

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

**Complaint No:** 991 of 2025  
**Date of complaint:** 06.03.2025  
**Date of Order:** 16.12.2025

1. Vibha Jain

**R/o:** House No.9B, KRB Road, Near RLY, Gate-8,  
Bharalumukh, Guwahati City, Assam – 781009.

2. Niraj Jain

**R/o:** House No.200, Nemisagar Colony, Vaishali Nagar,  
Jaipur, Rajasthan – 302021.

**Complainants**

**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 Hemant Phogat (Advocate)

**Complainants**

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 Pvt. Ltd.
7.	RERA Registered/ not registered	<b>Registered</b> 109 of 2017 dated 24.08.2017
8.	RERA extension	<ul style="list-style-type: none"> <li>• Extension No. 06 of 2022 dated 14.11.2022;</li> <li>• PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 29.03.2023;</li> <li>• PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 14.10.2024</li> </ul> <b>Valid up to 22.02.2025</b>
9.	Unit and Floor no.	Priority No.73, 5 <sup>th</sup> or similar floor (Food Court/ Office/ Entertainment/ Retail) (As per page no.24 of the complaint)
10.	Unit area admeasuring	1000 sq. ft. (Super Area) (As per page no.24 of the complaint)
11.	Date of start of construction	The Authority has decided the date of start of construction as <b>15.12.2015</b> 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	17.02.2018 (As per page no. 39 of the complaint)
13.	Possession Clause [as per MoU]	<p><b>Clause 3 of MOU</b></p> <p><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></p> <p style="text-align: right;"><b>[Emphasis supplied]</b></p> <p>(As on page no. 41 of complaint)</p>
14.	Assured return clause [as per MoU]	<p><b>Clause 4</b></p> <p><i>The company shall pay a monthly assured return of <b>Rs.65,000/- (Rupees Sixty-Five Thousand Only)</b> on the date of amount received with effect from 17-February-2020 before deduction of Tax at Source. ... The monthly assured return shall be paid to the allottee(s) until the commencement of the First lease on the said unit. This shall be paid from the effective date.</i></p> <p style="text-align: center;"><b>Read with</b></p> <p><b>Clause 7. (a)</b></p> <p><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;"><b>[Emphasis supplied]</b></p> <p>(As on page no. 42 of complaint)</p>
15.	Clause w.r.t infrastructure	<p><b>Clause 7(d)</b> <i>That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of</i></p>

	development/ Fit-out charges	<p><i>separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee, strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above-mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received.</i></p> <p>(As per page no.42 of the complaint)</p>
16.	Date of execution of buyer's agreement	<p>17.02.2018 (As per page no.21 of the complaint)</p>
17.	Possession Clause [As per BBA]	Not Available
18.	Due date of possession [as per MoU]	<p><b>17.08.2021</b> <b>[17.02.2021 + 6 months]</b> (Note: Due date to be calculated 36 months from the execution of buyer's agreement i.e., 17.02.2018, being later, plus grace period of 6 months) <b>(Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)</b></p>
19.	Basic Sale consideration	<p>Rs.35,00,000/- (As per clause 4 of MoU at page no.41 of complaint)</p>
20.	Total Sale Consideration [BSP + EDC/ IDC + IFMS + GST]	<p>Rs.46,75,880/- (As per payment schedule on page no.38 of the complaint)</p>

21.	Amount paid by the complainants	Rs.44,50,880/- (As mentioned in SoA cum demand letter dated 04.10.2024 at page 51 of the complaint)
22.	Assured return paid by the respondent	Not Provided
23.	Payment Plan	Assured return plan (As per payment schedule on page no.38 of the complaint)
24.	Reminder letter for signing the lease assignment form	10.12.2020 & 07.12.2021 (as per page 71-72 of reply)
25.	Occupation certificate /Completion certificate	14.08.2024 (For Tower-C) (as per page 42-44 of reply)
26.	Offer of possession	04.10.2024 (as per page 64-66 of reply)
27.	Demanda notice and offer of possession	04.10.2024 (as per page 64-66 of reply)
28.	Possession option for your existing space/ booking at Neo Square [Leasing to Desqworx Shared Offices Private Ltd.] Demand of Rs.29,50,000/- for fit out charges @ Rs.2,500/- sq. ft. + GST @18%.	19.12.2024 (as per page 52 of complaint)
29.	Reminder letter for fit-out charges	03.03.2025 (as per page 70 of reply)
30.	Reminder letter for execution of Conveyance Deed	02.05.2025 (as per page 69 of reply)

**B. Facts of the complaint: -**

3. The complainants have made following submissions in the complaint:

- i. That, after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainants had booked a commercial space in the area designated for food court and entertainment space bearing priority no.73, on 5th floor which was

later on shifted to 12th A, Floor having its Super Area 1000 sq. ft. and covered area of 500 Sq. ft. in the upcoming project of the respondent named "Neo Square" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs.35,00,000/- and total sale price of Rs.46,75,880/-, and the complainant had paid a sum of Rs.54,15,370/- including BSP, EDC, IDC, IFMS, & GST Charges.

- ii. The respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
- iii. The buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 17.02.2018.
- iv. That the complainant has abided by all the terms of MoU and builder buyer agreement dated 17.02.2018 and has made all the payments/ installments in a timely manner, as and when demanded by the respondent and there are no dues pending in respect of the basic sale price of the unit as per the (Annexure-1) payment schedule of the builder buyer's agreement.
- v. That, as per clause 3 of the MoU dated 17.02.2018, the respondent was/is under legal obligation to complete the construction of the project within 36 months from the date of execution of MoU but the respondent has failed to complete the project and handover the possession of the unit within the committed time period and the respondent has delayed the project.
- vi. That, as per clause 4 of the MoU dated 17.02.2018, the respondent was/is under legal obligation and was bound to pay the assured return of Rs.65,000/- (on the total amount receipt w.e.f. 17.02.2020 until the commencement of first lease on the said unit.
- vii. That it is pertinent to mention here that the respondent/ developer has failed to honor its own commitment of paying the monthly assured returns and has

not paid a single installment towards the monthly assured returns. The complainants have been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns via email communications and by visiting the respondent/ developer personally but the respondent/ developer has not paid any heed to the just and genuine demands of the complainants and has been lingering on the demands of the complainants on one pretext or the other.

- viii. That it is further worthwhile to mention here that upon communication with the respondent/ developer, the complainants were given verbal assurance that the respondent/ developer will settle the due assured returns at the time of receiving of occupation certificate and offer of possession and now even after the receiving of occupation certificate as informed by the respondent/ developer, the respondent/ developer has clearly denied to pay the assured returns.
- ix. That it is further worthwhile to mention here that the respondent has issued demands via demand notice and offer of possession letter dated 04.10.2024 on account of development charges to the tune of Rs.7,08,000/-, FTTH charge of Rs.6,490/-, Labour cess to the tune of Rs.25,000/-. The complainant has paid the above demands raised in the offer of possession letter despite the fact that the above demand were not part and parcel of the payment schedule of the buyer's agreement dated 17.02.2018.
- x. That the respondent has raised a demand for fit out charges to the tune of Rs.29,50,000/- toward the said unit/space through demand letter dated 19.12.2024. The above said fit out charges were never disclosed to the complainants at the time of booking of unit /space and neither the said fit out charges are part and parcel of the MoU and buyer's agreement dated 17.02.2018.

- xi. That the respondent is completely ignoring the terms of the buyer's agreement and is acting in an unlawful and arbitrary manner by making demands towards fit out charges upon his whims and fancies which are not part of the buyer's agreement with a sole intention to extort money out of the complainants in order to cause wrongful loss to the complainants.
- xii. The complainants have taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw the demands towards fit out charges as they are not part of the buyer's agreement or MoU and to pay him the assured returns as per the terms of MoU dated 17.02.2018 but the respondent has completely ignored the just and genuine demands of the complainants.
- xiii. That, till today the complainants have not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands toward fit out charges made via demand notice letter dated 19.12.2024 and therefore, the complainants are suffering from harassment and are going through a lot of mental and financial agony.
- xiv. The respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyer's agreement, which is immoral and illegal and amounts to unfair trade practice.
- xv. The cause of action accrued in favour of the complainants and against the respondent, when complainants had booked the said unit and it further arose when respondent failed/neglected to pay the assured returns and further by raising unlawful demands toward fit out charges in contravention to the terms of builder's buyer agreement & MoU dated 17.02.2018. The cause of action is continuing and is still subsisting on day-to-day basis

**C. Relief sought by the complainant(s):**

4. The complainants have sought the following relief(s):
- I. To direct the respondent to pay the assured returns until as per the terms and conditions of the MoU dated 17.02.2018;
  - II. To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit;
  - III. To direct the respondent to withdraw and waive of the demands towards fit out charges made in demand letter dated 19.12.2024;
  - IV. To direct the respondent not to charge anything which is not the part of payment schedule (Annexure-1) of buyer's agreement dated 17.02.2018;
  - V. To direct the respondent to offer possession of the unit and execute sale deed/ conveyance deed in favor of the complainants as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainants;
  - VI. Any other relief/ order or direction, which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

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

- ii. 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 07.02.2018, whereby seeking allotment of unit no.73 admeasuring 1000 sq. ft super area on the 12<sup>th</sup> A floor of the project having a basic sale price of Rs.3500/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.
- iii. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 17.02.2018 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 17.02.2020.
- iv. 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.
- v. 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.

- vi. 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.
- vii. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 17.02.2018 for the Shop - 73 on the 12<sup>th</sup> A floor admeasuring 1000 sq. ft. in the project.
- viii. That the as per clause 11 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. Accordingly, as per Clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.
- ix. That the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the

respondent had only paid Rs.44,50,880/- against the total due amount of Rs.54,15,370/-. It is to be noted that there is still an outstanding due of Rs.10,73,189/- which is to be paid by the Complainant against the unit booked as per the Demand Letter Dated: 04.10.2024.

- x. 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.10,73,189/- 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.
- xi. 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.
- xii. 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.
- xiii. 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.

- xiv. 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.
- xv. 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.
- xvi. 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.

xvii. 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 complainants 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 complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.1 Objection regarding complainant is investor not consumer.**

13. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are 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 they have paid total price of Rs.44,50,880/- 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. 000600000010557 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 17.02.2018, 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. Which comes out to be 17.02.2021. 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 17.02.2021 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 17.08.2021 (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 17.08.2021 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 complainants:**

**G.I. Direct the respondent to pay the assured returns until as per the terms and conditions of the MoU dated 17.02.2018;**

**G.II. Direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit;**

17. The above-mentioned reliefs sought by the complainants 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**

18. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 17.02.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

19. The respondent has submitted that the complainants in the present complaint are 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 complainants are raising their grievance.

20. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified*

*period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

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

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

22. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

23. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business

and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

24. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
25. The 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.
26. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 17.02.2018, which is reproduced below for the ready reference:

*Clause 4*

*... The company shall pay a monthly assured return of Rs.65,000/- on the total amount deposited till the signing of this MOU, with effect from 17.02.2020 before deduction of Tax at Source... The monthly assured return shall be paid to the allottee(s) until the commencement of first lease on the said unit. This shall be paid from the effective date.*

***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]*

27. Thus, the assured return was payable @Rs.65,000/- per month w.e.f. 17.02.2020, till commencement of first lease.
28. In light of the above, the Authority is of the view that as per the MoU dated 17.02.2018, 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 complainants at the agreed rate i.e., @Rs.65,000/- from the date i.e., 17.02.2020 till the commencement of the first lease of the concerned unit in accordance with the MoU dated 17.02.2018.
29. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return at the agreed rate i.e., Rs.65,000/- per month from the date i.e., 17.02.2020 till the commencement of the valid first lease of the concerned unit, in terms of MoU dated 17.02.2018.
30. 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 complainants 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 withdraw and waive of the demands towards fit out charges made in demand letter dated 19.12.2024;**

**G.IV. Direct the respondent not to charge anything which is not the part of payment schedule (Annexure-1) of buyer's agreement dated 17.02.2018;**

31. The complainants have sought relief with regard to the quash the demand letter dated 19.12.2024, vide which the respondent has demanded fit-out charges.

Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Fit-out charges**

32. In the further contended by the complainants that the respondent has raised fit-out charges vide letter dated 19.12.2024 and is seeking relief to quash the said demand, as the said amount charged were not part of agreement nor the MoU executed between parties. Also in the reply, the respondent submitted that they raised a demand towards fit-out charges amounting to Rs.29,50,000/- and the complainant has to make the said payment in favor of a third party, namely *H5 Hospitality LLP*, and the bank details provided therein does not pertain to the respondent. Further submitted that the said demand was charged as per the Clause 7(d) of the MoU executed between the parties & the complainants have agreed to pay such charges. The said clause is reiterated below for ready reference:

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

33. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining

such charges. This creates a grey area. Also, the complainants should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes, which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

34. Therefore, if the respondent seeks to levy fit out charges, it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 7(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainants.
35. Further, the respondent shall not charge anything which does not form a part of buyer's agreement or MoU interse parties.

**G.V. Direct the respondent to offer possession of the unit and execute sale deed/ conveyance deed in favor of the complainants as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainants;**

**G.VI Any other relief/ order or direction, which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint.**

36. 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 complainants. Furthermore, as per clause 8(e) of the MoU dated 17.02.2018, 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 complainants 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 04.10.2024 i.e., after receipt of occupation certificate on 14.08.2024.
37. The complainants are seeking direction to respondent to execute the conveyance deed of the commercial space/ allotted unit in favor of them. The complainants have been offered possession of the unit on 04.10.2024. 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, GST, 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)**

38. 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."*

39. 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 favour of the complainants 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.

**H. Directions of the Authority:**

40. 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 complainants at the agreed rate i.e., Rs.65,000/- per month from the effective date i.e., 17.02.2020 till the commencement of the valid first lease of the concerned unit, in terms of the MoU dated 17.02.2018.
- 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 complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020*.
- 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.

41. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
42. Files be consigned to registry.

  
**(Phool Singh Saini)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Date: 16.12.2025**

**HARERA**  
**GURUGRAM**