BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 18.12.2025

Name of the builder		**M/s Neo Developers Private Limited**
Project name		**"Neo Square", Sector 109, Gurugram**
S. No.	**Case No.**	**Case title**
1.	CR/2004/2025	Shiv Shankar Sharma and Arti Sharma V/s M/s Neo Developers Private Limited
2.	CR/2005/2025	Suman Sharma and Shiv Shankar Sharma V/s M/s Neo Developers Private Limited

CORAM:	
Shri Phool Singh Saini	**Member**
APPEARANCE:	
Shri Rajiv Vig (Advocate)	Complainants
Shri Venkat Rao and Shri Shivaditya Mukherjee (Advocates)	Respondent

ORDER

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

namely, New Square situated at Sector 109, Gurugram being developed by the same respondent/promoter i.e., M/s Neo Developers Pvt. Ltd. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges, assured return, VAT Charges, assured rentals and other reliefs.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project name and location	"Neo Square", sector 109, Gurugram, Haryana
Nature of the project	Commercial colony
Project area	3.08 acres
DTCP license no. and other details	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
Name of licensee	M/s Shri Maya Buildcon Private Limited & others
RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017
Extension of RERA registration	• 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**
Possession clause [As per BBA]	Not Available
Possession clause [As per MoU]	*Clause 3 of MOU* ...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. **[Emphasis supplied]**
Date of start of construction	The Authority has decided the date of start of construction as **15.12.2015** which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
Occupation certificate	**14.08.2024** (As per document provided by the respondent in its reply)

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Total Sale Consideration / Total Amount paid by the complainant(s)	Due date of possession, Offer of possession /Date of lease Deed
1.	**CR/2004/2025** Shiv Shankar Sharma and Arti Sharma V/S M/s Neo Developers Private Limited **DOF:** 16.04.2025 **RR:** 28.08.2025	Priority no.77, 5th floor or similar floor 400 sq. ft. (super area) (As per BBA at page no.33 of the complaint)	**MOU:** **13.03.2018** (As per page no.15 of complaint) **BBA:** Executed on **13.03.2018** (As per page no.30 of complaint) Registered in Tehsil on **05.01.2023** (As per page no.28 of complaint)	**TSC:** **Rs.22,73,552/-** (As per assured return plan i.e., Annexure-I at page no.48 of the complaint) **BSP:** **Rs.17,60,000/-** (As per MoU at page no.17 and as per BBA at page no.33 of the complaint) **AP:** **Rs.21,83,552/-** (As per MoU at page no.17 and as per BBA at page no.35 of the complaint)	**Due date of possession:** **13.09.2021** [13.03.2021+ 6 months] **(Note: Due date to be calculated 36 months from the execution of buyer's agreement i.e., 13.03.2018, being later, plus grace period of 6 months is hereby allowed as per *HARERA notification no. 9/3-2020 dated 26.05.2020*)** **OOP:** 04.10.2024 (Aas per page no. 50 of complaint)
	Assured return clause as per MOU dated 13.03.2018: Clause 4 ... **The company shall pay a monthly assured return of Rs.26,000/- on the total amount deposited till the signing of this MOU, with effect from 13.03.2020** 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. **[Emphasis supplied]** (As on page no.18 of complaint)				

2.	**CR/2005/2025** Suman Sharma and Shiv Shankar Sharma V/S M/s Neo Developers Private Limited DOF: 16.04.2025 RR: 28.08.2025	Priority no.56, 5th floor or similar floor 400 sq. ft. (super area) (As per BBA at page no.31 of the complaint)	**MOU: 30.06.2017** (As per page no.15 of complaint) **BBA:** Executed on **30.06.2017** (As per page no.28 of complaint) Registered in Tehsil on **05.01.2023** (As per page no.24 of complaint)	**TSC: Rs.19,51,600/-** (As per assured return plan i.e., Annexure-I at page no.44 of the complaint) **BSP: Rs.16,00,000/-** (As per MoU at page no.17 and as per BBA at page no.31 of the complaint) **AP: Rs.19,51,080/-** (As per MoU at page no.17 and as per BBA at page no.33 of the complaint)	**Due date of possession: 30.12.2020** [30.06.2020 + 6 months] **(Note: Due date to be calculated 36 months from the execution of buyer's agreement i.e., 30.06.2017, being later, plus grace period of 6 months is hereby allowed as per *HARERA notification no. 9/3-2020 dated 26.05.2020*)** **OOP:** 09.10.2024 (As per page no. 47 of complaint)

Assured return clause as per MOU dated 30.06.2017:
Clause 4
... **The company shall pay a monthly assured return of Rs.26,000/- on the total amount deposited till the signing of this MOU, with effect from 30.06.2019** 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.

[Emphasis supplied]

(As on page no.17-18 of complaint)

Relief sought by the complainant(s) in abovementioned complaints: -

1. The respondent be directed to pay Rs.22,53,940/- including interest thereon @18% p.a., as has become due and payable by the respondent to the complainant under assured return scheme as per clause 4 of the MOU dated 13.03.2018, from 13.03.2020 till 28.02.2025;
2. The respondent may further be directed to keep paying the aforesaid monthly assured amount pendente lite i.e., even after 31.12.2024 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainant as per clause 4 of the MOU dated 13.03.2018.
3. The illegal demand letters dt. 04.10.2024, 27.12.2024 and especially demand letter dated 03.03.2025 demanding Rs.11,80,000/- towards fit-out charges, be quashed. The respondent be directed to adjust the legitimate dues of the complainant from the over-due assured return amounts (as prayed in relief clause (1) & (2) and release the balance assured return amount to the complainant immediately within a fixed time frame;
4. The respondent be directed to hand over the possession and execute the sale deed of the aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court," in the aforesaid project "Neo Square" in favour of the complainant within a fixed time frame;
5. The respondent be permanently restrained from cancelling and terminating the

	allotment of aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court" in the aforesaid project "Neo Square" in favour of the complainant as the complainant has already paid 100% of the sale price of the unit to the respondent and is entitled to recover Rs.22,53,940/- from the respondent on account of non-payment of assured return amount till 28.02.2025.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received
BBA	Builder buyer's agreement
MOU	Memorandum of understanding
TSC	Total sale consideration
BSP	Basic sale price
AP	Amount paid by the allottee(s)
OC	Occupation certificate
OOP	Offer of possession

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement /MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the delayed possession charges, assured return, VAT, assured rentals and other charges.

5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case bearing no. ***CR/2004/2025*** *titled as* ***Shiv Shankar Sharma and Arti Sharma V/s M/s Neo Developers Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

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

CR/2004/2025 titled as ***Shiv Shankar Sharma and Arti Sharma V/s M/s Neo Developers Private Limited***

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017
8.	RERA extension	• Extension No. 06 of 2022 dated 14.11.2022; • PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 29.03.2023; • PROJECT CONTINUATION-RC/REP/HARERA/GGM/109 OF 2017/7(3)/33/2023/10 DATED 14.10.2024 **Valid up to 22.02.2025**
9.	Unit and Floor no.	Priority no.77, 5th floor (As per BBA at page no.33 of the complaint)
10.	Unit area admeasuring	400 sq. ft. (Super Area) (As per BBA at page no.32 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	13.03.2018 (As per page no.15 of the complaint)

13.	Possession Clause [As per MoU]	**Clause 3 of MoU** **...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. **[Emphasis supplied]** (As on page no. 17 of complaint)
14.	Assured return clause **[as per MoU dated 13.03.2018]**	**Clause 4** ... The company shall pay a **monthly assured return of Rs.26,000/- on the total amount deposited till the signing of this MOU, with effect from 13.03.2020** 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 until...** **[Emphasis supplied]** (As on page no.18 of complaint)
15.	Date of execution of buyer's agreement	13.03.2018 (As per page no.30 of complaint)
16.	Date of registration of buyer's agreement	05.01.2023 (As per page no.28 of complaint)
17.	Possession Clause [As per BBA]	Not available
18.	Due date of possession **[as per MOU dated 13.03.2018]**	**13.09.2021** [13.03.2021+ 6 months] (Note: Due date to be calculated 36 months from the execution of buyer's agreement i.e., 13.03.2018, being later, plus grace period of 6 months, as per HARERA notification no. 9/3-2020 dated 26.05.2020)
19.	Total sale consideration **[BSP + IFMS + EDC/IDC + GST]**	Rs.22,73,552/- (As mentioned in Annexure-I at page no.48 of the complaint)

20.	Basic sale consideration	Rs.17,60,000/- (As per MoU at page no.17 and as per BBA at page no.33 of the complaint)
21.	Amount paid by the complainant	Rs.21,83,552/- (As per MoU at page no.17 and as per BBA at page no.35 of the complaint)
22.	Payment Plan	Assured return plan (As per payment schedule on page no.48 of the complaint)
23.	Occupation certificate /Completion certificate	14.08.2024 (For Tower-C) (as per page 42-44 of reply)
24.	Offer of possession **[Priority No.77, 12A, of 400 sq. ft.]**	04.10.2024 (page 50 of complaint)
25.	Demand letter and offer of possession **[Priority No.77, 12A, of 400 sq. ft.]**	04.10.2024 (page 50 of complaint)
26.	Reminder-1 & 2 to demand letter and offer of possession **[Priority No.77, 12A, of 400 sq. ft.]**	27.11.2024 & 27.12.2024 (page 48 of reply & page 65 of complaint)
27.	Reminder for fit-outs **[Priority No.77, 12A, of 400 sq. ft.]**	03.03.2025 (page 51 of reply)
28.	Demand for maintenance charges	24.04.2025 (page 52 of reply)

B. Facts of the complaint: -

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

i. That on the basis of a License bearing No.102 of 2008 dated 15.05.2008 obtained from the Directors, Town and Country Planning, Chandigarh, Government of Haryana (in short DTCP), the respondent has been developing a commercial project under the name and style of "Neo Square" at Sector-109, Dwarka Expressway, Gurugram, Haryana. The respondent also got the aforesaid project registered with the Haryana Real Estate Authority vide

registration no.109 of 2017 dated24.08.2017 and the aforesaid project is an ongoing project of the respondent.

ii. That one of the schemes promulgated by the respondent in the aforesaid project was "Assured Return Plan" under the which the allottee was to pay the basic sale price of the booked commercial unit / space, as determined by the respondent, in advance to the respondent and the respondent in return would give an assurance / guarantee to pay a fixed assured amount every month, after a fixed period of two years of booking of unit, till the commencement of first lease of the commercial unit / space.

iii. It is only on the representations and assurances of the respondent especially regarding payment of assured return after 2 years of booking that the complainants agreed to book and consequently allotted commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court/ Entertainment" in the aforesaid project at the rate of Rs.4,400/- per sq. ft. The complainants and the respondent therefore fall within the expressions "allottee" and "promoter" respectively as defined in Section 2 (d) and (zk) of the Real Estate (R & D) Act, 2016 respectively.

iv. Thereafter a memorandum of understanding and buyer's agreement dated 13.03.2018 was executed between the respondent company and the complainants, which were got prepared by the respondent primarily keeping its own interests and benefits in mind.

v. Since the present dispute is regarding recovery of due amount under the assured return plan, payment of legitimate balance cost of the commercial unit booked by the complainants, handing over of possession and execution of sale deed by the respondent in favour of complainants in respect of the aforesaid commercial unit, the complainants reserve their rights to raise

their grievance in respect of other unreasonable and unfair terms and conditions of the MoU and BBA as and when the same is required in future.

vi. That under clause 3 of MoU, the respondent allotted unit no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court / Entertainment" in the aforesaid project at the rate of Rs.4,400/- per sq. ft. totaling to Rs.17,60,000- to the complainants, against which the complainants have already paid a total sum of Rs.21,83,552/- to the respondent towards the basic sale price, GST & EDC/IDC, the receipt of which was clearly admitted by the respondent in clause 4 of the said MOU. The respondent company undertook to complete the construction withing 36 months from the date of execution of the agreement or from the start of construction whichever was later and apply for grant of completion / occupation certificate.

vii. That under clause 4 of the MOU, the respondent company undertook to pay a sum of Rs.26,000/- per month in respect of the aforesaid unit to the complainant from 13.03.2020 till the commencement of first lease of the said unit as per clause 4 of the MoU.

viii. That under clause 8 to 10 of the MoU, the obligation was on the respondent company to find out the proposed lessee to whom the aforesaid unit was to be leased out and to finalize the terms and condition of the lease deed in respect of the aforesaid unit and as stated above, the liability of the respondent to pay monthly assured amount to the complainants is till the commencement of first lease of the said unit.

ix. However, the respondent company neither completed the construction of the commercial units/space within the stipulated period nor paid any assured amount to the complainants as promised in MoU dated 13.03.2018 w.e.f.

13.03.2020 and thus violated the provision of Section 11 (4) (a) of the Real Estate (R & D) Act, 2016.

x. That the complainants through other allottees came to know that the respondent company had promised, due to some restrictions, the payment of due assured return amount to the allottees only after receipt of occupation certificate and/ or at the time of handing over the possession of the unit to the allottees.

xi. That the complainants thereafter made number of visits, besides calling the officials of the respondent, during 2022 to 2024 to know the status of the project and her aforesaid commercial unit. However, the officials of the respondent kept on making one after another excuse and miserably failed to discharge their obligations under the MoU dated 13.03.2018.

xii. However, the respondent, instead of paying any assured amount to the complainants raised an illegal demand of Rs.3,90,289/- vide letter dated 04.10.2024. The complainants vide email dated 09.10.2024, 24.10.2024 and 28.11.2024 reminded the respondent about its promise to pay the assured return amount which has been due since 13.03.2020 and accumulated to more than Rs.20.00 lakh by then. However, the respondent intentionally avoided giving any reply to the aforesaid demand of the complainant. It is pertinent to mention here that the respondent illegally changed the location of the commercial unit of the complainants to level 12A floor without disclosing any valid reason and or consent of the complainants.

xiii. The complainants thereafter along with other allottees got a legal notice dated 26.12.2024 served upon the respondent asking him to pay the overdue assured return amount to the complainants. However, the respondent neither gave any reply nor paid any amount to the complainants and issued a reminder dated 27.12.2024 of its same illegal demand.

xiv. That the respondent does not want to discharge its own liabilities under the terms and conditions of the MoU dated13.03.2018 and is only illegally insisting for payment of its illegal demand, failing which the respondent is further illegally threatening to cancel/terminate the allotment of aforesaid unit in favour of the complainants.

xv. That a total sum of Rs.22,53,940/- including interest thereon @ 18% p.a. has become due and payable by the respondent to the complainants under the monthly assured return scheme as on 28.02.2025. That the respondent has misappropriated and mis-utilizing the funds of the innocent allottees including complainants herein for its own benefits and therefore, failed to complete the construction in time as also failed to pay assured monthly return as promised by it to complainants and others. The respondent is charging compound interest on the defaults of the allottees and is therefore liable to pay interest @18% p.a. on outstanding assured return amount to the complainants.

xvi. Since the respondent is contractually bound to pay much more i.e. Rs.22,53,940/- to the complainants under the terms and conditions of the MoU dated 13.03.2018 towards overdue assured return amount as on 28.02.2025, the respondent cannot legally terminate / cancel the allotment of the aforesaid commercial unit in favour of the complainants on account of alleged non-payment of its unsubstantiated dues which are much less than the total amount due to the complainants towards assured return amount. The respondent can easily adjust its legitimate balance dues from the overdue assured return amount and pay the balance thereof to the complainants. Therefore, the aforesaid demand letters of the respondent against the complainants containing illegal demand of dues and threat of

cancellation of aforesaid commercial unit of the complainants are illegal and are liable to be set-aside and quashed.

xvii. That the alleged demand of fit-out charges, ironically almost equal to the principal amount of overdue assured amount, is arbitrary, baseless, illegal, and dehors the MoU/ BBA executed between the parties and has been raised with malafide intention to nullify the complainants rightful claim for overdue assured returns. Hence, such demand is non-est in law deserves to be quashed.

xviii. That the cause of action to file the present complaint in favour of the complainants against the respondent arose due to aforesaid illegal acts of commission and omission on the part of the respondent and has been continuing and is still existing as the respondent has failed to discharge its liabilities and responsibilities under the provisions of the RERA Act and Rules and the terms and condition of the aforesaid MOU and BBA and rectify its illegal actions.

xix. That respondent has also failed to discharge its liability of payment of assured return towards many other similarly situated allottees of the same aforesaid project and in some of the similar cases, this Authority has already been pleased to direct the respondent inter alia to pay the outstanding assured return amount of the similarly situated allottees with interest.

C. Relief sought by the complainant(s):

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

I. Direct the respondent to pay Rs.22,53,940/- including interest thereon @18% p.a., as has become due and payable by the respondent to the complainant under assured return scheme as per clause 4 of the MOU dated 13.03.2018, from 13.03.2020 till 28.02.2025;

II. Direct the respondent to keep paying the aforesaid monthly assured amount pendente lite i.e., even after 31.12.2024 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainant as per clause 4 of the MOU dated 13.03.2018.

III. The illegal demand letters dt. 04.10.2024, 27.12.2024 and especially demand letter dated 03.03.2025 demanding Rs.11,80,000/- towards fit-out charges, be quashed. The respondent be directed to adjust the legitimate dues of the complainant from the over-due assured return amounts (as prayed in relief clause (1) & (2) and release the balance assured return amount to the complainant immediately within a fixed time frame;

IV. Direct the respondent to hand over the possession and execute the sale deed of the aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court," in the aforesaid project "Neo Square" in favour of the complainant within a fixed time frame;

V. Permanently restrain the respondent from cancelling and terminating the allotment of aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court" in the aforesaid project "Neo Square" in favour of the complainant as the complainant has already paid 100% of the sale price of the unit.

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

D. Reply by the respondent:

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

i. That the complainants have approached this Authority with unclean hands by concealing material facts and making false, misleading, and unsubstantiated allegations with the sole intent of extracting unlawful gains.

ii. That the complainants have concealed the fact regarding the demand raised by the respondent towards fit-out charges in respect of the allotted unit. By filing the present complaint, the complainants are merely attempting to negotiate upon the legitimate demand raised and delay the payment of lawful dues.

iii. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a Unit/Space, admeasuring 500 sq. ft. super area in the project "Neo Square".

iv. That after considering the request of the complainant, the Respondent allotted a unit bearing priority no. 130, on 3rd floor, admeasuring 500 sq. ft. super area.

v. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.

vi. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 09.07.2020.

vii. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 09.07.2020 was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.

viii. That since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. that the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit and vide letter dated 01.10.2020, requested the complainant to forward to complete the formalities with respect to leasing of the unit.

ix. The occupation certificate of the project was granted by the competent authority on 14.08.2024. Thereafter, the respondent sent an offer of possession letter dated 04.10.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

x. Despite receiving the offer of possession, the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated

27.11.2024, 27.12.2024, 29.01.2025 and 03.03.2025 requesting the complainant to do the needful. That the respondent vide letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU. That the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MoU and BBA.

xi. That the complainant is an investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits. That the complainants have invested in the instant project for earning lease rental can be verified from the fact that under clause 6 of the BBA, it is clearly mentioned in the terms and conditions pertaining to leasing of the unit are mentioned in the MoU.

xii. That the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs.600/- per sq. ft., the details of which are mentioned in para 15 herein below, equitably distributed amongst the unit. That under clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date. That after issuance of the occupation certificate, the development charges have been quantified, therefore, the same have been demanded from the complainant as per Clause 11 of the BBA

xiii. That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid

by the complainant as per clause 9 (d) of the MoU. That the expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental itself. Thus, as per clause 9 (d) of the MoU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing. Therefore, as per the agreed terms and conditions of the MoU, and considering the rights of other buyers in the project and the overall fate of the project, the complainant is bound to pay the fit-out charges.

xiv. That the complainant under clause 10(a) of the MoU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the lease, the amount of lease, usage or to who the unit is leased out.

xv. That in clause 9(b) of the MoU it is categorically agreed by the complainant that in case of any increase in monthly lease rental in excess of the assured return, the sale consideration shall be enhanced by Rs.66.66/- per sq. ft. for each rupee increase in the monthly lease rental and likewise, in case the monthly lease rental is reduced from the assured return, then for each decreased rupee per sq. ft. per month, the sale consideration shall stand decreased by Rs.133.33/- per sq. ft. That under the said clause, it was also agreed that the final sale consideration shall be calculated in terms of clause 9 (b) of the MoU.

xvi. That if the complainants are claiming his right under the MoU, then he should also be ready to fulfil his responsibility under the MoU. That if the Authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to leasing of the unit, and payment of fit-out charges under the MoU should also be allowed

xvii. That without prejudice, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving assured return/ penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/ penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honoring such commitments beyond the said date.

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

xix. Though the respondent has not raised any demand of maintenance charges. However, as per Clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainant shall be liable to make timely payment of maintenance charges and other related dues.

xx. 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.

xxi. That from the facts indicated above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the agreement.

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

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

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

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

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

F. Findings on the objections raised by the respondent:

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

17. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure circumstances such as orders/ restrictions of the NGT in NCR as well as competent authorities on account of environmental clearance, ban on construction by the orders of the courts, Hon'ble Supreme court, implementation of GST Act 2017, demonetization, Covid-19 and default in making timely payment by several allottees. it could not speed up the construction of the project, resulting in its delay. All the pleas advanced in this regard are devoid of merits. Firstly, the due date of possession as per clause 3 of the MoU dated 13.03.2018, 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 13.03.2021. 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 13.03.2021 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 13.09.2021 (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 13.09.2021 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 Rs.22,53,940/- including interest thereon @18% p.a., as has become due and payable by the respondent to the complainant under assured return scheme as per clause 4 of the MOU dated 13.03.2018, from 13.03.2020 till 28.02.2025;

G.II. Direct the respondent to keep paying the aforesaid monthly assured amount pendente lite i.e., even after 31.12.2024 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainant as per clause 4 of the MOU dated 13.03.2018.

G.III. Permanently restrain the respondent from cancelling and terminating the allotment of aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court" in the aforesaid project "Neo Square" in favour of the complainant as the complainant has already paid 100% of the sale price of the unit.

18. 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**

19. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 13.03.2018 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 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.

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 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.

27. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 13.03.2018, which is reproduced below for the ready reference:

> *Clause 4*
> *... **The company shall pay a monthly assured return of Rs.26,000/- on the total amount deposited till the signing of this MOU, with effect from 13.03.2020** 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.*
>
> ***[Emphasis supplied]***

28. Thus, the assured return was payable @Rs.26,000/- per month w.e.f. 13.03.2020, till commencement of first lease.

29. In light of the above, the Authority is of the view that as per the MoU dated 13.03.2018, 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 complainant at the agreed rate i.e., @Rs.26,000/- from the date i.e., 13.03.2020 till the commencement of the first lease of the concerned unit in accordance with the MoU dated 13.03.2018.

- **Delay possession charges**

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

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

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

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

32. Thus, the due date of possession, is to be calculated 36 months from the date of execution of the MoU/ buyer's agreement dated 13.03.2018. 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 complainant is 26.04.2020 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 13.09.2021 (including grace period).

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

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

34. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

35. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
>
> *Explanation. —For the purpose of this clause—*
>
> *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e.,10.80% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

37. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 13.09.2021. The occupation certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the respondent has failed to pay the assured return and delay possession charge till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement/MoU.

38. 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?

39. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.26,000/- per month on the total amount received till the commencement of first lease. If we

compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in the present complaint is payable at Rs.26,000/- per month whereas the delayed possession charges are payable approximately Rs.19,651/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount till the commencement of the first lease in terms of MoU. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher.

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

41. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return at the agreed rate i.e., Rs.26,000/- per month from the date of payment of assured return has not been paid till the commencement of the valid first lease of the concerned unit effective from the 13.03.2020, in terms of MoU dated 13.03.2018.

42. 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.IV. To quash the illegal demand letters dt. 04.10.2024, 27.12.2024 and especially demand letter dated 03.03.2025 demanding Rs.11,80,000/- towards fit-out charges. The respondent be directed to adjust the legitimate dues of the complainants from the over-due assured return amounts (as prayed in relief clause (1) & (2) and release the balance assured return amount to the complainant immediately within a fixed time frame;

43. The complainants have sought relief with regard to the quash the demand letter dated 04.10.2024 and 04.12.2024, vide which the respondent has demanded the development charges, Labour Cess, FTTH charges & Holding charges. Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Labour cess**

44. 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**

45. The undertaking to pay the development charges was comprehensively set out in the buyer's agreement dated 13.03.2018 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"*

46. 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**

47. The respondent during proceedings dated 16.09.2025 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**

48. 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.

49. 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."***

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

51. In the further contended by the complainants that the respondent has raised fit-out charges vide letter dated 03.03.2025 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 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.*

52. 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.

53. 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.

54. 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 hand over the possession and execute the sale deed of the aforesaid commercial space / unit priority serial no.77 measuring 400 sq. ft. (37.16122 sq. mt.) on 13th floor forming the part of the area designated for use of "Commercial Space as Food Court," in the aforesaid project "Neo Square" in favor of the complainant within a fixed time frame:

55. 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 13.03.2018, 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.

56. 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 10(iii) 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:

> *10(iii) ... 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)***

57. 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:

> ***"Section17: 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 low 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."

58. 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:

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 assured return to the complainants at the agreed rate i.e., Rs.26,000/- per month from the date the payment has not been paid till the commencement of the valid first lease of the concerned unit, in terms of the MoU dated 13.03.2018.

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 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.

60. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

61. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

62. Files be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated:18.12.2025