beyond the said date.

xviii. That the issue of assured returns is already sub judice before the Hon'ble Punjab & Haryana High Court in Vatika Ltd. vs UOI (CWP-26740-2022) and NEO Developers Pvt. Ltd. vs UOI (CWP-16896/2023). In both cases, directions have been issued not to take coercive steps with respect to such claims, thereby indicating that the matter requires adjudication by higher judicial forums.

xix. 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:

- That the development and implementation of the said Project have been hindered on account of several orders/directions passed by National Green Tribunal, Environment Pollution (Prevention and Control Authority), Commissioner, Municipal Corporation, Gurugram and other various authorities/forums/courts vide order dated 07.04.2015 (for 30 days), 19.07.2016 (for 30 days), 08.11.2016 (for 7 days), 07.11.2017 (for 90 days), 29.10.2018 (for 10 days), 24.07.2019 (for 30 days), 11.10.2019 (for 81 days);
- On 08.11.2016, the Government of India demonetized the currency notes of Rs.500/- and Rs.1000/- with immediate effect. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months;
- 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, 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;

- 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;
 - Due to Covid-19 pandemic situation, firstly night curfew was imposed followed by weekend curfew and then complete curfew which affects each and every activity including the construction activity was banned in the State.
- xx. 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.
11. All other averments made in the complaint were denied in toto.
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:

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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances.

17. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure circumstances such as orders/restrictions of the NGT in NCR as well as competent authorities on account of environmental clearance, ban on construction by the orders of the courts, Hon'ble Supreme court, implementation of GST Act 2017, demonetization, Covid-19 and default in making timely payment by several allottees. it could not

speed up the construction of the project, resulting in its delay. All the pleas advanced in this regard are devoid of merits. Firstly, the due date of possession as per clause 3 of the MoU dated 20.03.2015, the construction of the said building/ complex shall be completed within a period of 36 months from the date of execution of this Agreement or from the start of construction, whichever is later. Therefore, the due date of possession comes out to be 15.12.2018. Secondly, the events such as NGT in NCR on account of the environmental conditions, ban on construction and other force majeure circumstances do not have impact on the project being developed by the respondent. As the events mentioned above are for short period and are routine in nature happening annually and the promoter is required to take the same into consideration while fixing due date of possession. And lastly, the event of demonetization was in accordance with government policy and guidelines. Therefore, the Authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

18. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020*** and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

19. The respondent was liable to complete the construction of the project and the possession of the said unit by 15.12.2018 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay possession.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to pay assured return @Rs.90/- per sq. ft. per month amounting to Rs.22,500/- for unit no.34, since July, 2019 till handing over the possession/ leasing out the property after completion;

G.II. Direct the respondent to pay the interest as per RERA Act;

20. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will definitely affect the result of the other reliefs and the same are being interconnected.

• **Assured return**

21. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 20.03.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

22. The respondent has submitted that in the present complaint, the complainant is claiming the reliefs on basis of the terms agreed under the MoU executed 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 RERA Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder and allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.

23. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

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

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

25. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale

consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

26. 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.
27. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
28. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. It is not disputed that the respondent is a real estate developer, however, the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

29. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 20.03.2015, which is reproduced below for the ready reference:

Clause 4

... The company shall pay a monthly assured return of Rs.22,500/- on the total amount deposited till the signing of this MOU, with effect from 20.03.2017 before deduction of Tax at Source ... The monthly assured return shall be paid to the allottee from 20.03.2017 onwards until the commencement of the first lease on the said unit.

Read with

Clause 7(a)

That the responsibility of assured return to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals.

[Emphasis supplied]

30. Thus, the assured return was payable @Rs.22,500/- per month w.e.f. 20.03.2017, till commencement of first lease.

31. In light of the above, the Authority is of the view that as per the MoU dated 20.03.2015, it is an obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.22,500/- from the date i.e., 20.03.2017 till the commencement of the first lease of the concerned unit in accordance with the MoU dated 20.03.2015.

- **Delay possession charges**

32. In the present complaints, the complainant intends to continue with the project and are both seeking delay possession charges and assured return with respect to the subject unit 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."

33. As per the documents available on record, that as per Clause 3 of the MOU dated 20.03.2015, the construction of the said allotted unit was to be completed and possession of the unit was to be handed over by the respondent within a maximum period of 36 months from the date of execution of the or from the start of construction, whichever is later. The same is part of Clause 3 of the said MOU and the relevant portion thereof is reproduced hereunder:

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

34. Thus, the due date of possession, is to be calculated 36 months from the date of start of construction i.e., 15.12.2015, being later than date of execution of the MoU/ buyer's agreement dated 20.03.2015. Therefore, the due date of possession comes out to be 15.12.2018. In case no. **CR/4637/2024 titled as Renu Wadhera and Vikram Wadhers V/s M/s Neo Developers Private Limited**, the due date of possession comes out to be 17.01.2020, as the MoU/ buyer's agreement was executed on 17.01.2017 i.e., after the date of start of construction (15.12.2015).

35. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is 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. *ibid.* 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."

36. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid 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., 16.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
37. 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—

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 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;"

38. 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.
39. On consideration of documents available on record and submissions made by the complainant 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 completed within a stipulated time i.e., by 15.12.2018. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to pay the assured return and delay possession charge till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement/MoU.

40. 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?
41. 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 BBA or in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.22,500/- per month on the total amount received till the commencement of first lease. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in the present complaint is payable at Rs.22,500/- per month whereas the delayed possession charges are payable approximately Rs.20,737/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till the commencement of the first lease in terms of MoU. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher. A

comparative table showing comparison of assured return and delay possession charges, per months is reproduced below:

Sr. No.	Case No.	Assured return (per month)	DPC (per month)
1.	CR/4627/2024	Rs.22,500/-	Rs.19,652/-
2.	CR/4628/2024	Rs.22,500/-	Rs.20,737/-
3.	CR/4629/2024	Rs.22,500/-	Rs.13,532/-
4.	CR/4637/2024	Rs.72,000/-	Rs.31,536/-

42. 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 due date of possession till commencement of first lease, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher, without prejudice to any other remedy including compensation.
43. Therefore, after considering the facts of the present case, the Authority directs the respondent to pay the assured return at the agreed rate i.e., Rs.22,500/- per month from the date of payment of assured return has not been paid till the commencement of the valid first lease of the concerned unit effective from the 20.03.2017, in terms of MoU dated 20.03.2015.
44. The respondent 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, from the complainant and failing which that amount would be payable with interest @ 8.80% per annum till the date of actual realization.
- G.III. Direct the respondent to execute the sale deed after the competition of the project and after receiving of the completion certificate and occupation certificate, in favour of the complainant;**
- G.IV. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant;**

45. With respect to the aforesaid relief, the Authority observes that there is no clause in the entire MoU or BBA which obligates the respondent to handover possession of the subject unit to the complainant. Furthermore, as per clause 8(e) of the MoU dated 20.03.2015, it was agreed between the parties that on completion of the project the developer shall put the said unit on lease and the unit will be handed over to the lessee directly. The Authority further observes that the complainant has failed to provide any document to show that the said MoU or buyer's agreement was executed under protest. Also, no objection/protest whatsoever, was made by the complainant at any point of time since the execution of the MoU/ BBA. Accordingly, handing over the possession was never the intent of the respondent rather the unit was to be leased out. Although it is admitted fact that the respondent has offered the possession of the subject unit on 22.03.2025 i.e., after receipt of occupation certificate on 14.08.2024.
46. The complainant is seeking direction to respondent to execute the conveyance deed of the commercial space/ allotted unit in favor of them. The complainant has been offered possession of the unit on 22.03.2025. Whereas the possession was offer after obtaining of occupation certificate on 14.08.2024. As per clause 11 of the MoU, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said unit in favor of the allottee(s) but only after receiving full payment of total price of the unit and the relevant clause of the MoU is reproduced for ready reference:

11 ... That the sale deed shall be executed in favour of the allottee(s) based on the terms of the present MoU and buyer's agreement. The sale deed shall be executed and get registered in favour of the allottee(s) within 45 days from the date of receipt of occupation certificate, subject to the payment of basic sale price, EDC, IDC, IFMD, security deposit, Service Tax, late payment charges, interest, all other charges and compliances of all other terms and condition of the present MoU and buyer's agreement by the allottee(s)...

(Emphasis Supplied)

47. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

48. As the respondent has obtained the occupation certificate from the competent authority on 14.08.2024, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the registered conveyance deed in favor of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within a period of three months from the date of this order.

G.V To set aside the illegal demand of VAT made by the respondent vide letter dated 22.01.2020 and 30.10.2020;

G.VI.Pass such other order as the Authority deems fit in the fact and circumstances of the case.

49. The complainant has sought relief with regard to the setting aside the demand of VAT raised by the respondent vide letter dated 22.01.2020 and 30.10.2020.

- VAT

50. The complainant has contended that the respondent has illegally charged amount from him towards VAT submitting that in October, 2020, a demand notice of Rs.1,84,003/- towards 'VAT outstanding' was sent by the developer to the complainant. It is pertinent to mention herein that even before this illegal demand, the developer had made such demands in the year 2020 and the complainant had readily cleared all the VAT payments, after which the developer had sent an email stating that no dues are payable. However, despite the same being an admitted position, developer again raised this demand without giving any legal basis on the basis of which such demand is being made, as VAT already has been superseded by the GST regime. But the version of respondent is otherwise and took a plea that respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand of VAT is done as per Clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the

allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

51. It is further observed by the Authority that vide demand letter dated 22.03.2025, the respondent has demanded the development charges, Labour Cess, FTTH charges & Holding charges. Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Labour cess**

52. 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**

53. The undertaking to pay the development charges was comprehensively set out in the buyer's agreement dated 20.03.2015 in clause 11. The said clause of the agreement is reproduced hereunder: -

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

54. 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**

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

- **Holding charges**

56. 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.

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

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

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

- **Maintenance charges**

59. 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 right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of

possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **Fit-out Charges**

60. The Authority also observed that vide letter dated 22.03.2025, the respondent has demanded Fit-out charges which amounting to Rs.10,32,500/- and has asked the complainant to make the said payment in favor of a third party, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties.
61. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 22.03.2025 towards fit-out charges amounting to Rs.10,32,500/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.
62. Further, it is observed that on the proceeding date of hearing, i.e., 16.12.2025, the counsel for the respondent contended that the demand of Fit-outs has been raised strictly in terms of clause 8(d) and 7(d) of the Memorandum of Understanding and clause 11 of the Buyer's Agreement dated 20.03.2015. It was further argued that under Clause 9 of the MOU, the complainant had authorized the respondent to finalize the terms and conditions of the lease.

Upon perusal of the MOU dated 20.03.2015, this Authority finds that the said MoU does not contain any 8(d) clause or 7(d) authorizing the respondent to levy fit-out charges. In the absence of any contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law.

63. Therefore, the respondent is directed not to raise any demand which is in contrary to the agreed terms of the allotment/MoU. Further, the respondent shall not charge anything which does not form a part of buyer's agreement or MoU interse parties.

H. Directions of the Authority:

64. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f):
- i. The respondent/promoter is directed to pay the assured return to the complainant at the agreed rate i.e., Rs.22,500/- per month from the date the payment has not been paid till the commencement of the valid first lease of the concerned unit, in terms of the MoU dated 20.03.2015.
 - ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within a period of 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 shall not charge anything from the complainant which is not part of the MoU or buyers' agreement executed. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's

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

- iv. The respondent shall recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
 - v. The respondent is directed to supply a copy of the updated statement of account after adjusting assured returns within a period of 30 days to the complainant. Thereafter, the complainant shall pay outstanding dues, if any, after adjustment of assured returns within a period of 60 days from the date of receipt of updated statement of account.
 - vi. The respondent is further directed to execute the registered conveyance deed in terms of Section 17(1) of the Act of 2016, 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.
65. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
66. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
67. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.12.2025