BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**4101 of 2025**
Date of complaint:	**08.08.2025**
Date of Decision:	**14.11.2025**

Vanditaa Sethi
R/o: Flat no. 402, Tata Housing Gurgaon Gateway, Sector-112, 113, Bajghera, Gurgaon, Haryana – 122017 **Complainant**

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32B, Pusa Road, Karol Bagh, New Delhi-110005 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:

Shri Rajiv Vig (Advocate)	Complainant
Shri E Krishna Dass	Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details.

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 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.	5th floor (page no. 35 of complaint)
7.	Unit area admeasuring	400 sq. ft. (page no. 35 of complaint)
8.	Date of buyer's agreement	26.09.2023 (page no. 29 of complaint)
9.	Date of MOU	19.04.2018 (page no. 16 of complaint)
10.	Assured return Clause	*4. .....* *The Company shall pay a monthly assured return of Rs.26,000/- on the total amount received with effect from 19.04.2018 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 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 first lease on the said unit. This shall be paid from the effective date.* *(page no. 19 of complaint)*

11.	Basic sale consideration	Rs. 24,10,800/- (as per MOU at page 18 of complaint) Rs. 30,02,442/- (as per payment plan on page no. 58 of complaint) Rs. 33,02,138/- (as per SOA at page 54 of complaint)
12.	Amount paid by the complainant	Rs. 29,12,672/- (as per SOA on page no. 54 of complaint)
13.	Occupation certificate	14.08.2024
14.	Offer of possession	04.10.2024 (page no. 52 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That on the representations and assurances of the respondent especially regarding payment of assured return w.e.f. 19.04.2018 the complainant agreed to book and consequently allotted commercial space / unit priority serial no.83 measuring 400 sq. ft. on 5th floor or similar forming part of the area designated for commercial space as food court / entertainment in the aforesaid project at the rate of Rs.6027/- per sq. ft. The complainant and the respondent therefore fall within the expressions "allottee" and "promoter" respectively as defined in Section 2 (d) and (zk) of the Real Estate (R & D) Act, 2016 respectively.
5. That thereafter a memorandum of understanding and buyer's agreement dated 19.04.2018 were executed between the respondent and the complainant which were prepared by the respondent primarily keeping its own interests and benefits in mind.
6. That under clause 3 of MOU, the respondent allotted unit no.83 measuring 400 sq. fton 5th floor or similar forming the part of the area designated for

commercial space as food court / entertainment in the aforesaid project at the rate of Rs.6027 /- per sq. ft. totaling to Rs.24,10,800/-, against which the complainant has already paid a total sum of Rs.29,12,672/- towards basic sale price, EDC/IDC & GST, the receipt of which was clearly admitted by the respondent in clause 4 of the said MOU. The respondent company in clause 3 itself undertook to complete the construction within 36 months from the date of execution of the agreement and apply for grant of completion / occupation certificate.

7. That under clause 4 of the MOU, the respondent company undertook to pay a sum of Rs.26,000/- per month in respect of the aforesaid unit to the complainant from 19.04.2018 till the commencement of first lease of the said unit as per clause 4 of the MOU.
8. That under clause 8 to 10 of the MOU, the obligation was on the respondent company to find out the proposed lessee to whom the aforesaid unit was to be leased out and to finalize the terms and condition of the lease deed in respect of the aforesaid unit and as stated above, the liability of the respondent to pay monthly assured amount to the complainant is till the commencement of first lease of the said unit.
9. However, the respondent failed to complete the construction of the commercial units/space within the stipulated period and paid monthly assured return amounts only upto July, 2019 and thereafter stopped making payments of assured return amount to the complainant and thus violated the provision of Section 11 (4) (a) of the Real Estate (R & D) Act, 2016.
10. That the respondent vide letter dt.11.09.2020 informed the other allottees that due to certain restrictions the respondent shall pay due assured return amount as promised under the terms and conditions of the MOU

dt.19.04.2018 to the allottees at the time of handing over the possession of their units.

11. That the complainant thereafter made number of visits besides calling the officials of the respondent during 2022 to 2024 to know the status of the project. However, the officials of the respondent kept on making one after another excuse and miserably failed to discharge their obligations under the MOU dt.19.04.2018.
12. That in the meantime in the year 2023, the respondent asked the complainant to deposit expenses for registration of buyer's agreement, which the complainant duly deposited and thereafter the buyer's agreement was duly registered on 25.09.2023 wherein the location of unit of the complainant was changed from 5th level to 13th floor. However, the respondent again failed to pay any assured return amount.
13. The complainant thereafter again made various requests and also visited the office of the respondent through her attorney for payment of assured return amount. However, the respondent instead of paying the aforesaid overdue assured return amount raised an illegal demand of Rs.4,10,009/- vide its demand letter dt.04.10.2024, which was objected to by the complainant as the respondent had miserably failed to perform its part of the contract.
14. That the respondent instead of taking any action on the aforesaid emails of the complainant again sent the same illegal demand of Rs.4,10,009/- vide letter dt.27.11.2024.
15. The complainant along with few other allottees thereafter got a legal notice dt.16.12.2024 served upon the respondent calling upon him to discharge his liabilities under the MOUs. The respondent, however, instead of giving any reply to the said legal notice or paying any amount to the complainant

towards overdue assured return amount again raised illegal demands of Rs.11,80,000/- and Rs.39,766/- towards the alleged fit-out charges and maintenance charges vide letters dt.19.12.2024 and dt.24.04.2025.

16. That the respondent has no legal right to claim fit-out charges and maintenance charges before handing over the possession of the unit of the complainant with over assured return amount as promised by the respondent to all its allottees vide letter dt.11.09.2020. The fit-out charges are also not part of the MOU and BBA executed between the parties and were illegally raised against the complainant.

17. That the respondent in order to avoid payment of legitimate overdue assured return amount to the complainant has been raising totally illegal and malafide demands to illegally frustrate the legitimate claim of the complainant against the respondent towards assured return amount, which the respondent was liable to pay w.e.f. 01.08.2019 but which the respondent was postponing on one or other excuse. The respondent is now illegally threatening to cancel/terminate the allotment of the aforesaid unit in favour of the complainant.

18. That a total sum of Rs.24,24,240/- including interest thereon @ 18% p.a. has become due and payable by the respondent to the complainant under the monthly assured return scheme from 01.08.2019 to 31.07.2025. The respondent has misappropriated and mis-utilizing the funds of the innocent allottees including complainant for its own benefits and therefore, failed to complete the construction in time and pay assured monthly return to complainant and others. The respondent is charging compound interest on the defaults of the allottees and is therefore liable to pay interest @18% p.a. on outstanding assured return amount to complainant.

19. That the respondent against the total basic cost of the unit of Rs.24,10,800/- is demanding Rs.11,80,000/- as fit out charges which are otherwise the liability of the tenant / lessee.

20. That the complainant is therefore aggrieved by the following illegal acts of commission and omissions on the part of the respondent:

- Non payment of assured return amount of Rs.26,000/- per month w.e.f. 01.08.2019 and interest thereon till date;
- Raising of illegal demand against the complainant containing alleged charges and interest thereof without first paying and / or at least adjusting its legitimate demand of balance dues of the aforesaid unit from the outstanding assured return amount to be paid by the respondent to the complainant w.e.f. 01.08.2019 and paying the balance outstanding amount of assured return to the complainant;
- Non handing over of the possession and non-execution of sale deed of the commercial unit priority Unit No.83 measuring 400 sq. ft. on 13th floor forming the part of the area designated for commercial space as food court / entertainment in the aforesaid project "Neo Square".
- Issuance of illegal threats by the respondent to the complainant regarding cancellation and termination of allotment of the aforesaid unit of the complainant despite having paid the 100% basic sale price of the aforesaid unit.

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

outstanding assured return amount of the similarly situated allottees with interest.

C. Relief sought by the complainant: -

22. The complainant has sought following relief(s):

(i) Direct the respondent to pay Rs.28,96,920/- including interest thereon @ 18% p.a. under assured return scheme as per clause 4 of the MOU dt.19.04.2018 from 01.08.2019 till 31.07.2025.

(ii) Direct the respondent to pay aforesaid monthly assured amount pendente lite i.e. even after 31.07.2025 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainant as per clause 4 of the MOU dt.19.04.2018.

(iii) Direct the respondent to set aside the illegal demand letters dated 04.10.2024, 27.11.2024, 24.04.2025 and 05.05.2025.

(iv) Direct the respondent to hand over the possession and execute the sale deed of the aforesaid commercial space / unit.

(v) Direct the respondent not to cancel and terminate the allotment of aforesaid commercial space / unit as the complainant has already paid 100% of the sale price of the unit to the respondent and is entitled to recover Rs.29,96,920/- from the respondent on account of non-payment of assured return amount till 31.07.2025.

23. 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

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

I. That the complainant with the intent to invest in the Real Estate Sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 16.02.2018 whereby seeking allotment of Unit No. 83, admeasuring 400 sq. ft super area on the 12th A floor of the project having a basic sale price of Rs.6027/-. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

II. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 19.04.2018 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. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 19.04.2018 till offer of possession. As per terms of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

III. That by no stretch of imagination it can be concluded that the complainant herein are "allottee/consumer." The complainant is 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.

IV. That the MOU executed between the parties was in the form of an "Investment Agreement." Therefore, the allotment of the said unit contained a "Lease

Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Authority, in totality, does not exist.

V. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainant cannot be dealt with by this Authority. That the respondent had been rightly obliging with the payments of committed returns to be made by it.

VI. That the complainant voluntarily also executed the buyer agreement dated 19.04.2018 for Shop no. 83 on 12th A floor admeasuring 400 sq. ft super area in the project.

VII. That the relief of assured return is not maintainable before the 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 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.

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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 promotor 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.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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.

XXII. 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.

XXIII. 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."*

XXIV. 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.

XXV. 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.

XXVI. 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. 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.

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. That an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee. Also, an Appeal bearing no. 647 of 2021, titled as *Vatika Limited vs Vinod Agarwal*, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 27.01.2021, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee.

XXXI. That the as per clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.

XXXII. That as per clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made. Accordingly, as per clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession comes out to be 01.11.2019.

XXXIII. 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. The complainant miserably failed to comply the payment plan under which the

unit was allotted to the complainant and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs. 29,12,672/- against the total due amount of Rs. 33,02,138/-. There is still an outstanding due of Rs. 4,10,009/- which is to be paid by the complainant against the unit booked as per the demand letter dated 04.10.2024.

XXXIV. That since the respondent 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 respondent in the said project and leasing of the unit/space thereof. As per the mutually agreed terms between the complainant and the respondent, the returns were to be paid from 19/04/2018 till the commencement of first lease. As per clause 8 (a) of the MOU, the respondent herein had duly authorised the complainant to put the said unit on lease. 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.

XXXV. 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 allotee(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.

XXXVI. That apart from the above it is worth mentioning here that the allotee is not entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease. The decision taken and terms negotiated by the company shall be final and binding on the allotee(s).

XXXVII. That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 2500/- per sq. ft. to the complainant which is sum of Rs. 11,80,000/- 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.

XXXVIII. That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. The complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MoU.

XXXIX. That the complainant failed to clear the outstanding dues of Rs. 4,10,009/- payable against the unit.

XL. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly,

the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.

XLI. 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. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

XLII. That the demand of VAT is done as per clause 11 of the buyer's agreement. The said clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainant is liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

XLIII. 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.

XLIV. 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.

XLV. 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. 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

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

26. 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

27. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

29. 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.*

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking assured return.

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being the investors.

31. The respondent took a stand that the complainant is 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 complainant 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;"*

32. 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 complainant are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 20.05.2020. 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.

G. Findings on the relief sought by the complainant.

i. Direct the respondent to pay Rs.28,96,920/- including interest thereon @ 18% p.a. under assured return scheme as per clause 4 of the MOU dt.19.04.2018 from 01.08.2019 till 31.07.2025.

ii. Direct the respondent to pay aforesaid monthly assured amount pendente lite i.e. even after 31.07.2025 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainant as per clause 4 of the MOU dt.19.04.2018.

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

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

35. 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.*

36. 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;*

37. 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.
38. 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.
39. 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.
40. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the

complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

41. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 30.01.2018, which is reproduced below for the ready reference:

> *4.*
> *The Company shall pay a monthly assured return of **Rs.26,000/-** on the total amount received with effect from **19.04.2018** 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 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 first lease** on the said unit. This shall be paid from the effective date*
> .

42. Thus, as per the abovementioned clause the assured return was payable @Rs.26,000/- per month w.e.f. 19.04.2018, till the commencement of first lease.

43. In light of the above, the Authority is of the view that as per the MoU dated 19.04.2018, it was obligation on part of the respondent to pay the assured return untill the commencement of first lease. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and

subsequently unit was offered for possession on 04.10.2024. However, no document has been placed on record by respondent to show that the respective unit has been leased out. Accordingly, in that case, the respondent continues to remain liable to pay assured return to the complainant at the agreed rate i.e., @Rs.26,000/- from the date i.e., 19.04.2018 till the commencement of first lease after deducting the amount already paid on account of assured return to the complainant.

iii. **Direct the respondent to set aside the illegal demand letters dated 04.10.2024, 27.11.2024, 24.04.2025 and 05.05.2025.**

44. The complainant stated that the respondent vide letter dated 04.10.2024 raised various illegal demands. The authority after perusal of the said demand notice has observed that the respondent has raised demands on account of fitout charges, labour cess, development charges and FTTH charges.

45. The respondent submitted that as per the Clause 7 of the MoU executed between the parties the complainant has agreed to pay fit out charges. The said clause is reiterated below for ready reference:

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

46. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

47. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.

- **Labour cess**

48. 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**

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

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

50. 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 complainant viz- à-viz the total area of the particular project. The complainant 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**

51. The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

52. 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.

53. 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 complainant 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-

> *"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.***"

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

iv. Direct the respondent to hand over the possession and execute the sale deed of the aforesaid commercial space / unit.

55. The complainant is seeking relief w.r.t the offer of possession. The Authority observes that the occupation certificate for the project was received on 14.08.2024 and subsequently the respondent has offered the possession of the unit on 04.10.2024. In view of the said, the present relief becomes redundant.

v. **Direct the respondent not to cancel and terminate the allotment of aforesaid commercial space / unit as the complainant has already paid 100% of the sale price of the unit to the respondent and is entitled to recover Rs.29,96,920/- from the respondent on account of non-payment of assured return amount till 31.07.2025.**

56. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

57. Since the respondent promoter has obtained occupation certificate on 14.08.2024. 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

58. 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 per month as per the MoU dated 19.04.2018 at the agreed rate i.e., @Rs.26,000/- from the date i.e., 19.04.2018 till the commencement of first lease after deducting the amount already paid on account of assured return to the complainant.

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

iv. The respondent is 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.

59. Complaint stands disposed of.

60. File be consigned to registry.

Dated: 14.11.2025

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