BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No:	**2999 of 2024**
Date of Filing:	**26.06.2024**
Date of Order:	**16.12.2025**

Vallbhesh Prabhakarrao Dalal
R/o: Plot No.19, Lower Ground Floor, Hemkunt Colony, Greater Kailash – I, New Delhi – 110048.
Currently at: 12-97, BLK-210, Tampines Street-23, Tampines, Singapore-520210. **Complainant**

Versus

M/s Neo Developers Private Limited
Regd. Office at: - 32-B, Pusa Road, New Delhi-110005. **Respondent**

CORAM:

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

APPEARANCE:

Shri Anuj Chauhan and Shri Shivam Bakshi (Advocates) **Complainant**
Shri Venket Rao and Shri E. Krishna Das (Advocates) **Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

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

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 Valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Private Limited
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; • 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.	41 at Ground floor (As per page no.41 of the complaint)
		G-08 (change in unit no.) (As per email dated 21.10.2022 at page no.107 of compliant)
10.	Unit area admeasuring	586 sq. ft. (Super Area) (As per page no.41 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's	06.10.2018 (As per page no. 59 of the complaint)
13.	Possession Clause **[As per MoU]**	**Clause 12 of MOU** *That the company shall **complete the construction of the said Building/Complex, within which the said space is located within 48 months from the date of execution of this Agreement or from the start of construction, whichever is later** and apply for grant of completion/Occupancy Certificate. The Company on grant of occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.* **[Emphasis supplied]** (As on page no. 62 of complaint)
14.	Assured return clause **[As per MoU]**	***Clause 18*** *... The company shall pay a monthly return of **Rs.81,454/- on the total amount deposited till the signing of this MOU, with effect from 06-october-2020** before deduction of Tax at Source.* ***Read with*** ***Clause 8*** *That the responsibility of paying assured return to be paid by the company shall cease on Notice of possession.* ***Clause 9*** *Company shall pay Rs.104.25/- per sq. ft. per month rent to allottee from possession till first lease.* ***[Emphasis supplied]*** *(As on page no.63,61 & 62 of complaint)*
15.	Date of execution of buyer's agreement	06.10.2018 (As per page no.33 of the complaint)
16.	Possession clause	Not available

	[as per BBA]	
17.	Due date of possession **[As per MoU]**	**06.04.2023** (Note: Due date to be calculated 48 months from the date of execution of buyer's agreement i.e., 06.10.2018, being later, plus grace period of 6 months.) **(Note: Grace period of 6 months allowed as per *HARERA notification no. 9/3-2020 dated 26.05.2020*)**
18.	Basic Sale Consideration	Rs.60,81,508/- (As per clause 18 of MoU at page no.63 of complaint)
19.	Total Sale Consideration **[BSP + EDC/IDC + IFMD + PLC]**	Rs.90,78,804/- (As per payment schedule on page no.51 of the complaint)
20.	Amount paid by the complainant	Rs.89,47,441/- (As per payment receipt on page no.26, 28, 74 & 75 of the complaint)
21.	Assured return paid by the respondent	Rs.2,44,362/- (Rs.81,454/- X 3 months) for the period of 3 months only (October, 2020 – December, 2020) (as alleged in email dated at page 106 of complaint)
22.	Payment Plan	Assured return plan (As per payment schedule on page no.51 of the complaint)
23.	Occupation certificate /Completion certificate	14.08.2024 (For Tower-C) (as per the copy of OC provided at page 42-44 of reply in **CR/991/2025**)
24.	Offer of possession	12.03.2025 (As per page 5-10 of application on behalf of complainant under Order 6 Rule 17)
25.	Final reminder letter	05.11.2020 (as per page 103 of reply)
26.	Email clarifying the status of unit location	21.10.2022 **Content of email reproduced below:** *... we would like to inform you that there is change in the unit number only and you have been allocated unit no. G-08 and location of*

		the unit would remain same as was initially booked... (As per page 107 of complaint.)
27.	Demand letter	22.02.2024 (as per page no. 184 of complaint & 104 of reply)
28.	Fit out charges of Rs.20,51,000/- as mentioned in demand letter @Rs.3,500/- per sq. ft.	22.02.2024 (as per page no. 184 of complaint & 104 of reply)
29.	Demand notice and offer of possession **[For unit no. G-08, area 586 sq. ft.]**	12.03.2025 (As per page 5-10 of application on behalf of complainant under Order 6 Rule 17)
30.	Fit out charges of Rs.24,20,180/- as mentioned in Annexure-II @Rs.3,500/- per sq. ft. plus GST	12.03.2025 (As per page 9 of application on behalf of complainant under Order 6 Rule 17)

B. Facts of the complaint.

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

a. That the complainant believing to the fake promises and assurances made by the respondent, including but not limited to early and timely possession and assured returns, booked a retail shop bearing unit no. 41, ground floor vide booking application form dated 03.08.2018, admeasuring 586 sq. ft. at the rate of Rs.10,378/- per sq. ft. in the said project with a basic cost of Rs.60,81,508/- and total cost of Rs.90,78,804/-.

b. That the complainant made a payment of Rs.2,00,000/- vide cheque no. 848566 dated 31.07.2018 as the booking amount and very high preferential location charges (PLC) of Rs. 2,780/- per sq. ft. were also charged from the complainant.

c. That the complainant received a welcome letter dated 04.08.2018, wherein it was mentioned that the BBA and MoU shall be executed upon receipt of full and final

payment, which is in violation of the provisions and rules and regulation under the RERA Act, 2016.

d. That the complainant made the payment of Rs.84,36,345/- vide cheque no. 848570 dated 12.09.2018 to the respondent as the second instalment for the unit booked which was duly acknowledged by the respondent. That the respondent received around 95% of the total cost of the unit even before executing the BBA.

e. That a builder buyer agreement was executed between the complainant and the respondent on 06.10.2018 wherein the due date of possession was promised to be October, 2020. That a memorandum of understanding (MoU) dated 06.10.2018 was also executed between the complainant and the respondent wherein the respondent committed to pay a monthly assured return of Rs.81,454/- from 06.10.2020.

f. That the respondent issued an illegal demand letter vide email dated 25.06.2020 for EDC/IDC, etc., which was payable only at the time of possession as per the agreed terms and conditions of the BBA executed between the parties to the present matter. The complainant raised objections through various mails but, unaware of the intents of the respondent, the complainant was forced to make the payment of Rs.3,11,096/- on 01.07.2020 for EDC/IDC, as demanded under the aforesaid demand letter.

g. That the complainant wrote several emails on numerous occasions to the respondent for resolution of his queries and concerns relating to the covered area, irregular advance payment of EDC/IDC, non-sharing of tax invoices, irregular BBA registration fees, etc. to which the respondent has never provided any satisfactory reply till date.

h. That the respondent defaulted in providing the possession by the due date as agreed in BBA i.e., 06.10.2020 and also did not make the payment of monthly assured returns as agreed under the MoU dated 06.10.2018.

i. That the respondent sent a letter dated 15.10.2020 to the complainant informing him about the construction update and the status of assured return wherein the respondent evaded all its obligations under untenable reasons.

j. That the complainant received a "Notice for BBA/MoU Registration" dated 01.10.2020 on 21.10.2020 wherein it was stated that the BBA/MoU executed between the parties on 06.10.2018 needs to be registered now after more than 02 (two) years and also called for registration fee of Rs.25,000/- which stated to have included registration fees, stamp duty, drafting charged, red cross receipt, advocate's service charges, etc. which was later increased to Rs.50,000/- vide email dated 22.10.2020. The complainant, after receiving the said notice, sent an email to the respondent objecting the irregularities of the same to which, no satisfactory reply was ever received by the complainant.

k. That the complainant regularly followed the respondent regarding possession of the said unit, payment of assured returns as per MoU dated 06.10.2018, status of lease agreement, etc. via email dated 07.04.2021 but, the respondent never responded with a satisfactory reply and avoided the concerns of the complainant on one pretext or the other. The respondent also denied paying any payment against the assured returns till the possession and committed breach of MoU.

l. That the respondent even defaulted in completing the project as per the affidavit dated 08.01.2020 submitted before the HARERA at the time of registration of the said project but the respondent failed to complete the same and again committed the default.

m. That it came to the knowledge of the complainant that there is some revision in the layout plan of the project wherein the unit numbers have been changed by the respondent, for which, no formal intimation was sent by the respondent to the complainant.

n. That the complainant after becoming aware of change in the layout plan, raised an objection via email dated 03.01.2022 with the respondent for clarification on the above-stated issue and the location of the said unit booked by the complainant for which the complainant has paid high PLC charges and that too in advance. The respondent has informed the complainant through email dated 21.10.2022 that there is change in the unit number only and the location of the initially booked unit remains the same and now, the allocated unit bears number G-08. However, the respondent has not shared the plans as per the request of the complainant. That complainant further asked the respondent to share the revised layout plan to confirm the location of the unit allocated but the respondent never provided the said layout plan to the complainant even after several continuous follow-ups.

o. That the respondent, without resolving the issue of the complainant, sent a letter dated 01.02.2022 to the complainant for construction update and status of monthly assured return cheques wherein the respondent informed that due to discrepancy in construction, the application for occupation certificate (OC) has already been withdrawn by them and the possession cannot be delivered until such amendments are made as per the directions of DTCP and further informed that they are unable to fulfil their commitment of assured returns as per the MoU dated 06.10.2018.

p. That being aggrieved by such unethical conduct of the respondent and violation of RERA Act, 2016 and breach of BBA and MoU committed by the respondent, the complainant filed a complaint bearing number 7999 of 2022 before the HRERA, Gurugram seeking refund along with interest.

q. That the respondent filed a frivolous reply to the aforementioned complaint, wherein, another illegal final reminder letter dated 05.11.2020 was attached by the respondent which was never received by the complainant herein.

r. That it was during the proceedings of the aforementioned matter that the complainant received another illegal demand letter dated 22.02.2024 from the respondent, stating illegal charges and raising payment of Rs.9,65,287/- to be paid on or before 28.02.2024.

s. That the complainant, on receipt of the above-stated demand letter dated 22.02.2024, wrote an email dated 27.02.2024 to the respondent raising objections to the said demand letter but no response was ever received from the respondent to the concerns and objections raised in the said email.

t. That during the proceedings of the aforementioned complaint, the counsel for the respondent submitted before the Authority that the OC has been applied by the builder before the concerned Authority and the same is expected to be received shortly. The said submission of the counsel for the respondent can be perceived in the order dated 10.04.2024.

u. That the complainant, believing to the submissions of the counsel for the respondent and considering the advance stage of the project, preferred withdrawal application dated 22.04.2024, which was subsequently allowed un-opposed with a liberty to file a fresh by the Authority vide its order dated 15.05.2024.

v. That the hopes of getting the possession of the unit and monthly assured returns, even after investing such a huge amount in the project, has been shattered by the conduct of the respondent and it has become a constant harassment and mental torture besides financial loss which he is suffering continuously.

w. That the complainant, due to the violations done by the respondent, has lost rent/profit for more than 04 (four) years. The complainant has also lost the value of money which is deposited with the respondent since past years. The complainant has also lost the profit of appreciation of the property due to the delay caused by the respondent. The complainant has also suffered mental agony

and harassment as he has been following the respondent via various ways of communication but, all efforts of the complainant went in vain.

x. That even after making more than 95% of the total payment to the respondent, the complainant has not received any relief and the mental agony and harassment are continuing till date. That the respondent has wrongfully enriched itself by not providing the possession of the said unit to the complainant by the due date and also has omitted to pay the agreed assured returns as per the MoU executed between the parties, which the complainant has received only for 03 (three) months, and the respondent is till date reaping the benefits of hard-earned life savings of the complainant by retaining the same with itself even after failure to complete the said project.

y. That no other complaint pertaining to the subject unit is pending before this Authority or any other competent Authority.

C. Relief sought by the complainants

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

I. To direct the respondent to pay the delayed possession charges at prescribed rate from due date to possession till actual realization;

II. To direct the respondent to pay the assured returns as agreed in the MOU executed between the parties till actual realization;

III. To direct the respondent to pay interest at prescribed rate on the assured returns as agreed upon up to date of actual realization as per Section 34(1) of CPC, 1908;

IV. To direct the respondent to give a valid offer of possession upon the receipt of a valid occupation certificate;

V. To direct the respondent to offer possession of designated erstwhile unit no.41 as originally allotted to the complainant;

VI. To quash the illegal demands raised by the respondent in demand letter dated 22.02.2024;

VII. To quash the unjustified & arbitrary demands raised in the demand letter and offer of possession dated 12.03.2025 and further direct the respondent to not

demand any arbitrary amount including but not limited to fit-out charges, development charges, and other amounts inconsistent to the terms and conditions agreed between the parties;

VIII. Pass any other order as the Authority deems fit.

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

D. Reply by the respondent:

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

a. That the complainant has erred gravely in filing the present complaint and misconstrued the Provisions of the Real Estate (Regulation & Development) Act, 2016. It is imperative to bring to the attention of this 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 complainant cannot be construed to fall within the ambit of RERA Act. That the complainant 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.

b. That the complainant 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 complainant decided to apply to the respondent by submitting a booking application form dated 03.08.2018, whereby seeking allotment of unit no.41 admeasuring 586 sq. ft super area on the ground floor of the project having a basic sale price of Rs.60,81,508/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

c. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 06.10.2018 was executed between the parties, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondent, the returns were to be paid from 06.10.2020.

d. That by no stretch of imagination it can be concluded that the complainant herein is "Allottee/Consumer." That the complainant is simply investor 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.

e. 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 the Authority, in totality, does not exist.

f. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainant 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.

g. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 06.10.2018 for the Shop - 41 on the ground floor of the project, after having full knowledge and being well satisfied and conversant with the terms and conditions of the buyer agreement.

h. That the as per clause 12 of the 'MoU', the respondent was obligated to complete the construction of the said complex within 48 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. It is not out of the place to mention here that the respondent is entitled for the grace period of 6 months' time period on account of the delay so caused due to various bans/constructions restrictions and worldwide spread of covid-19 spread, which the Authority and other courts had considered as a force majeure circumstance and have allowed grace period of 6 months to the promoters at large on account of delay so caused as the same was beyond the control of the respondent. Accordingly, the due date of delivery of possession in the present case is 48 months + 6 months (grace period) to be calculated from 06.10.2018 and the due date for possession in the instant case comes out to be 06.04.2023.

i. That the complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs.89,47,441/- against the total due amount of Rs.96,12,576/-. It is to be noted that against the unit booked by the complainant, the respondent till date has already remitted Rs.2,44,362/- on account of assured return to the complainant.

j. That in the present case, the complainant has not obliged its duties as per the MoU & buyer's agreement and further has not made the payments as per the agreed timeline. That the complainant failed to clear the outstanding dues of

Rs.8,41,411/- payable against the unit. Thus, the complainant herein has clearly violated the duties of an allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016.

k. That the respondent is raising the EDC/IDC demands as per government regulations. That the rate at which the respondent is charging the EDC/IDC amount is as per the assessments of the competent authority. Accordingly, the EDC/IDC amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority. That the demand of EDC/IDC is done as per clause 11 of the buyer's agreement. The aforesaid mentioned clause clearly states that the allottee is liable to pay interest on all delayed payment of taxes, charges etc. It is noted herein that the complainant is liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

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

m. That the respondent cannot pay "Assured Returns" to the Complainant by any stretch of Imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the Respondent had no other alternative but to stop the payment of any return etc.

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

o. 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.

p. That from the facts indicated above and documents appended, 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 period of 48 as has been provided in the agreement.

q. That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

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

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

12. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainant is investor not consumer.

13. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.

14. The Authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under Section 31 of the Act, 2016, 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 MoU and buyer's agreement, it is revealed that the complainant is an allottee/buyer and he has paid total price of Rs.89,47,441/- to the promoter towards purchase of the said unit in the project of the promoter. 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;"*

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject

unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under Section 2 of the Act, 2016. there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". 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. Thus, the contention of promoter that the complainant-allottee being investors is not entitled to protection of this Act stands rejected.

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

16. 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 06.10.2018, the construction of the said building/ complex shall be completed within a period of 48 months from the date of execution of this Agreement or from the start of construction, whichever is later. Which comes out to be 06.10.2022. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 06.10.2022 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 06.04.2023 (including grace

period). 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. In the instant complaint, the due date of handing over of possession comes out to be 06.04.2023 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. 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.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to pay the delayed possession charges at prescribed rate from due date to possession till actual realization;

G.II Direct the respondent to pay the assured returns as agreed in the MOU executed between the parties till actual realization;

G.III Direct the respondent to pay interest at prescribed rate on the assured returns as agreed upon up to date of actual realization as per Section 34(1) of CPC, 1908;

17. It is observed by the Authority, the earlier the complainant has filed a complaint bearing no.7999 of 2022, w.r.t subject unit in question and sought refund. Further on 22.04.2024, the complainant has filed an application for withdrawal of said complaint, submitting that the project is near completion and possession might be given soon, which was allowed vide order 15.05.2024 and the complaint bearing no.7999 of 2022 was dismissed as withdrawn with liberty to file a fresh complaint.

18. 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 Returns**

19. The complainant is seeking unpaid monthly assured returns on as per the terms of the MoU dated 06.10.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

20. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

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

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

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 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;*

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 builder 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 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.
26. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured

returns between the promoter and allotee arises out of the same relationship and is marked by the addendum agreement.

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 builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 06.102018.

28. In the present complaint, the assured return was payable as per clause 18 and clause 8 of the MoU dated 06.10.2018, which is reproduced below for the ready reference:

> ***Clause 18***
> *... The company shall pay a monthly return of* ***Rs.81,454/- on the total amount deposited till the signing of this MOU, with effect from 06-october-2020*** *before deduction of Tax at Source.*
>
> ***Read with***
>
> ***Clause 8***
> *That the responsibility of paying assured return to be paid by the company shall cease on Notice of possession.*
> ***Clause 9***
> *Company shall pay Rs.104.25/- per sq. ft. per month rent to allottee from possession till first lease.*

[Emphasis supplied]

29. Thus, as per the abovementioned clauses the monthly assured returns were payable @Rs.81,454/- per month w.e.f. 06.10.2020 till the possession.

30. In light of the above, the Authority is of the view that as per the MoU dated 06.10.2018, it was obligation on part of the respondent to pay the monthly assured

return till the possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Although it is admitted fact that the respondent has offered the possession of the subject unit on 12.03.2025 i.e., after receipt of occupation certificate on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.81,454/- with effect from 06.10.2020 until the possession on account of assured returns and thereafter, the monthly rental at the agreed rate i.e., Rs.104.25/- per sq. ft. per month from the date of possession till first lease, as per the terms and conditions mentioned in the MoU dated 06.10.2018 to the complainant.

- **Delay Possession Charges:**

31. In the present complaint, the complainant intends 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"*

32. As per the documents available on record, that as per clause 12 of the MOU dated 06.10.2018, 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 48 months from the date of execution of the or from the start of construction, whichever is later. The same is part of Clause 12 of the said MOU and the relevant portion thereof is reproduced hereunder:

> *12. **That the company shall complete the construction of the said Building/Complex, within which the said space is located within 48 months from the date of execution of this Agreement or from the start of construction, whichever is later** and apply for grant of completion/Occupancy Certificate. The Company on grant of occupancy.*

Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.

[Emphasis supplied]

33. The subject unit was allotted to the complainants vide MOU dated 06.10.2018. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 48 months from the date of execution of this agreement or from the start of construction whichever is later. The period of 48 months is calculated from the date of BBA i.e., 06.10.2018, being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 06.04.2023.

34. **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. 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"*

35. 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., 16.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% per annum.

36. 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;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
38. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 06.04.2023.
39. 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?
40. 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 06.10.2018. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of Rs.81,454/- on the total amount received till the notice of possession. If we compare this assured return with delayed possession charges payable under

proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs.81,454/- per month whereas the delayed possession charges are payable approximately Rs.80,526/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the possession. Moreover, as per clause 9 of MoU dated 06.10.2018, the interest of the allottees is protected even after the possession, as the respondent has assured the complainant monthly rent @ Rs.104.25/- per sq. ft. per month from possession till the date of first lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession, as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

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

42. Therefore, after considering the facts of the present case, the Authority directs the respondent to pay the amount of assured return at the agreed rate i.e., @ Rs.81,454/- from the date of payment of assured return has not been paid till the possession of the unit, thereafter, the respondent shall pay monthly rental at the agreed rate i.e., Rs.104.25/- per sq. ft. per month from the date of possession till first lease, as per the terms and conditions mentioned in the MoU dated 06.10.2018.

43. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after

adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

G.IV. Direct the respondent to give a valid offer of possession upon the receipt of a valid occupation certificate;

G.V. Direct the respondent to offer possession of designated erstwhile unit no.41 as originally allotted to the complainant;

44. The complainant has contended that he had purchased a unit bearing no. G-41, at ground floor for sale consideration of Rs.90,78,804/-, which consists preferred location charges (PLC). However, the respondent has arbitrary changed his unit from G-41 to G-08, which is not at that location for which PLC charges has been paid.

45. Upon this, the counsel for the respondent submitted that only the unit no. of the allotted unit has been changed and location of the unit remains same as allotted earlier and the same is confirmed to the complainant vide email dated 21.10.2022.

46. After perusal of the documents available on records and submission made by both the parties, the Authority observes that the complainant was allotted a unit bearing no. G-41 at ground floor having 586 sq. ft. (super area) vide MoU and buyer's agreement both executed on dated 06.10.2018. However, as per the MoU and buyer's agreement, the total sale consideration of the unit is Rs.90,78,804/- (including PLC of Rs.16,29,080/-), against which the complainant has paid an amount of Rs.89,47,441/-. Further, upon raising an objection and seeking clarification w.r.t change in layout plan by the complainant via email dated 03.01.2022, on 21.10.2022, the respondent has confirmed to the complainant that there is change in the unit number only and have been allocated unit no. G-08 and location of the unit would remain same as was initially booked. The relevant para of email dated 21.10.2022 is reproduced for reference:

... we would like to inform you that there is change in the unit number only and you have been allocated unit no. G-08 and location of the unit would remain same as was initially booked...

47. However, it is clearly evident from the layout plans provided in the complaint (page 117A & 117B of complaint), that the unit no. G-41 & G-08 at totally two different unit and situated at two different locations. Therefore, the Authority directs the respondent to offer possession of the originally allotted unit to the complainant within 30 days of this order.

G.V. To quash the illegal demands raised by the respondent in demand letter dated 22.02.2024;

G.VI. To quash the unjustified & arbitrary demands raised in the demand letter and offer of possession dated 12.03.2025 and further direct the respondent to not demand any arbitrary amount including but not limited to fit-out charges, development charges, and other amounts inconsistent to the terms and conditions agreed between the parties;

G.VII. Pass any other order as the Authority deems fit.

- **Fit-out Charges**

48. The Authority also observed that vide letter dated 22.02.2024, the respondent has demanded Fit-out charges which amounting to Rs.20,51,000/- and thereafter vide a separate letter dated 12.03.2025, the respondent has demanded Fit-out charges which amounting to Rs.24,21,080/- (inclusive of GST) 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.

49. 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 22.02.2024 & 12.03.2025 towards fit-out charges amounting to Rs.24,21,080/- 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.

50. 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 06.10.2018. 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 06.10.2018, 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.

51. 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.

52. Further, the complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges in terms of demands.

- **Labour cess**

Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019

titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Development charges**

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

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

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 complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

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 complainants at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under-

> 3. *"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the*

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

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

H. Directions of the Authority:

59. 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 amount of assured return at the agreed rate i.e., @ Rs.81,454/- from the date of payment of assured return has not been paid till the possession of the unit, thereafter, the respondent is further directed to pay monthly rental at the agreed rate i.e., Rs.104.25/- per sq. ft. per month from the date of possession till the first lease, as per the terms and conditions mentioned in the MoU dated 06.10.2018.

ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which the said amount would be payable with interest @8.80% p.a. till the date of actual realization.

iii. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge FTTH charges, holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.***

iv. The respondent 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.

60. The complaint as well as application, if any, stand disposed of accordingly.

61. Files be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.12.2025