BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1839 of 2025
Date of filing : 21.04.2025
Date of decision : 05.02.2026

Mr Tarsem Malik and Apoorv Malik
R/o: - H.NO 799, Sector 06, Bahadurgarh
Haryana **Complainants**

Versus

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

CORAM:
Shri Phool Singh Saini **Member**

APPEARANCE:
Shri Gaurav Bhardwaj **Counsel for Complainants**
Shri E. Krishna Dass (Advocate) **Counsel for Respondent**

ORDER

1. The present 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 Valid up to 14.05.2024
6.	Name of licensee	M/s Shri Maya Buildcon Pvt. Ltd.
7.	RERA Registered/ not registered	**Registered** 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
8.	Unit and Floor no.	Priority Serial No. 133 at third floor (As mentioned on page no.24 of the complaint)
9.	Unit area admeasuring	300 sq. ft. (Super Area) (As mentioned in BBA page no.62 of the complaint)
10.	Date of execution of buyer's agreement	12.03.2020 (as per page 58 of the complaint)
11.	Date of execution of MoU's	12.03.2020 (as per page 82 of the complaint)
12.	Possession Clause	**Clause 5.2 of BBA & Clause 3 of MOU** ...The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start

		of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The Company on grant of occupancy. Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues. **[Emphasis supplied]** (As per clause 5.2 of BBA at page 65 & as per MOU at page no. 84 of complaint)
13.	Assured return clause as per MOU	***Clause 4*** *... The company shall pay a penalty of Rs.37,125/- per month on the said unit. On the total amount received, with effect from effective date-II (i.e., 13.08.2021) before deduction of Tax at Source... The penalty shall be paid to the allottee(s) from end of effective date-II until the offer of possession letter date, on prorate basis.* *[Emphasis supplied]* (As per page no. 85 of complaint)
14.	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.

15.	Due date of possession	**12.09.2023** [12.03.2023 + 6 months] (Note: Due date to be calculated 36 months from the execution of the agreement i.e., 12.03.2020, being later, plus grace period of 6 months) (Note: Grace period of 6 months allowed as per *HARERA notification no. 9/3-2020 dated 26.05.2020*)
16.	Total Sale Consideration	Rs.33,28,716/- (As mentioned in Annexure-I at page no.79 of the complaint)
17.	Amount paid by the complainant	Rs.23,99,264/- (as mentioned in demand letter dated 15.04.2024 at page 93 of complaint as well as per receipts at page 51-55 of the complaint)
18.	Payment Plan	Down Payment plan (As per pg. no. 79 of the complaint)
19.	Occupation certificate	14.08.2024 (As per DTCP site)
20.	Demand and possession letter	04.11.2024 (As per pg. no. 99 of the complaint)
21.	Letter for leasing of space on 3rd floor	Rs.12,39,000/- (for Fit-outs) Dated 02.04.2025 (As per annexure A/1 of application u/s 36 of the Act)

B. Facts of the complaint

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

i. That the respondent advertised about the launch of its commercial complex project namely "NEO Square" located in Sector-109, Dwarka

Expressway Gurugram, Haryana. The said respondent painted rosy picture of the project in their advertisement making tall claims and representing that the project is strategically connected with Dwarka Expressway and surrounded with major residential development. The respondent further asserted that there will be accessibility to all important corners of NCR in matter of minutes. The project was advertised as encompassing various types of retail space, Office space including multi brand retail store, restaurants, Roof top sky lounge, 8 screen multiplexes with gold glass etc.

ii. That the complainants booked a commercial unit via application in the said project by paying an amount of Rs. 1,00,000/- vide instrument bearing no. 001810 dated 08.02.2020 drawn from Canara Bank.

iii. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company, the complainants further made payment of Rs. 5,00,000/- vide instrument bearing no. 467042 dated 19.02.2020, Rs. 10,00,000/- vide instrument bearing no. 467043 dated 24.02.2020, Rs. 6,40,000/- vide instrument bearing no. 467049 dated 02.03.2020 and Rs. 1,59,264/- video instrument bearing no. 467051 dated 12.03.2020 respectively drawn on Canara Bank towards the purchase of the said commercial space. It is pertinent here to mention that the complainants have made a total payment of Rs. 23,99,264 /- against the total sale consideration of Rs. 27,69,600/- prior to execution of memorandum of understanding and builder buyer agreement.

iv. That thereafter, a buyer agreement was executed between the complainants and the respondent on 12.03.2020 wherein under clause 5.2, the respondent undertook to complete construction, handover

possession of the unit in question within 36 months from the date of execution of buyer agreement i.e. by 12.03.2023. It is pertinent to mention here that the the complainants raised several objections to various terms and conditions of the said buyer agreement but the respondent clearly stated that the execution of buyer agreement is merely a formality. Deposing faith upon the respondent, the complainants agreed to the said buyer agreement.

v. That pursuant to the afore-mentioned payment by the complainants, the respondent executed an MOU dated 12.03.2020 with the complainants thereby allotting the commercial space priority no. 133 located in 3rd Floor. That prior to execution of the said MOU, the complainants opted for "Possession Link Payment Plan" and has agreed that the basic sale consideration for allotment of the unit is Rs. 9,232/- admeasuring super area 300 per sq. ft and the complainants paid more than 90% payment against the total basic sale price of Rs. 27,69,600/-. It is imperative to mention here that as per clause 4 of MOU the respondent shall pay a penalty of Rs. 37,125/- to the complainants s on the total amount received with effect from 13.08.2021 (Effective Date-II) until the date of offer of possession.

vi. That the aforesaid MOU contained various unfair clauses, one being where no specific date of offer of possession being committed by the Respondent. Similarly, the MOU nowhere mentioned about the delay compensation charges to be payable in case of delay in offer of possession. On the contrary, in case of delay of payment by the buyer, the memorandum of understanding clearly laid down an interest @ 18% p.a. to be levied by the respondent. The said clauses are completely one sided and are liable to be declared as null and void.

vii. That till date, the respondent failed in handing over of possession and monthly assured return of Rs. 37,125/- on the total amount received as per the MOU. It is pertinent here to mention that the respondent assured to pay the monthly assured return to the complainants but the complainants has not been received any assured return till date. The continuous atrocity of the respondent company has caused severe mental agony and financial harassment to the complainants.

viii. That later, vide letter dated 15.04.2024 titled as "Demand Notice and Offer for Fit-out", the respondent informed the complainants about the formal possession will be offered on receipt of occupation certificate and completion of formalities and further notified regarding the occupation certificate has already been applied for the unit bearing priority no. 133 to the complainants.

ix. That the complainants received a letter dated 04.11.2024 titled as "demand notice and offer of possession" the respondent informed the complainants that the occupation certificated has been received and the respondent are ready to initiate the possession process of the unit. Subsequently, the respondent requested the complainants to clear the pending dues on or before 11.11.2024 as per Annexure – I of the said letter dated 04.11.2024. However, to the utter shock of the complainants, as per the said annexure – i of the afore-mentioned letters, the respondent raised an additional demand of Rs. 11,55,954/- whereas as per the Annexure – I of the BBA, the pending dues amount to Rs. 3,70,336/-. It is to be noted that the complainants had already made 90% payment in 2020.The Respondent again exerted undue pressure upon the Complainants to pay CAM charges and other fees as demanded by the maintenance service provider.

x. That the respondent simply duped the complainants of her hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted in to extreme kind of financial hardship, mental distress, pain and agony to the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to pay delayed possession charges to the complainants on the principal amount paid by the complainants, from the due date of possession till the actual handing over of possession.

ii. Direct the respondent to pay pending assured return for a period of 13.08.2021 till 04.11.2024 amounting to Rs.19,16,567/- (along with interest @11.10% from the effective date II until offer of possession letter date)

iii. Direct the respondent not to charge any amount beyond he amount mentioned in builder buyer agreement.

iv. Direct the respondent to not levy any holding charges from the complainant.

v. Direct the respondent to not levy any maintenance charges from the complainants till date of handover;

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

D. Reply by the respondent

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

i. That at the outset, it is relevant to state that Respondent is a real estate company engaged in the business of the development and construction of

real estate projects and is one of the reputed names in the real estate sector in the National Capital Region.

ii. 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. It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularization 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.

iii. It is submitted that the complainants with the intent to invest in the Real Estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. 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 14/02/2020, whereby seeking allotment of unit no. 133, admeasuring 300 sq. ft super area on the 1st floor of the project having a basic sale price of Rs. 9232/- 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 upon the request of the complainants through the above said application form dated 14/02/2020, respondent vide welcome letter dated 14.02.2020 as well as allotment letter allotted unit bearing no. 133

on 1st floor as per the terms and conditions forming part of the application form & buyer's agreement.

v. That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 12/03/2020 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 13/08/2021 till Offer of Possession. It is also submitted that as per terms of the MOU, the Complainants herein had duly authorised the Respondent to put the said unit on lease.

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. That the MOU executed between the parties was in the form of an "Investment Agreement." That the Complainant had approached the Respondent as an investor looking for certain investment opportunities.

viii. It is pertinent to mention herein that as per the agreed terms and conditions of the MOU the Complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted

that there is absolutely no escalation in the sale consideration of the Unit, Fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the Unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the Unit in terms of the MOU.

ix. From a bare perusal of the aforementioned clause of the MOU, it is evident that the complainant himself has agreed to pay the fit-out charges to be incurred on account of leasing the unit to any lessee. That the Respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainant about the details of the lease and requested the complainant to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be utilised to make ready the space in terms of the requirements of the lessee for their business operation.

x. That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainant as per Clause 8 (d) of the MOU. It is further clarified herein that the expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental itself. Thus, as per

Clause 8 (d) of the MOU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing.

xi. That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the MOU which are beneficial to him and denies the other.

xii. It is pertinent to note herein that the units were sold as a bare shell, and they were to be made fit out ready at the time of possession. It is clear that the sale consideration for the units did not include any fit-out expenses therefore, the fit-out expenses were meant to be recovered as on the date of leasing rather than as on the date of booking. Much time has lapsed from the date of booking to the date of leasing, and the cost and also the preferences of the lessees have also undergone changes, and accordingly, the fit-out ready leases are as per the current market preferences and prices.

xiii. That the respondent has always been transparent about the fit-out charges. That as and when the buyers have approached the respondent, clarifications and details with respect to fit-out charges were provided to such buyers.

xiv. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent Authority on 24.02.2020 and reapplied on 29.06.2021. It is noted herein that the buidling was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the

year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent Authority, entered into a 1st lease with the Lessee.

xv. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent Authority on 23.01.2023 and the same was issued on 14.08.2024.

xvi. It is pertinent to mention herein that after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1st lease with the lessees. However, the complainant failed to come forward and to do the needful.

xvii. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to Assured Return was not clear and accordingly, a Writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.

xviii. Without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the Occupation Certificate for the execution of the Lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. It is noted herein that 1st lease was executed as the building was completed and the fit-out works as per the

requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.

xix. It is most humbly submitted that it is an established practice in the Real Estate Sector, wherein the Promoter executes a Lease Deed with a Lessee for a future Project even before the completion of the said Project. In fact, there is no bar by any statutory provision on entering into such an understanding. There have been numerous such instances where renowned developers have adopted such a practice. A few of such instances/ are reproduced herein, which will also prove that it is legally valid to lease out premises before the Completion of the project.

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

S. No.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any	7th of April, 2015 to 6th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped

		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.			movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment 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.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not

					feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and 17th Nov, 2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.		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.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent.

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

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

11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

xxi. 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 has been provided in the agreement.

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

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

E. Jurisdiction of the Authority

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

E.I Territorial Jurisdiction

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

E.II Subject matter jurisdiction

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

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

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

F. Findings on the objections raised by the respondent:

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

13. The respondent took a stand that the complainant are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the 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;"*

14. 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 and BBA dated 12.03.2020. 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.

F. II. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return.

15. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

16. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for

the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

> *"...it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification"*

17. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainants.

i. Direct the respondent to pay the unpaid assured return amount along with the interest.

ii. Direct the Respondent to pay delayed possession charges to the Complainant on the principal amount paid by the Complainant, from the due date of possession till the date of actual handing over of possession.

G.1) Assured Returns

18. The complainants are seeking unpaid assured returns/penalty on monthly basis as per the terms of the MoU dated 12.03.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

19. The respondent has submitted that the complainants in the present complaint 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.

20. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

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

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

22. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
23. It is to be noted that the Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.
24. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
25. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. 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 dated 12.03.2020.

26. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 12.03.2020, which is reproduced below for the ready reference:

> ***Clause 4***
> *"The Company shall pay a Penalty of* ***Rs.37,125/-*** *(Rupees twenty Nine Thousand Nine Hundred Seventy three only) per month on the said Unit, On the total amount received with effect from* ***13.08.2021*** *(Effective Date-II) Subject to TDS, Taxes, cess or any of their levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- I. The penalty shall be paid to the Allottee(s) from end of effective date II until the offer of possession letter date, on prorate basis."*

27. Thus, as per the abovementioned clause the assured return/penalty was payable **@Rs.37,125/-** per month w.e.f. 13.08.2021, till the offer of possession.

28. In light of the above, the Authority is of the view that as per the MoU dated 12.03.2020, it was obligation on part of the respondent to pay the assured return/penalty till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 04.11.2024. Accordingly, the respondent/promoter is liable to pay assured return/penalty

to the complainants at the agreed rate i.e., @Rs.37,125/- from the effective date as per clause 4 of the MoU i.e., 13.08.2021 till the offer of possession letter i.e., 04.11.2024.

G.II) Delay Possession Charges:

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

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

30. The subject unit was allotted to the complainant vide MOU/BBA dated 12.03.2020. In the facts and circumstances of this case, the developer was obligated to complete the construction of the said unit within 36 months from the date of execution of this agreement or from the start of construction whichever is later. The period of 36 months is calculated from the date of BBA i.e., 12.03.2020 being later. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 12.09.2023.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it

has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

32. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% per annum.

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

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

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter

which is the same as is being granted to the complainant in case of delay possession charges.

35. On consideration of documents available on record and submissions made by the complainant, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 12.09.2023.

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

37. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 12.03.2020. The assured return/penalty in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of @Rs. 37,125/- on the total amount received with effect from 13.08.2021 till the offer of possession letter i.e., 04.11.2024. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs.37,125/- per month whereas the delayed possession charges are payable approximately Rs.21,593/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their

money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

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

39. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 12.03.2020, the promoter had agreed to pay to the complainant allottee @Rs.37,125/- with effect from 13.08.2021 till the offer of possession letter date.

40. Therefore, considering the facts of the present case, the respondent is liable to pay the amount of assured return as per the clause 4 of the MoU at the agreed rate i.e., @Rs.37,125/- with effect from 13.08.2021 till the offer of possession letter date i.e., 04.11.2024.

iii. Direct the respondent not to charge any amount beyond the amount as mentioned in Builder Buyer Agreement.

iv. Direct the respondent to not levy any holding charges from the complainant.

v. Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.

41. All the above reliefs are taken up together as the same are inter connected with each other. Further, in all the complaints, complainants are seeking

relief with regard to the waiver of the illegal Fit-out charges, development charges, labour Cess, FTTH charges and Interest Payable.

42. It is to be noted that the respondent, vide its demand notice and offer of possession letter dated 04.11.2024, and thereafter through subsequent reminder letters, has raised various demands upon the complainant towards development charges, labour cess, FTTH charges, EDC/IDC, VAT, interest on delayed payment, etc. Upon perusal of the record and the applicable contractual documents, this Authority observes that while certain statutory and development-related charges may be leviable strictly in accordance with the terms of the BBA and MoU and subject to actual proof of payment to the competent authorities, the respondent cannot raise blanket or composite demands without placing on record any justification, calculation sheet, or documentary evidence substantiating the same. Further, it is settled that interest on delayed payment cannot be charged in a mechanical manner, particularly when the delay, if any, is attributable to the respondent itself on account of non-handover of possession and non-fulfilment of its contractual obligations. Accordingly, the Authority is deliberating its findings on the demands:

- **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**

43. 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"*

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**

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**

The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the 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-

> 3. *"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain*

> *the apartment. Therefore, the* ***holding*** *charges will not be payable to the developer.* ***Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.***"

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

- **Interest Free Maintenance Security**

The Authority observes that the MoU dated 12.03.2020 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.

- **Fit-Out charges**

44. The respondent, vide letter dated 02.04.2025, raised a demand of Rs.12,39,000/- towards fit-out charges. The complainants objected to the said demand on the ground that such charges were neither contemplated under the Agreement nor under the MoU executed between the parties and has directed the complainant to make the said payment in favour of a third party, namely *World of Shalom Restaurants Ltd.*, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. However, on perusal of the MoU executed between the allottee and the promoter, the Authority finds that Clause 8(d) exists in the present MoU and is reproduced herein below:

> *"That the Allottee(s) further agrees and understand* ***that in case the tenant desires any infrastructural changes in the form if separate sewage arrangement or the gas pipeline or any other change which involves***

> ***expenses 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 rent 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 8(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received."*

45. The Authority observes that clause 8(d) of the MoU clearly mandates that any expenditure incurred on account of infrastructural or any changes, if demanded by the tenant, can be recovered from the allottee only after issuance of a written notification by the promoter on the registered e-mail address of the allottee. The said clause does not confer any unfettered or unilateral right upon the promoter to incur expenses on its own accord and thereafter recover the same from the allottee without prior intimation. Such conduct is contrary to the express terms of clause 8(d) as well as the statutory obligations cast upon the promoter under Section 11(4)(d) of the Act, which require the promoter to act in a reasonable and responsible manner. 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 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainants.

- **Interest on delayed payment:**

46. The Authority has perused the offer of possession letter dated 04.11.2024, wherein an amount of Rs.37,125/- has been levied towards interest on delayed payment. Upon examination of the MoU on record, it is noticed that the complainant has already paid a sum of Rs.23,99,264/-, which is less than the total basic sale consideration of the said unit is Rs.27,69,600/-, as expressly stipulated in the possession linked payment plan of the MoU executed between the parties. Hence, in terms of the MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 04.11.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU. Accordingly, the complainant is liable to pay the remaining applicable charges, as agreed between the parties, along with interest, if any, on delayed payment attributable to the allottees.

vi.The respondent may kindly be directed to hand over the possession and execute the sale deed of the Commercial Space.

47. The Authority hereby directs the respondent not to cancel the unit and shall hand over symbolic and constructive possession of the unit in question to the complainant within a period of 30 days from the date of this order. The Respondent is further directed to ensure that the possession is delivered in

48. 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 -

49. 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 penalty/assured return to the complainant at the agreed rate i.e., @Rs.37,125/- from the effective date as per clause 4 of the MoU i.e., 13.08.2021 till offer of possession letter date i.e.,04.11.2024, after deducting the amount already paid on account of assured returns to the complainants.

II. The respondent/promoter is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

III. The respondent/promoter is directed to handover possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days.

IV. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge FTTH and 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***.

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

VI. The respondent 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.

VII. The complainants are 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.

VIII. The respondent is directed to restrict its demand towards advance maintenance charges strictly to a maximum period of one year only, and any demand raised in excess thereof shall be deemed unsustainable and liable to be withdrawn/adjusted in accordance with law.

IX. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.

50. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

51. File be consigned to registry.

Phool Singh Saini
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 05.02.2026