

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no.** : 1534 of 2025  
**Date of filing** : 27.03.2025  
**Date of decision** : 12.02.2026

Mihir Kumar Jha  
**R/o:** - Kunwar Singh Colony, Chas,  
Near Garga Bridge, Post-chas, Jharkhand-827013 **Complainant**

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 Rawat **Counsel for Complainant**  
Shri Venket Rao (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	<b>Registered</b> 109 of 2017 dated 24.08.2017 Valid up to 23.08.2021
8.	Unit and Floor no.	Priority No.97, 3rd floor (Restaurant) (As mentioned in BBA at page no.55 of the complaint)
9.	Unit area admeasuring	300 sq. ft. (Super Area) (As mentioned in BBA at page no.55 of the complaint)
10.	Date of execution of buyer's agreement	31.08.2019 (As per page no.52 of the complaint)
11.	Date of execution of MoU's	31.08.2019 (As per page no.34 of the complaint)
12.	Possession Clause	<b>Clause 5.2 of BBA &amp; Clause 3 of MOU</b> ...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.



		<p>Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.</p> <p><b>[Emphasis supplied]</b></p> <p>(As per clause 5.2 of BBA at page 59 of complaint)</p>
13.	Assured return clause as per MOU	<p><b>Clause 4</b></p> <p><i>... The company shall pay a penalty of Rs.29,973/- per month on the said unit. On the total amount received, with effect from effective date-II (i.e., 23.08.2020) 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 prorata basis.</i></p> <p><b>[Emphasis supplied]</b></p> <p>(As per page no. 85 of complaint)</p>
14.	Date of start of construction	<p>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.</p>
15.	Due date of possession	<p><b>31.08.2022</b></p> <p>[Nate: calculated 3 years from the date of execution of MoU/BBA, being later.]</p>
16.	Total Sale Consideration	<p>Rs.21,33,154/-</p> <p>(as mentioned in demand letter dated 04.02.2025 at page 80 of complaint)</p>
17.	Amount paid by the complainant	<p>Rs.18,39,264/-</p> <p>(as mentioned in MoU at page 36 &amp; in demand letter dated 04.02.2025 at page 80 of complaint)</p>



18.	Occupation certificate	14.08.2024 (As per DTCP site)
19.	Demand notice and offer of possession [Priority no.97 on 2 <sup>nd</sup> floor, Area 300 sq. ft.]	04.02.2025 (page 78 of complaint)
20.	Reminder letter's	27.02.2025 & 25.03.2025 (page 48-49 of reply)
21.	Final reminder	02.04.2025 (page 50 of reply)
22.	Legal Notice from complainant	04.03.2025 (At page 83-88 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- The respondent advertised about its new project namely 'Neo Square' in Sector 109 of the Gurugram. The Respondents painted a rosy picture of the project in its advertisements making tall claims.
  - In 2008, the respondents company issued an advertisement announcing a commercial complex "Neo Square" at Sector - 109, Dwarka Expressway, Gurugram was launched by respondents, under the license no. 102 of 2008 dated 15.05.2008, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondents confirmed that the projects had got Building Plan Approval from the authority.
  - The complainant while searching for a commercial unit was lured by such advertisements and calls from the brokers of the respondents for buying a commercial space in their project namely Neo Square. The respondents company told the complainant about the moonshine reputation of the company and the representative of the respondents company made huge presentations about the project mentioned above and also assured that they



have delivered several such projects in the National Capital Region. The Respondents handed over one brochure to the Complainant which showed the project like heaven and in every possible way tried to hold the Complainant and incited the Complainant for payments.

- iv. Relying on various representations and assurances given by the Respondents company and on belief of such assurances, Complainant booked a unit in the project by paying a booking amount of Rs. 2,50,000/- dated 25.06.2019 drawn on Allahabad Bank towards the booking of the said unit bearing no. 97, Third Floor, NEO SQUARE in Sector-109, having super area measuring 300 sq. ft. to the Respondents and the same was acknowledged by the Respondents on 27.06.2019.
- v. That based on the payment plan and as per the demand raised by the respondent company, complainant made the following payments: - Rs.2,50,000/- on 25.06.2019 and Rs. 15,89,264/- on 22.08.2019 to buy the captioned unit.
- vi. That the Respondents confirm to the Complainant booking of the said unit and providing the details of the project, confirming the booking of the unit dated 25.06.2019, allotting a unit no. 97, Third Floor measuring 300 Sq. Ft (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 19,06,764/-, which includes basic price, EDC and IDC, and other Specifications of the allotted unit.
- vii. As per assurance and on the bases of the representation by the respondent builder a MOU dated 31.08.2019 was executed between the parties.
- viii. Furthermore, after repeated reminders and follow ups only the buyers agreement was executed on 17.12.2021.
- ix. That as per agreed terms of MOU and agreement the Respondents agreed to put the said unit on lease and to effectuate the same. But till date



Respondents has failed to abide and honour the agreed terms of MOU and agreement by not leasing out the above said unit till date.

- x. As per the said assurance at the time of booking, and clause 5.2 of the BBA the Respondents was liable to handover the possession of the said unit on or before 31.08.2022 i.e. 36 months from the date of agreement, therefore, the Respondents was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery and the Complainant as per agreed terms of booking and MOU and agreement is also entitled to get the monthly assured amount till the completion of the unit for fit outs and also post the completion of the construction of the said building, Complainant will be paid committed return per Month on super area from the date of completion of construction of said building till the said unit is put on lease, whichever is earlier.
- xi. During the period the Complainant went to the office of Respondents several times and requested them to allow them to visit the site and when the Respondents will pay the assured return the Complainant is entitled to but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once Complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The Complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- xii. The Complainant contacted the Respondents on several occasions and was regularly in touch with the Respondents. The Respondents was never able to give any satisfactory response to the Complainant regarding the status of the construction and were never definite about the delivery of the possession.
- xiii. The Complainant kept pursuing the matter with the representatives of the Respondents by visiting their office regularly as well as raising the matter to



when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.

- xiv. That the complainant continuously asking the respondents company about the status of the project, time by which the project is expected to be completed, when the respondents will start paying the penalty amount that respondents is liable to pay and also the monthly assured amount but respondents was never able to give any satisfactory response to the complainant
- xv. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 18,39,264/- against the total sale consideration of Rs. 19,06,764/-.
- xvi. That it is pertinent to mention here that allotment of the unit was made on 27.06.2019, after coming into force of the RERA Act,2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charged the Complainant on the super area i.e. 300 Sq. Ft. which is against the provisions of the RERA Act,2016 and the rules,2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the respondent to charge on the carpet area instead of the super area of the unit.
- xvii. In the present case respondent has collected Rs. 18,39,264/- against the total sale consideration of Rs. 19,06,764/- till date.
- xviii. The complainant had also inquired about the assured return which was to be paid the respondents, as also the promised possession of the unit in question, which was to be handed over to the Complainant, by the



- respondents, but the respondent has not taken any step in furtherance thereof till date but has only kept on delaying it without any rhyme or reason.
- xix. The complainants after many requests and emails; received the demand notice cum offer of possession on 04.02.2025. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands which are actually not payable as per the Builder Buyer Agreement.
- xx. That offering possession by the Respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the Complainants as per the Agreement, by the Complainants and hence the offer of possession.
- xxi. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact, it is a letter for demand of money rather than being an offer of possession.
- xxii. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following-IFMS, development charges, FTTH and labour Cess and interest etc which are actually not payable as per the Builder Buyer Agreement: That offering possession by the Respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that



those charges were never payable by the Complainants as per the Agreement, by the Complainants and hence the offer of possession.

xxiii. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact, it is a letter for demand of money rather than being an offer of possession.

xxiv. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. Complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the Complainants left with no option instead of signing the same.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - i. Direct the respondent to hand over the symbolic and constructive possession of said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.
  - ii. Direct the Respondent to execute a conveyance deed in respect of the unit in question in favour of the Complainant;
  - iii. Direct the Respondent to pay the interest on the total amount paid by Complainant -at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession or valid offer of possession.



- iv. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay the due and payable monthly assured return /commitment charges amount till the unit in question is so leased out in terms of the allotment letter and possession of the unit in question is handed over, as in accordance with the MOU dated 31.08.2019.
- v. It is most respectfully prayed that this Hon'ble Authority be pleased to order Respondents to pay the amount due to the Complainant, from the Respondents, on account of the interest, as per the guidelines laid in the RERA, 2016 and the monthly assured amount(s) as per clause of the MOU.
- vi. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondents from raising fresh demand(s) for payment under any head, as the Complainant had already made payment as per the payment plan.
- vii. It is most respectfully prayed that till the time possession, as promised in the MOU, of the unit in question, is handed over to the Complainant, this Hon'ble Authority be pleased to order the respondents to pay a penalty of Rs.29,973/- Per Sq. Ft. Per Month till possession of the said property as per terms and conditions of the MOU.
- viii. It is most respectfully prayed that till the time possession, as promised in the MOU, of the unit in question, is handed over to the Complainant, this Hon'ble Authority be pleased to order the respondents to pay lease rentals at assured lease @ Rs. 81.75/- Per Sq. Ft Per Month till lease out the said property as per terms and conditions of the MOU.
- ix. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.



- x. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to set a side offer of possession dated 04.02.2025.
  - xi. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondents to provide the exact lay out plan of said unit.
  - xii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents to pay monthly assured rental amount/ commitment charges w.e.f. the date of completion of the construction of the said building till the leasing out of the said space/unit as per clause of the MOU.
  - xiii. It is most respectfully prayed that this Hon'ble Authority be pleased to taken penal action against the respondents for violation of various provisions of the RERA Act,2016.
  - xiv. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, FTTH Charges, maintenance charges etc, which in any case is not payable by the Complainant.
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 the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 300 sq. ft. super area in the project "NEO Square".
  - ii. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 97, on 3<sup>rd</sup> floor, admeasuring 300 sq. ft. super area.



- iii. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.
- iv. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 31.08.2019
- v. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 31.08.2019 was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- vi. It is noted herein that since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit and vide letter dated 01.10.2020, requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- vii. The occupation certificate of the project was granted by the Competent Authority on 14.08.2024.
- viii. Thereafter, the respondent sent an offer of possession letter dated 04.02.2025, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- ix. Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of



- outstanding dues. Therefore, the respondent was constrained to issue reminders dated 27.02.2025, 25.03.2025 and 02.04.2025 requesting the complainant to do the needful.
- x. It is pertinent to mention herein that the complainant is a investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.
- xi. It is most humbly submitted that the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an MOU which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainants themselves have entrusted the respondent with the leasing rights of the units.
- xii. That from a mere perusal of the aforementioned submissions, it is evident that physical possession of the subject unit and leasing the unit by himself was never the intent of the complainant. Therefore, the present complaint is liable to be dismissed and it is evident from the BBA and MOU entered into; the complainant may be directed to accept constructive possession and be in adherence of terms of MOU with respect lease obligation thereunder.
- xiii. It is pertinent to mention herein that the complainant, vide his complaint, is raising an issue that he has already paid the entire sale consideration and that the respondent is raising additional demands.



- xiv. It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. That the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit. That under Clause 11 of the BBA, the Complainant has agreed to pay all applicable charges, including Development Charges, as may be levied at the time of execution of the BBA or at any future date.
- xv. That from a bare perusal of the aforementioned clause of the BBA, it is evident that the Complainant himself has agreed to pay the development charges, therefore, at this belated stage, the Complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.
- xvi. It is noted herein that due to additional costs incurred by the Respondent in providing the aforementioned facilities, the development charges are demanded from the Complainant as per Clause 11 of the BBA. Therefore, as per the agreed terms and conditions of the BBA, the Complainant is bound to pay the Development Charges and the Respondent is entitle to recover the same, so it is evident that there is no escalation in the price of the subject Unit, the price remains frozen, that the development charges as and when could have been quantified, the Respondent would have been in a position to charge. That after issuance of the Occupation Certificate, the development charges have been quantified, therefore, the same have been demanded from the Complainant as per Clause 11 of the BBA.
- xvii. 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.

- xviii. 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.
- xix. 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.
- xx. 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.
- xxi. 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.
- xxii. It is noted herein that payment of the fit-out charges is very crucial for leasing out the subject Unit, as it is required for making the subject unit ready for occupation of the Lessee to run its business. Without getting the subject Unit ready as per the requirements of the Lessee, it is not possible for any Lessee to take the subject Unit on lease. Furthermore, the subject Unit is leased out along with other units as part of a larger space, therefore, the unwillingness of the Complainant towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the Project, whose leasing of the units will be hampered due to the defaults of the Complainant. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the Project and the overall fate of the Project, the Complainant is bound to pay the fit-out charges.
- xxiii. 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 building was completed and all the requirements 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 lessees were showing interest in taking the Units in the Project on lease, therefore, the Respondent anticipated that the Occupation Certificate will be granted by the Competent Authority, entered into a 1<sup>st</sup> lease with the Lessee.

- xxiv. 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.
- xxv. 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 1<sup>st</sup> lease with the Lessees. However, the Complainant failed to come forward and to do the needful.
- xxvi. Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1<sup>st</sup> 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 adjudication.
- xxvii. 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 1<sup>st</sup> 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 1<sup>st</sup> lease of the Units, failed to do the needful.
- xxviii. That from a mere perusal of the aforementioned submissions, it is evident that the Complainant himself have authorized the Respondent to finalize the terms and conditions of the lease and categorically agreed to execute a separate lease deed, if required. Further, the Complainant himself agreed that in case of his failure to execute a separate lease deed if required, the Respondent shall be authorized to execute the lease deed on behalf of the Complainant. Therefore, in view of the agreed terms and conditions of the MOU, it is submitted herein that the lease deed executed by the Respondent on behalf of the Complainant are valid as the same are executed as per the terms and conditions of the MOU.
- xxix. That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving Assured Return/Penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such Assured Return/Penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the Respondent is legally barred from honouring such commitments beyond the said date.
- xxx. It is pertinent to mention herein that in the present Complaint, the Complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the Respondent. It is noted herein that though the



Respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per Clauses 10, 11 and 12 the Complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, Insurance, Stamp, Registration, Development Charges and allied services in relation to the said unit and the Project as a whole.

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

S. N o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity, The Order had Completely Hampered The construction activity.
2.	19 <sup>th</sup> July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate	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



		consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.			construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 <sup>th</sup> Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 <sup>th</sup> Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 <sup>th</sup> Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention



					that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.
5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing, (17 <sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 <sup>th</sup> October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 <sup>th</sup> Oct 2018. By virtue of order dated 29 <sup>th</sup> of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov 2018.	1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 <sup>th</sup> July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators



					which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 <sup>th</sup> October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "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.	3 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 <sup>rd</sup> week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction



					activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

xxxii. 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 31.08.2019. 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 complainant.**

- 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 complainant is seeking unpaid assured returns/penalty on monthly basis as per the terms of the MoU dated 31.08.2019 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 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.
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 property 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 31.08.2019.
26. In the present complaint, the assured return/penalty was payable as per clause 4 of the MoU dated 31.08.2019, which is reproduced below for the ready reference:

**Clause 4**

*"The Company shall pay a Penalty of **Rs.29,973/-** (Rupees twenty Nine Thousand Nine Hundred Seventy three only) per month on the said Unit, On the total amount received with effect from **23.08.2020** (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 prorata basis."*



27. Thus, as per the abovementioned clause the assured return/penalty was payable @Rs.29,973/- per month w.e.f. 23.08.2020, till the offer of possession.
28. In light of the above, the Authority is of the view that as per the MoU dated 31.08.2019, 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 04.02.2025. Accordingly, the respondent/promoter is liable to pay assured return/penalty to the complainant at the agreed rate i.e., @Rs.29,973/- from the effective date as per clause 4 of the MoU i.e., 23.08.2020 till the offer of possession letter i.e., 04.02.2025.

**G.II) Delay Possession Charges:**

29. In the present complaint, the complainant intends 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 31.08.2019. 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., 31.08.2019 being later. Accordingly, the due date of possession comes out to be 31.08.2022.

31. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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., 12.02.2026 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 31.08.2022.
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 31.08.2019. 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. 29,973/- on the total amount received with effect from 23.08.2020 till the offer of possession letter i.e., 04.02.2025. 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. 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 31.08.2019, the promoter had agreed to pay to the complainant allottee @Rs.29,973/- with effect from 23.08.2020 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.29,973/- with effect from 23.08.2020 till the offer of possession letter date i.e., 04.02.2025.

**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, complainant is 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 04.02.2025, 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 31.08.2019 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.

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

44. 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 absolute completeness, strictly adhering to the amenities and specifications as promised in the Agreement to Sale and the sanctioned project brochures.
45. 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 -**

46. 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.29,973/- from the effective date as per clause 4 of the MoU i.e., 23.08.2020 till offer of possession letter date i.e.,04.02.2025, after deducting the amount already paid on account of assured returns to the complainant.
- 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 complainant 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 complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.
- 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.
47. Complaint stand disposed of.
48. File be consigned to registry.

  
Phool Singh Saini  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 12.02.2026**