BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Order: 28.11.2025

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Appearance
1.	CR/1702/2025	Rajender Yadav and Bimla Devi V/s NEO Developers Private Limited	Garvit Gupta (Counsel for the complainants) E. Krishna Das and Dushyant Yadav (Counsels for the Respondent)
2.	CR/1681/2025	Krishna Devi and Hitesh Yadav V/s NEO Developers Private Limited	Garvit Gupta (Counsel for the complainants) E. Krishna Das and Dushyant Yadav (Counsels for the Respondent)

CORAM:

Shri Arun Kumar **Chairman**

ORDER

1. This order shall dispose of the aforesaid 2 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 complainants in the above referred matters are allottees of the project, namely, ***"Neo Square"*** 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 valid offer of possession of the unit along with assured return and other reliefs.

3. The details of the complaints, reply status, unit no. & unit size, date of execution of the BBA and MoU, assured return clause, Total sale consideration, total paid amount by the complainants, and offer of possession letter 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
Occupation certificate	14.08.2024

Sr. No.	**Complaint No., Case Title, and Date of filing of complaint and reply received**	**Unit no., floor & size**	**Date of execution of MoU**	**Assured Return Clause in MoU**	**Total Sale Consideration / Total Amount paid by the complainants**	**Offer of possession letter (O.O.P)**
1	**CR/1702/2025** Rajender Yadav and Bimla Devi Vs. M/s Neo Developers Pvt. Ltd.	Unit no. 05 at second floor And 582 sq. ft. (page 28 of complaint)	**MOU:** 30.10.2013 (page 27 of complaint)	***Clause 12 of MoU*** *"The Company shall pay a monthly return of* ***Rs. 49,470/-*** *on the total amount*	**T.S.C:** Rs.53,86,454/- (as per payment plan on page no. 33 of complaint) **A.P.: -** Rs.55,09,372/-	**Date of the letter -** 24.03.2025 (As per pg. no. 64 of the reply)

	DOF: 28.03.2024 **RR:** 30.09.2025			*deposited till the signing of this MOU with effect from **29** Day of **OCTOBER 2013**."* ***Clause 16 of MoU.*** *"That the responsibility of paying assured returns to be paid by the Company shall cease upon the execution of Possession."* (as per MOU at page 31 of complaint)	(as per MOU at page 66 of reply)	
2	**CR/1681/2025** Krishna Devi and Hitesh Yadav Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 28.03.2025 **RR:** 30.09.2025	Unit no. 04 at second floor And 582 sq. ft. (page 37 of complaint)	**MOU:** 30.10.2013 (page 30 of complaint)	**Clause 12 of MoU** *"The Company shall pay a monthly return of **Rs. 49,470/-** on the total amount deposited till the signing of this MOU with effect from **29 Day of OCTOBER 2013**."* ***Clause 16 of MoU.*** *"That the responsibility of paying assured returns to be*	**T.S.C:** Rs.53,85,454/- (as per assured return plan on page no. 37 of complaint) **A.P.: -** Rs.55,09,276/- (as per page no. 46 of reply)	**Date of the letter –** 09.11.2024 (As per pg. no. 48 of the reply)

				paid by the Company shall cease upon the execution of Possession." *(as per MoU at page 34 of complaint)*		

Reliefs sought by the complainants –

1. Respondent is liable to make payment towards the assured return from 29.10.2013 onwards till valid offer of possession.
2. Respondent is liable to make payment of delayed interest on the amount paid by the Complainants from the due date i.e 30.10.2016 till the date of actual handing over of possession.
3. Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.
4. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.
5. Respondent be directed to lease the unit in question after the valid offer of possession on behalf of the Complainants as per the terms of the allotment and make payment towards the lease rental.
6. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainants.
7. Respondent be not to terminate the allotment or create third party rights on the allotted unit/space.
8. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.

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

MoU	Memorandum of Understanding
T.S.C	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer of Possession

4. The aforesaid complaints have been filed by the complainants against the promoter alleging violation of the memorandum of understanding (MoU) executed between the parties in respect of the subject units, inter alia, on account of failure to hand over possession within the stipulated due date of 36 months, non-payment of assured return and other allied charges.

5. The facts of all the complaints filed by the complainants-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/1702/2025 titled as Rajender Yadav and Bimla Devi Vs. M/s Neo Developers Pvt. Ltd.*** 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 total sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, assured return clause, if any, have been detailed in the following tabular form:

CR/1702/2025 titled as Rajender Yadav and Bimla Devi Vs. M/s Neo Developers Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	05, 2nd floor (page no. 28 of complaint)

7.	Unit area admeasuring	582 sq. ft. (page no. 28 of complaint)
8.	Date of MOU	30.10.2013 (page no. 27 of complaint)
9.	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.
10.	Assured return Clause in MoU.	*12. "The company shall pay a monthly return of Rs. 49,470/- on the total amount deposited till the signing of this MOU with effect from 29.10.2013."* *16. "That the responsibility of paying Assured returns to be paid by the company shall cease upon the execution of Possession."* *(page no.31 of complaint)*
11.	Basic sale consideration	Rs. 53,86,454/- (as per payment plan on page no. 33 of complaint)
12.	Amount paid by the complainant	Rs. 55,09,372/- (As per pg. 66 of reply)
13.	Demand letters	22.01.2020 (As per pg. no. 45 of the complaint)
14.	Occupation certificate	14.08.2024 (As per the DTCP site)
15.	Offer of possession	03.12.2024 (As per pg. no. 64 of the reply)
16.	Fit-out demand raised of Rs. 24,36,729/- (Inc GST)	24.03.2025 (As per pg. 63 of the reply)

B. Facts of the complaint

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

i. That the complainants received a marketing call from the office of the respondent in the month of June 2013 for booking in the said project of the respondent. The complainants had also been attracted towards the aforesaid project on account of publicity done by the respondent through various means like various brochures, posters, advertisements etc.

ii. That the complainants induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as they required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively given within the agreed time frame. However, the respondent demanded that the complainants would have to make the complete payment towards the basic sale consideration amount along with taxes. on the basis of the representations made by the respondent and on its demand, the complainants made the payment of more than the total basic price of the unit amounting to Rs. 49,79,636/-.

iii. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the MOU to the respondent. The complainants repeatedly requested the respondent for execution of mou with balanced terms. During such discussions, the respondent assured the complainants that no illegality whatsoever, would be committed by them. The respondent/promoter refused to amend or change any term of the pre-printed MOU and further threatened the complainants to forfeit the previous amount paid towards the unit if the MOU was not signed and submitted. The complainants were left with no other option but to sign the one-sided MOU for an allotment of Unit No. 205 on second floor measuring 582 sq.ft. in the said project. As per clause 3 of the MOU, the Respondent categorically mentioned that the complainants have

opted for 'Investment Return Plan' and has agreed that the basic consideration for the allotment of the said unit is to be determined at Rs. 8250/- per sq.ft taking into consideration a return of Rs. 85/- per sq.ft. per month. Furthermore, as per Annexure-I of the said MOU, the basic sale consideration of the unit inclusive of GST was Rs. 48,01,500/- and the total consideration of the unit was Rs. 53,86,454/- inclusive of the Basic Sale Price, IFMD, EDC/IDC and Service Tax.

> *"3. That Company hereby has agreed to allot to the Allottee(s) premises measuring 582 sq. ft. (54.07 sq. mtr.) super built up area on the Second floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 8250/-/- per sq.ft. taking into consideration a return of Rs. 85/- per sq.ft. per month, subject to the terms of this MOU. Return is provided till Possession is offered to the customer."*

iv. That as per Clause 12 of the MOU, it was reiterated that the complainants have paid the respondent an amount of Rs.49,79,636/- against the total allotment consideration as determined in clause 3 of the MOU. The respondent had categorically assured at the time of the booking that it would be diligent in making payment towards the monthly return and in adhering to its contractual obligations.

v. It is submitted that as per clause 3 of the said MOU, it was agreed that the respondent would pay monthly return of Rs. 85/- per sq.ft. till the possession is offered to the complainants. The respondent reiterated the same in clause 12 of the mou and categorically mentioned that the respondent shall pay a monthly return of Rs. 49,470/- on the total amount deposited till the signing of the MOU with effect from 29.10.2013.

vi. That as per the terms of the MOU, it was agreed that the respondent would lease the unit in question on behalf of the complainant and thereafter make payment of lease rentals to the complainant.

vii. That the respondent vide demand letter dated 16.12.2015 demanded amount of Rs. 2,75,772/- against the EDC and IDC. The complainants based on the demands raised by the respondent paid a sum of Rs. 2,75,868/- vide Cheque dated 30.12.2015 towards the balance total sale consideration. The said amount was acknowledged by the respondent vide receipt dated 02.01.2016.

viii. The respondent subsequently raised further payments against VAT vide its demand letters dated 30.03.2017. The complainants accordingly made the said payments of Rs.13,793/- vide cheque no.290233 and Rs.2,40,075 vide cheque no.223319 on 24.04.2017 as demanded by the respondent towards VAT charges.

ix. It is pertinent to mention herein that the Complainants have till now, paid more than the total sale consideration of the said unit.

x. That as per Clauses 3 and 4 of the MOU, the respondent was under the obligation to pay monthly returns of Rs. 49,470/- till the possession is offered to the complainants. Also, as per Clause 16 of the MOU, it was the responsibility of the respondent to pay assured monthly returns and that the Respondent shall cease to pay the assured returns only upon the execution of possession. Clause 16 of the MOU is reproduced below: -

> *"16. That the responsibility of paying assured returns to be paid by the Company shall cease upon the execution of Possession.*

xi. The respondent in furtherance to the agreed terms failed to make any payment towards the assured monthly return to the complainants. Upon the grievances raised by the complainants regarding the non-payment of assured returns, it was assured and promised by the representatives of respondent

that the said amount would be adjusted along with interest at the time of possession. Furthermore, as per letter dated 18.12.2019 sent by the respondent to the complainant, it was stated that the said payment could be made as it had become illegal for it to withdraw the funds from the bank account and that its auditors are refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of the interest payments.

xii. That despite having made the MOU dated 30.10.2013, the Respondent failed to specify the due date of possession and made the MOU very much favourable as per the wishes of the respondent.

xiii. It is pertinent to mention here that this Hon'ble Authority placing reliance on the Judgment of the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 – SC);** MANU/SC/0253/2018 has observed that in case there is no agreement or where no due date has been specified in the agreement, then a reasonable period of 3 years from the date of booking would be considered as an apt time in which the promoter would be bound to offer the possession of a plot/unit/apartment. Thus, the unit was to be offered within 3 years from the date of booking of the unit. since, the booking was made by the complainants on 30.10.2013, the due date to offer the possession of the unit to the respondent was 30.10.2016. Hence, as per the provisions laid down by law, the possession of the unit was to be offered by the respondent to the complainants latest by 30.10.2016.

xiv. Furthermore, on the representations and assurances of the respondent, the complainants were under the believe that amount of monthly return would be adjusted in the total sale consideration at the time of offer of possession. The respondent completely sidelined its own obligations and

failed to offer the possession of the said allotted unit to the complainants and adjust any such amount in the remaining sale consideration.

xv. That in a completely malafide manner, the respondent vides its letter dated 22.01.2020 demanded Rs. 6,76,358/- towards VAT charges. It is pertinent to mention herein that the complainant has already submitted the said amount to the respondent and the respondent had vide its earlier receipts dated 27.04.2017 acknowledged the said payment as well. When the amount itself stands paid, there is no occasion for the respondent to have demanded VAT charges yet again from the complainant. The said letter dated 22.01.2020 is liable to be revoked.

xvi. That the complainants have been duped of their hard-earned money paid to the respondent regarding the unit in question. The complainants requested the respondent to offer the possession of the allotted unit to them after sending a valid offer of possession so that they could lease the unit but the respondent has been dilly-dallying the matter. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

xvii. Furthermore, as per clause 15 of the MOU dated 30.10.2013, the sale deed had to be executed and registered in favour of the allottee. It is submitted that even as per the terms of the agreement, the respondent is duty bound and had a contractual obligation to execute the conveyance deed of the unit in favour of the Complainants. Relevant clauses of the MOU and the agreement are reproduced hereunder:

> *"15. That the Sale Deed shall be executed in favour of the Buyer based on the terms of the present MOU read with the Allotment letter which shall be in the standard format of the Company..."*

xviii. That the complainants apprehend that the respondent would illegally and unilaterally cancel/terminate the allotment by creating third party rights. The

said strong apprehension is based on the fact that the representatives of the respondent have been issuing threats to the complainants that in case the Complainants don't accept the unilateral reasoning given by the Respondent then it would terminate the allotment of the Complainants and would allot the unit in question to a third party.

C. Relief sought by the complainant:

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

I. Respondent is liable to make payment towards the assured return from 29.10.2013 onwards till valid offer of possession.

II. Respondent is liable to make payment of delayed interest on the amount paid by the Complainants from the due date i.e 30.10.2016 till the date of actual handing over of possession.

III. Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.

IV. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

V. Respondent be directed to lease the unit in question after the valid offer of possession on behalf of the Complainants as per the terms of the allotment and make payment towards the lease rental.

VI. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainants.

VII. Respondent be not to terminate the allotment or create third party rights on the allotted unit/space.

VIII. Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.

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. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as *"RERA Act"*). It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of RERA act. that the complainants herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.

II. That the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE",situated at Sector-109, Gurugram, Haryana being developed by the respondent.

III. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 24/10/2013, whereby seeking allotment of Unit No. 2-32, admeasuring 590 Sq. Ft super area on the 2nd floor of the project having a

basic sale price of Rs. 8250/- (hereinafter referred to as the *"Unit"*). The Complainants, considering the future speculative gains, also opted for the Investment Return Plan being floated by the respondent for the instant Project.

IV. That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 30/10/2013 *(hereinafter referred to as* "MOU") was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. it is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 29/10/2013 till offer of possession. It is also submitted that as per terms of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.

V. That since the complainant had opted for the Investment Return Plan, a MoU dated 30.10.2013 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof.

VI. 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 15.09.2018 as per clause 2 of the MOU.

VII. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

VIII. 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.

IX. In catena of the above discussion, it is submitted that in the present complaint the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as assured return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

X. That the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. however, the complainant delayed the same for one or the other reasons.

XI. That the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs. 55,09,372/- against the total due amount of Rs. 65,71,807/-.

XII. That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof.

XIII. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 29/10/2013 till the offer of possession. It is also submitted that as per clause 8 (a) of the MOU, the Respondent herein had duly authorised the Complainant to put the said unit on lease.

XIV. That is because it contained a "Lease Clause" which empowers the complainant/developer to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.

XV. That complainant is trying to negotiate to the demand of respondent on Fit out, the respondent has raised the demand of Rs 3500/- per Sq. Ft (Rupees Three Thousand Five Hundred Only) to the complainant which is sum of Rs. 24,36,729/- for getting the said unit fit out which is essential for getting the said unit leased out. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.

XVI. It is further submitted that the demand of VAT 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. The said clause is reiterated below for ready reference:

"That the Allotee 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 Service Tax, VAT, Development charges, Stamp Duties, Registration Charges, Electrical Energy Charges,

EDC Cess, IDC Cess, BOCW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like. These shall be paid on demand and in case of delay, these shall be payable with interest by the Allottee".

XVII. It is noted herein that the complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

XVIII. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

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

		Clearance from the competent Authority.			affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and 17th Nov, 2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent.

		authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.			Accordingly, construction activity has been completely stopped during this period.
6.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly,

		mentioned in the aforesaid order that construction activity would be completely stopped during this period.			construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

XIX. 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 come within the meaning of *force majeure*.

XX. 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 and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled ***"Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP"*** **decided on 17.05.2022**, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

XXI. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent.

XXII. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the said project in all aspect and obtained the completion certificate from the office of DTCP.

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 completed 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 maintainability of complaint on account of complainants being the investors.

17. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and

thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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, it is revealed that the complainants are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "**allottee**" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 30.10.2013. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F. II Objection regarding the project being delayed because of force majeure circumstances.

19. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 16.05.2018. It is observed that

orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. 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 wrong.

G. Findings on the reliefs sought by the complainants.

I. Respondent is liable to make payment towards the assured return from 29.10.2013 onwards till valid offer of possession.

II. Respondent is liable to make payment of delayed interest on the amount paid by the Complainants from the due date i.e 30.10.2016 till the date of actual handing over of possession.

G.I – Assured Returns

20. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 30.10.2013 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

22. 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.*

23. 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;*

24. 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.

25. 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.

26. 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.

27. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotees arises out of the same relationship and is marked by the agreement.

28. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.

In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 30.10.2013.

29. In the present complaint, the assured return was payable as per clause 12 and clause 16 of the MoU dated 30.10.2013, which is reproduced below for the ready reference:

> ***Clause 12***
>
> *"The company shall pay a monthly return of Rs.49,470/- on the total amount deposited till the signing of this MOU with effect from 29.10.2013."*
>
> ***Clause 16***
>
> *"That the responsibility of paying Assured returns to be paid by the company shall cease upon the execution of Possession."*

30. Thus, as per the abovementioned clauses the assured returns were payable @Rs. 49,470/- per month w.e.f. 29.10.2013, till the possession.

31. In light of the above, the Authority is of the view that as per the MoU dated 30.10.2013, it was obligation on part of the respondent to pay the monthly assured return till the possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.49,470/- from the effective date i.e., 29.10.2013 until the possession of the unit after deducting the amount already paid on account of assured returns to the complainants.

G.II Delay Possession Charges:

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

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

33. **Due date of possession**: The subject unit was allotted to the complainants vide MoU dated 30.10.2013. As per the documents available on record, nowhere in the MoU mentioned the period of possession/due date of possession hence the same cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"*

34. In the instant case, the MoU executed between the parties on 30.10.2013. In view of the above-mentioned reasoning, the date of MoU ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession comes out to be 30.10.2016.

35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18

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

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

36. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules 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., 28.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

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

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

payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being liable to be paid to the complainants in case of delay possession charges.

39. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 30.10.2016.

40. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

41. To answer the above proposition, it is worthwhile to note that the assured return is payable to the allottees in terms of the provisions of the MoU dated 30.10.2013. In the present case, the promoter had agreed to pay a fixed monthly assured return on the total amount received from the complainants with effect from 30.10.2013 till the possession of the subject unit. A comparison between the assured return stipulated under the MoU and the delayed possession charges payable under the proviso to Section 18(1) of the Act, 2016 reveals that the assured return is more beneficial to the allottees. By way of the assured return clause, the promoter assured the allottees of a specific monthly compensation until the unit is put on valid lease. Moreover, the interest of the allottees continues to remain protected even after completion of construction, as the assured return is payable till the unit or space is actually leased out. The underlying objective of delayed possession charges, namely safeguarding the interest of the allottees for continued use of their funds by the promoter beyond

the stipulated date of possession, stands duly satisfied by the payment of assured return after the due date of possession. Accordingly, the allottees are entitled to receive either the assured return or delayed possession charges, whichever is higher, for the relevant period.

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

43. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @Rs.49,470/-with effect from 29.10.2013 till the possession of the concerned unit.

44. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

III. **Direct the respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the buyer's agreement.**

IV. **Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.**

45. The complainants have raised objection towards the fit-out charges, development charges, and delay payment charges raised by the respondent vide letter dated 24.03.2025, and has sought waiver of the same on the ground that such charges were not stipulated in the memorandum of understanding (MoU) dated 30.10.2013 executed between the parties. The Authority has considered

the contention of the respondent raised in its reply, wherein reliance has been placed upon clause 8(d) of the alleged MoU to justify the demand of fit-out charges of Rs.24,36,729/- from the complainants. However, on perusal of the entire record and the documents placed on file, including the MoU executed between the parties, this Authority finds that no such clause 8(d), as claimed by the respondent, exists in the said MoU. The respondent has failed to place on record any authenticated or executed document evidencing the existence of the aforesaid clause. Accordingly, the plea raised by the respondent on the basis of the alleged clause 8(d) is found to be factually incorrect, unsupported by the record, and is therefore rejected.

46. It is also evident that no prior intimation letter or demand letter specifying the nature of such fit-outs charges has been shared with the complainant while signing the MoU. In the absence of any documentary proof demonstrating transparency, disclosure or lease agreement at the time of leasing between the parties, the arbitrary imposition of fit-outs charges by the respondent cannot be sustained in the eyes of law, hence the same is set-aside.

47. Further, complainants are seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges in terms of illegal demands raised with offer of possession.

- **Labour cess**

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

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

- **Development charges**

The Authority has considered the contention raised by the respondent that the development charges are payable in terms of Clause 11 of the Buyer's Agreement. However, it is observed that no such Buyer's Agreement has been placed on record by the respondent in the present matter. In the absence of the BBA, reliance placed by the respondent on Clause 11 thereof is misplaced and cannot be sustained in the eyes of law. Nevertheless, if any development charges are recoverable, the respondent may claim the same strictly in accordance with the terms agreed under the Memorandum of Understanding (MoU) signed between the complainants and the respondent as per the payment plan, duly supported with proper bifurcation and justification.

- **FTTH Charges**

The Authority further observes that the issue of FTTH charges has neither been discussed nor agreed upon between the parties under the Memorandum of Understanding dated 30.10.2013. There is no material on record to show any consent or contractual stipulation with respect to levy of FTTH charges. In the absence of any such agreement, the demand raised by the respondent towards FTTH charges is unsustainable and is hereby set aside.

- **Holding charges**

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.

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."***

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

- **Maintenance charges**

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021,*** the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the

rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **VAT**

The complainants have contended that the respondent has illegally charged amount from him towards VAT, a statement of account cum demand notice of Rs.6,66,417/- towards 'VAT outstanding' was sent by the developer to the complainant on 03.12.2024. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

- **Interest payable**

The Authority has perused the offer of possession letter dated 03.12.2024, wherein an amount of Rs.5,32,764/- has been levied towards interest on delayed payment. Upon examination of the MoU on record, it is noticed that the complainants have already paid a sum of Rs.49,79,636/-, which is more than the basic sale consideration of Rs.48,01,500/- as reflected in the payment plan annexed with the MoU. The Authority further observes that the total basic sale consideration of the said unit is Rs.53,86,454/-, as expressly stipulated in the payment schedule of the MoU executed between the parties. Further, as per the statement of account cum demand annexed with the reply filed by the respondent dated 03.12.2024, it is reflected that an amount of Rs.55,09,372/- has already been paid by the complainants, which stands duly acknowledged and accepted by the respondent. However, the same statement of account records the total sale consideration of the unit as Rs.65,71,807/-. Hence, in terms of the MoU, it is stipulated that the complainants are liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainants on 03.12.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU. Accordingly, the complainants are liable to pay the remaining applicable charges, as agreed between the parties, along with interest, if any, on delayed payment attributable to the allottees.

V. **Respondent be directed to lease the unit in question after the valid offer of possession on behalf of the Complainants as per the terms of the allotment and make payment towards the lease rental.**

48. The complainants are seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that, since the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 30.10.2013.

VI. **In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainants.**

49. The Authority observes that the Occupancy Certificate of the project has already been received by the respondent on 14.08.2024 and the offer of possession of the unit to the complainants by the respondent is already on record. As per Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainants. 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.

VII. **Respondent be not to terminate the allotment or create third party rights on the allotted unit/space.**

VIII. **Direct to the Respondent to execute Conveyance deed under Section 17 of the RERA Act, 2016.**

50. In view of the fact that the complainants have already paid more than sale consideration towards the subject unit, the respondent is hereby restrained from creating any third-party rights, interest, charge, lien, encumbrance, or alienation of any nature whatsoever in respect of the said unit, till the handing

over of possession of the unit to the complainants in terms of this order. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the Authority:

51. 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.49,470/- with effective date as per clauses 12 and 16 of the MoU i.e., 29.10.2013 till the possession of the subject unit after obtaining occupancy certificate.

ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

iii. The respondent is hereby restrained from charging any fit-out charges from the complainants/allottees, as the imposition of such charges is not supported by any clause in the MoU executed between the parties. Accordingly, the fit-out charges are stands struck off.

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

v. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

vi. The respondent shall charge interest on delayed payment from the complainants, if any.

vii. The complainants are directed to pay the outstanding dues, if any, after adjustment of assured returns within period of 60 days from the date of receipt of updated statement of account.

viii. The respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 30.10.2013.

ix. The respondent is directed to get the conveyance deed executed 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.

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

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

54. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated:28.11.2025