

**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	Attendance
1.	CR/1470/2025	Sushma Devi V/S Neo Developers Private Limited	Hemant Phogat (Complainant) Dushyant Yadav (Respondent)
2.	CR/1471/2025	Late Sh. Rajesh Kumar through Legal heirs V/S Neo Developers Private Limited	Hemant Phogat (Complainant) Dushyant Yadav (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 complainant(s) 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, waiver of fit out charges and other reliefs.
3. The details of the complaints, reply status, unit no., date of agreement & MoU, AR clause, total sale consideration and total paid amount are given in the table below:

<b>Project Name and Location</b>	"Neo Square", Sector 109, Gurugram, Haryana
<b>Nature of the project</b>	Commercial Colony
<b>Project area</b>	3.08 acres
<b>Occupation certificate</b>	14.08.2024

S. n o.	Complaint no./title/ date of filing complaint	Unit No. and area admeasuring	Date of execution of BBA and MoU	Assured return clause in the MoU	Basic sale consideration and Amount paid by the complainant
1.	CR/1470/2025  Sushma Devi V/S NEO Developer s Private Limited  DOF: 24.03.2025  RR: 30.09.2025	Unit no. - Priority Allotment serial no.76, 3 <sup>rd</sup> floor  And 392 Sq. ft.  (as per page no. 23 of complaint)	<b>BBA:</b> 02.08.2018  (page 20 of complaint)  <b>MOU:</b> 02.08.2018  (as per page no. 67 of complaint)	<b>Clause 04 of MoU</b>  <i>"The company shall pay a monthly return of Rs.38,487/- on the total amount received with effect from 02.08.2018 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return</i>	<b>B.S.C:</b>  Rs. 19,60,000/-  (as per page no. 23 of complaint)  <b>A.P.:-</b>  Rs. 21,95,200/-  (as per BBA at page no. 25 of complaint)

				<p><i>shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date"</i></p> <p><i>(As per pg. no. 41 of the Complaint)</i></p>	
2.	<p>CR/1471/2025</p> <p>Late Sh Rajesh Kumar through Legal heirs V/S NEO Developers Private Limited</p> <p><b>DOF:</b> 24.03.2025</p> <p><b>RR:</b> 30.09.2025</p>	<p>Unit no. - Priority Allotment serial no.75, 3<sup>rd</sup> floor</p> <p>And</p> <p>301 Sq. ft.</p> <p><i>(as per page no. 29 of complaint)</i></p>	<p><b>BBA:</b> 02.08.2018 <i>(as per page no. 26 of complaint)</i></p> <p><b>MOU:</b> 02.08.2018 <i>(as per page no. 47 of complaint)</i></p>	<p><b>Clause 04 of MoU</b></p> <p><i>"The company shall pay a monthly return of Rs.29,552/- on the total amount received with effect from 02.08.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."</i></p> <p><i>(As per pg. no. 49 of the Complaint)</i></p>	<p><b>B.S.C:</b> Rs. 15,05,000/- <i>(as per page no. 29 of complaint)</i></p> <p><b>A.P.:</b> - Rs. 16,85,600/- <i>(as per page no. 31 of complaint)</i></p>

**Reliefs sought by the complainant -**

1. To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.
2. To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.12.2024 on account of Development Charges, Labour Cess, FTTH charge.
3. To direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 02.08.2018.

4. To direct the respondent to offer the possession of the unit and execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the basic sale price in respect of the unit/ space has been paid by the complainant.

**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

BBA: Builder Buyer's Agreement

MOU: Memorandum of Understanding

BSC: Basic Sale Consideration

AP: Amount paid by the allottee/s

RR: Reply received by the respondent

- Inadvertently, vide proceedings dated 28.11.2025, the grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 was left to be added while calculating the due date 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 assured return, revoking illegal demands and respondent not doing conveyance deed in favour of the complainant.
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 **CR/1470/2025 titled as Sushma 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 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/1470/2025 titled as Sushma 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	3.089 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.	Buyer's agreement	02.08.2018 (As per pg. no.20 of the complaint)
7.	Unit no.	Priority No.76 3 <sup>rd</sup> floor (8-meter height) (As per pg. no. 23 of the complaint)
8.	Unit area admeasuring	392 sq. ft. (Super Area) (As per pg. no. 23 of the complaint)
9.	Date of MoU	02.08.2018 (As per pg. no. 39 of the complaint)
10.	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.
11.	Possession clause	<i>Clause 3 of the MoU</i>  <i>"The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate."</i>
12.	Due date of possession	02.04.2022 (36 months Calculated from date of agreement being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)

13.	Assured Clause	return	<p><i>Clause 4.</i></p> <p><i>"The company shall pay a monthly return of Rs.38,487/- on the total amount received with effect from 02.08.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."</i></p> <p><i>(As per pg. no. 41 of the Complaint)</i></p>
14.	Total basic consideration	Sale	<p>Rs. 21,95,200/- (including GST, IFMD, EDC, IDC and taxes) As per pg. no. 25 of the Complaint)</p>
15.	Amount paid by the complainant		<p>Rs. 19,60,000/- (As per pg. no. 23 of the Complaint)</p>
16.	Occupation certificate		<p>14.08.2024 (As per the DTCP site)</p>
17.	Offer of possession		<p>04.12.2024 (As per pg. no. 51 of the complaint)</p>
18.	Reminders for payment		<p>Letters dated 14.02.2025 and 24.02.2025 (demand of Rs. 3,84,853/-)</p>
19.	Demand for Fit-out charges		<p>16.03.2025 (As per pg. no. 65 of the reply)</p>

**B. Facts of the complaint.**

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

- i. That, after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainant had booked a commercial space in the area designated for food

- court and entertainment space bearing priority no. 76, on 3<sup>rd</sup> floor having its Super Area 392 Sq. ft. and covered area of 156.8 Sq. ft. in the upcoming project of the respondent named "Neo Square" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 19,60,000/- (Rupees nineteen lakhs sixty thousand only) and total sale price of Rs. 22,83,400/- (Rupees twenty-two lakh eighty-three thousand four hundred only), and the complainant had paid a sum of Rs. 21,95,200/- (Rupees twenty-one lakh ninety-five thousand two hundred only).
- ii. The buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 02.08.2018.
  - iii. That the complainant has abided by all the terms of MOU and builder buyer agreement dated 02.08.2018 and has made all the payments/installments in a timely manner, as and when demanded by the respondent and there are no dues pending in respect of the basic sale price of the unit as per the (annexure-1) payment schedule of the builder buyers agreement.
  - iv. That, as per clause-3 of the MOU dated 02.08.2018, the respondent was/is under legal obligation to complete the construction of the project within 36 months from the date of execution of MOU but the respondent has failed to complete the project and handover the possession of the unit within the committed time period and the respondent has delayed the project.
  - v. That, as per clause 4 of the MOU dated 02.08.2018, the respondent was/is under legal obligation and was bound to pay the assured return of Rs. 38,487/- (Rupees Thirty-Eight Thousand Four Hundred Eighty-Seven only) on the total amount receipt w.e.f. 02.08.2020 until the commencement of first lease on the said unit.

- vi. That it is further worthwhile to mention here that upon communication with the respondent/ developer, the complainant was given assurance vide letter dated 18.12.2019 & 15.10.2020.
- vii. That the respondent/ developer will settle the due assured returns at the time of offer of possession and now even after the receiving of Occupation Certificate as informed by the respondent/developer, the respondent/ developer has clearly denied to pay/adjust the assured returns.
- viii. That upon communication with the respondent/ developer, the complainant was given assurance vide letter dated 18.12.2019 & 15.10.2020. That the respondent/ developer will settle the due assured returns at the time of offer of possession and now even after the receiving of occupation certificate as informed by the respondent/ developer, the respondent/developer has clearly denied to pay/adjust the assured return.
- ix. That the respondent in contravention to the terms of builder buyer agreement and MOU dated 02.08.2018 has raised unlawful demands via demand notice and offer of possession letter dated 04.12.2024 on account of development charges to the tune of Rs.2,77,536/- (Rupees Two Lakh Seventy-Seven Thousand Five Hundred Thirty-Six only), FTTH charge to the tune of Rs. 6,490/- (Rupees Six Thousand Four Hundred Ninety only), labour cess to the tune of Rs. 9,800/- (Rupees Nine Thousand Eight Hundred only). The demands raised by the respondent in the said demand notice are not part and parcel of the payment schedule (annexure-1) of the buyer's agreement and these demands are being raised illegally and in an arbitrary manner by the respondent with the sole intention to extort more money from the complainant.
- x. That the complainant upon the receiving of the demand and offer of possession letter dated 04.12.2024, confronted and approached the respondent/ developer and sought clarification upon the unlawful demands raised in the letter

dated 04.12.2024, despite of paying entire sale price as per the payment plan (Annexure-1) of the buyers agreement dated 02.08.2018 and further requested the respondent/ developer for the payment of due assured returns in respect of her unit but the respondent/ developer has failed to provide any satisfactory reply to the just and genuine demands of the complainant.

xi. That the complainant have further requested the respondent by visiting personally at the office of the respondent/ developer to adjust the demand pertaining to IFMS in the demand notice and offer of possession letter dated 04.12.2024 towards the pending assured returns but the respondent/ developer has clearly denied to adjust the same and is further pressurizing the complainant to pay the demands raised in the letter dated 04.12.2024 and is also threatening to terminate the allotment of the unit/space of the complainant by sending reminder-1 letter dated 14.02.2025.

xii. That the respondent is completely ignoring the terms of the buyer's agreement and is acting in an unlawful and arbitrary manner by making demands upon his whims and fancies which are not part of the buyer's agreement with a sole intention to extort money out of the complainant in order to cause wrongful loss to the complainant.

xiii. The complainant has taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyer's agreement and to pay him the assured returns as per the terms of mou dated 02.08.2018 but the respondent has completely ignored the just and genuine demands of the complainant.

xiv. That, till today the complainant has not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter

dated 04.12.2024 and therefore, the complainant is suffering from harassment and is going through a lot of mental and financial agony.

xv. The respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyer's agreement, which is immoral and illegal and amounts to unfair trade practice.

xvi. The cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said unit and it further arose when respondent failed/neglected to pay the assured returns and further threaten the complainant to cancel the allotment of her unit vide letter dated 14.02.2025 by raising unlawful demands in contravention to the terms of builder's buyer agreement dated 02.08.2018. The cause of action is continuing and is still subsisting on day-to-day basis.

### **C. Relief sought by the complainants**

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

- 1) To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.
- 2) To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.12.2024 on account of development charges, labour cess, FTTH charge.
- 3) To direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 02.08.2018.
- 4) To direct the respondent to offer the possession of the unit and execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the basic sale price in respect of the unit/ space has been paid by the complainant.

### **D. Reply by the respondent**

9. The respondent has contested the complaint on the following grounds:
- i. At the outset, the complainants have 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", (hereinafter referred to as the "Project") 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 02/08/2018, whereby seeking allotment of Unit No. 76, admeasuring 392 Sq. Ft super area on the 3<sup>rd</sup> Floor of the project having a basic sale price of Rs. 5000/- (Rupees Five Thousand Only) (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: - 02/08/2018 (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.

- v. That as per terms of the "MOU", the returns were to be paid from 02/08/2020 till commencement of First lease. 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.
- vi. That by no stretch of imagination it can be concluded that the complainants herein are "allottee/consumer." That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.
- vii. That at this stage, it is categorical to highlight that the complainant is trying to mislead this Hon'ble Authority by concealing facts which are detrimental to this complaint at hand.
- viii. That the MOU executed between the parties was in the form of an "Investment Agreement."
- ix. That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.
- x. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Hon'ble Authority. Without prejudice to the rights of the respondent, at the utmost bonafide, the Hon'ble Authority is most humbly appraised by the fact that the

- respondent had been rightly obliging with the payments of committed returns to be made by it.
- xi. That the complainant voluntarily also executed the buyer agreement dated 02.08.2018 for shop no. 76 on 3<sup>rd</sup> floor admeasuring 392 Sq. Ft super area in the project.
  - xii. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act.
  - xiii. That under the scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.
  - xiv. That a perusal of section 13(2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.
  - xv. That the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance where the project was an ongoing project and provisions of the act were being made applicable, in such a situation, a strict interpretation of the statutory provisions is being mandated.
  - xvi. That the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under section 13. Section 13 nowhere mentions the agreements pertaining to assured return are covered under the act, 2016.

- xvii. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under section 31 of the Act. Further, the provisions of section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the act and rules/regulations made there under.
- xviii. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of section 11 highlight the scope of the functions of the promoter, as envisaged under the act. The same also, so do not impose any obligations in relation to returns of investment.
- xix. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The rules in rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promoter and in particular the promoter in relation to an ongoing project. the rules also keep "assured return" out of their scope. rule 8 provides a clear indication as to the matters which are to be covered under the agreement of sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.
- xx. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That even this agreement does not contain any condition governing assured

returns. Thus, any order of payment of assured return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.

- xxi. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.
- xxii. On the basis of the above, it may be considered that there is no provision under the scheme of act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.
- xxiii. Also, a perusal of the Section 2(d) defining allottee as well as section 2 (zk) which defines "promoter" does not include any transaction regarding "assured return". Therefore, the assured return scheme is beyond the scope of the act, 2016 and jurisdiction of the authority.

- xxiv. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale (buyer's agreement). However, in the present matter the complainant is relying upon the terms of MOU which is a distinct agreement than the Buyer's agreement and thus, the MOU is not covered under the provisions of the Act, 2016. The said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.
- xxv. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:
- "11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.*
- xxvi. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.

- xxvii. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- xxviii. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the Respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees/Complainant due above said prevailing confusion/anomaly. The preamble of the act reads as under:
- "An Act 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."*
- xxix. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.
- xxx. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- xxxi. That the BUDS Act is a central Act came subsequent to the companies act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act.

- xxxii. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- xxxiii. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- xxxiv. That 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.
- xxxv. That recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. Vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

- xxxvi. That as the complainant in the present complaint is seeking the relief of assured return/penalty, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.
- xxxvii. A bare reading of Section 13(2) demonstrates that Assured Return/Penalty is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.
- xxxviii. That Moreover, the present complaint is based on the terms of an mou entered into between the parties, which is distinct from the builder-buyer agreement. The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.
- xxxix. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

xl. 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. N o.	Date of Order	Directions	Period Of Restriction	Days affect ed	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.	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> 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.	19 <sup>th</sup> 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 Clearance from the competent Authority.	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 affected the supply and price of ready mix concrete required for construction activities.
3.	8 <sup>th</sup> 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.	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 <sup>th</sup> 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 7 <sup>th</sup> 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 21 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.
5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 <sup>th</sup> 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 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.		9 days	On account of 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.
6.	29 <sup>th</sup> October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 <sup>th</sup> Oct 2018. By virtue of order dated 29 <sup>th</sup> of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov 2018.	1 <sup>st</sup> Nov to 10 <sup>th</sup> 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.	24 <sup>th</sup> 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 relating 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.	11 <sup>th</sup> October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> 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, 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 " <i>MC Mehta vs. Union of India</i> " 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.	3 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 <sup>rd</sup> 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.

- xli. 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. 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.

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

12. 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**

13. 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**

14. 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.*

15. 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 the complainants being investor.**

16. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 02.08.2018, it is revealed that the complainants are buyers, and they have paid a total price of Rs. 21,95,200/- to the promoter towards purchase of a 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;"*

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees

as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

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

18. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. Further, an extension of 6 months on account is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020. As per MoU, the due date of possession was 02.04.2022. 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 relief sought by the complainant.**

- I. To direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.**

19. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 02.08.2018 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
20. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.
21. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:
- (i) *an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
  - (ii) *advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*
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 promoter 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 promoter 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 allottee arises out of the same relationship and is marked by the addendum agreement.

27. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
28. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 02.08.2018, which is reproduced below for the ready reference:

**Clause 4**

*"The Company shall pay a monthly assured return of Rs.38,487/-on the total amount received with effect from 02.08.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- 1. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."*

29. Thus, as per the abovementioned clause the assured return was payable @Rs.38,487/-per month w.e.f. 02.08.2020, till the commencement of first lease.
30. Further, it is observed that despite the assurances extended by the respondent/developer through its letters dated 18.12.2019 and 15.10.2020, wherein it was specifically contended that the assured returns would be settled/adjusted at the time of offer of possession, the respondent has failed to honour the said commitment. Even after the receipt of the Occupation Certificate, the respondent has neither paid nor adjusted the assured returns as promised.

Accordingly, the contention of the respondent in the aforesaid letters stands belied by its own conduct.

31. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 24.07.2020. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the Competent Authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. The validity of the said lease can be considered only after obtaining the Occupation Certificate, i.e., on 14.08.2024.

32. In the present complaint, as per clause 4 of the MOU dated 02.08.2018, the amount on account of assured returns was payable from 02.08.2020 up to the commencement of the first lease which was executed on 24.07.2020 but the first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 04.12.2024. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainants at the agreed rate i.e., @Rs.38,487/- per month from the effective date i.e., 02.08.2020 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainant.

**II. To direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.12.2024 on account of Development Charges, Labour Cess, FTTH charge.**

**III. To direct the respondent not to charge anything which is not the part of Payment Schedule (Annexure-1) of Buyers Agreement dated 02.08.2018.**

33. The complainant has further sought relief regarding the waiver of various charges, penalties, rates, and other demands which, according to them, do not form part of either the Buyers' Agreement dated 02.08.2018 or the MoU executed on the same date. The impugned demand letter dated 04.12.2024 reflects components such as IFMS, development charges, FTTH charges and labour cess, which have been objected to by the complainant. The Authority of the view that:

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

**Clause 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"*

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**

The Authority further observes that clause 11, as discussed hereinabove, does not contain any stipulation regarding levy or recovery of FTTH charges from the complainant. In the absence of any specific contractual consent or agreed term between the parties, such charges cannot be imposed by the respondent.

Accordingly, the respondent is directed to raise demands strictly in accordance with the terms mutually agreed under the executed agreement and MoU.

• **Interest Free Maintenance Security**

The Authority observes that the MoU dated 02.08.2018 executed between the parties specifically provides for payment of additional charges, including IFMS @Rs.225/- per sq. ft. It is evident that the parties had agreed that the said IFMS charges shall be payable separately, in addition to the basic sale consideration, at the time of offer of registration. Accordingly, the levy of IFMS charges, as stipulated in the MoU, is held to be applicable in this case.

34. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 02.08.2018.
35. It is pertinent to note that prior to the filing of the present complaint, no demand towards fit-out charges had been raised by the respondent nor any relief sought has been asked by the complainant. However, during the pendency of the proceedings, the respondent issued a leasing out letter on 26.03.2025, wherein the demand for fit-out charges of Rs.16,18,960/-, which is on record. The view of the Authority in this regard is that 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 complainant.

**IV. To direct the respondent to offer the possession of the unit and execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the basic sale price in respect of the unit/ space has been paid by the complainant.**

36. Since the respondent promoter has obtained occupation certificate on 14.08.2024 and the offer of possession is made on 04.12.2024. 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**

37. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to pay the assured return to the complainant at the agreed rate of @Rs.38,487/- per month from the effective date in clause 4 of the MoU i.e., 02.08.2020 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainant if any.
- 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 shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 02.08.2018.

- IV. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- V. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.
- VI. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.
- VII. 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.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
40. Files be consigned to registry.



**(Arun Kumar)**  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated:28.11.2025**