BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1703 of 2025**
Date of filing	**:**	**01.04.2025**
Date of decision	**:**	**12.02.2026**

Nitin Yadav
R/o: - WZ-97, Second Floor, Sunder Palace,
Jwala Heri, Paschim Vihar, New Delhi-110063 **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 Manish Yadav **Counsel for Complainant**
Shri Venket Rao (Advocate) **Counsel for Respondent**

ORDER

1. This order shall dispose of the complaint filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	04.11.2015 (As per page no.65 of the complaint)
7.	Unit no.	Priority No. 59, 3rd floor (Restaurant) (As mentioned in BBA at page no.70 of the complaint)
8.	Unit area admeasuring	250 sq. ft. (Super Area) (As mentioned in BBA at page no.70 of the complaint)
9.	Date of MoU	04.11.2015 (As per page no.53 of the complaint)
10.	Possession clause	*3...That 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/ occupation certificate... **[Emphasis Supplied]** (As per MoU at page no.55 of the complaint)
11.	Due date of possession	**04.11.2018** [Nate: calculated 3 years from the date of start of construction, being later.]
12.	Assured return Clause	*4...* **The company shall pay a monthly assured return of Rs.22,500/- on the total amount received with effect from 04.11.2015 (Effective Date-II)** after deduction of taxes at source and service tax, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as Annexure-I. **The monthly assured return shall be paid to the allottee(s) unit the commencement of the first lease on the said unit. This shall be paid from the effective date.** **And** **Clause 7.a** That the responsibility of assured returns to be paid by the company shall cease on commencement of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals. **[Emphasis Supplied]** (As per MoU at page 55-56 of complaint)

13.	Total Sale Consideration **[inclusive of BSP, IFMS, FTTH, Development Charges & Labour cess]**	Rs.32,19,308/- (as mentioned in demand letter dated 19.12.2024 at page 142 of complaint)
14.	Amount paid against the unit	Rs.27,67,065/- (as mentioned in demand letter dated 19.12.2024 at page 142 of complaint)
15.	Occupation certificate	14.08.2024 (page no. 40-42 of reply)
16.	Demand notice and offer of possession **[Priority no.59 on 3rd floor, Area 250 sq. ft.]**	19.12.2024 (page 140-142 of complaint)
17.	Reminder letter's	14.02.2025 & 25.02.2025 (page no. 46-47of reply)
18.	Letter for leasing unit [Leasing to world of shalom restaurants (P) Ltd.] Demand of Rs.10,32,500/- for fit out charges @ Rs.3,500/- sq. ft. + GST @18%.	28.02.2025 (Page no. 145 of complaint and page no.49-50 of reply)
19.	Final reminder	21.03.2025 (page 48 of reply)
20.	Reminder letter for fit-out charges	02.04.2025 & 17.04.2025 (page 51-52 of reply)
21.	Payment request for maintenance charges [for 01.11.2024 – 31.03.2025] Amounting to Rs.24,854/-	24.04.2025 (page 53 of reply)

B. Facts of the complaint.

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

i. That in pursuant to the elaborate advertisements in the leading newspapers and on the basis of the assurances, representations and promises made by the respondent/ developer/ builder in the brochure / advertisement circulated by respondent in the year 2015 about the timely completion of a premium project with impeccable facilities referred to by the respondent as one of the best commercial projects launched by the Respondent company in and around Gurugram and further believing the same to be correct and true, the complainants / allottee considered booking one commercial units at Third floor under Assured Return scheme in the project of the Respondent namely "Neo Square, Sector-109, Dwarka Expressway, Gurugram, Haryana" in the year 2015 itself. It was also represented and assured by the respondent that the commercial units booked would be positively completed on its scheduled time.

ii. That it was further claimed by the Respondent that the project would be comprised of high street retail and recreational hub having numerous high-end shops, Multiplex Cinema Hall, Food zone, Fine Dine restaurants, cafes, shopping, food court, service apartments, hyper marts etc. It was further assured that the project would be completed within a period of 36 months.

iii. That enticed and allured in response to the said advertisement and the false promises made by the respondent, the complainants submitted applications for booking one commercial unit's ad-measuring super area 250 Sq. ft. under assured return plans in the aforementioned project Neo Square @ Rs 9680/- per sq. ft. for total basic sale consideration of Rs.24,20,000/- for the commercial units. That the present Complaint pertains to Unit No. / Priority No. 59 of Third Floor measuring 250 Sq. Ft. Super Area in Neo Square, Sector 109, Dwarka Expressway Gurugram, Haryana.

iv. That the Complainant paid a sum of Rs 2,55,760/- through cheque No. 786545 dated 21.10.2015 drawn on State Bank of Bikaner and Jaipur, Paschim Vihar, New Delhi as the booking amount for unit number 59 and also paid a sum of Rs 22,65,880 /- through cheque No.786547 dated 31.10.2015 drawn on State Bank of Bikaner and Jaipur, Paschim Vihar, New Delhi for the said unit number 59 admeasuring 250 sq. ft. at Third Floor. Consequently, a total sum of Rs 25,21,460/- was paid against the booking of unit number 59 which has been duly accepted and acknowledged by the Respondent and which amount exceeds the total basic sale consideration. Rest of the amount in terms of the agreement was to be paid at the time of possession under the terms of the agreement. As an acknowledgement of the receipt of the aforesaid amount the Respondent issued Invoice cum Receipt of payment vide receipt no.0261/15-16 dated 27.10.2015 and receipt No. 0263/15-16 dated 04.11.2015.

v. That the respondent assured the complainant that they have already obtained all the mandatory permissions/ clearances to construct the project and the same would be constructed strictly in conformity with the sanctioned plan. that the construction of the project would be completed within 36 months of purchasing the unit.

vi. That the respondent induced the complainant to purchase the unit under the Assured return plain wherein the respondent undertook to make the payment at the rate of Rs. 90 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainant at the time of booking or at the time of execution of the Memorandum of Understanding.

vii. That the complainant entered into a Memorandum of Understanding and subsequently a Builder Buyer Agreement was also executed both dated 04.11.2015 with the respondent. That the Complainant paid a sum of Rs 2,55,760/- through cheque No. 786545 dated 21.10.2015 drawn on State

Bank of Bikaner and Jaipur, Paschim Vihar, New Delhi as the booking amount for unit number 59 and also paid a sum of Rs 22,65,880 /- through cheque No.786547 dated 31.10.2015 drawn on State Bank of Bikaner and Jaipur, Paschim Vihar, New Delhi for the said unit number 59 admeasuring 250 sq. ft. at Third Floor. Consequently, a total sum of Rs 25,21,460/- was paid against the booking of unit number 59 which has been duly accepted and acknowledged by the Respondent and which amount exceeds the total basic sale consideration.

viii. It was agreed under the MoU that a monthly return of Rs 22,500/- shall be payable as Assured return from 04.11.2015.

ix. That as per the terms and conditions of allotment as per MoU, the respondent had committed to remit an assured monthly return at the rate of Rs 90 per square feet of the super area of the unit until the commencement of the first lease. It was also stated that based on the Respondent's present plans and estimates that the project is in an advanced stage of construction and the developer would be completing the construction of the said building / commercial units soon. That along with the handing of the MoU and BBA, the Complainants also received the assured return monthly PDC cheques for the period Nov. 2015 to February 2017.

x. That further the Complainants have also received PDC for monthly assured return / amounting to Rs. 22,500/- per month @Rs 90 per sq.ft. for the allotted units i.e. in total Rs 20,250 per month for the allotted units from the respondent starting from Nov. 2015 till March 2016.

xi. That there after the respondent has made various payment of monthly assured return till March, 2020.

xii. That the respondent raised demand dated 30.03.2017 for VAT as well as EDC/IDC to the complainant.

xiii. That the complainant made payment through cheque No.111110 drawn om State Bank of Bikaner and Jaipur Paschim Vihar, New Delhi dated 11.05.2017 for demand of EDC / IDC amounting to Rs 1,18,500 and receipt no. RCT/001248 dated 16.05.2017 was generated by the respondent acknowledging the same.

xiv. That the complainant made payment through cheque No.111111 drawn om State Bank of Bikaner and Jaipur Paschim Vihar, New Delhi dated 11.05.2017 for demand of VAT of Rs 1,26.925/- and receipt no. 0942/17-18 dated 16.05.2017 was generated by the respondent acknowledging the same.

xv. That the respondent/ developer failed to give possession of the unit (as per the commitment of delivering within 36 months) as well as per possession clause / terms and conditions of the MoU even after passing of 36 months period and did not inform the complainant about the progress / status of the project as well as the allotted unit.

xvi. That thereafter since Year 2019 onwards the respondent , has failed to remit the monthly assured return regularly and some of the PDC Cheques given to the complainant also got bounced due to funds insufficient and completely stopped from April, 2020 and the complainants have not received even a penny from the respondent towards the amount of assured return and neither till date the respondent have handed over the possession of the aforementioned unit to the complainant.

xvii. That the complainants have at all times been ready and willing to comply with their part of the agreement , subject to the respondent handing over the actual physical possession of the aforesaid unit after obtaining OC , is ready and willing to pay the respondent, the balance amount of the sale consideration, if any, after adjusting the unpaid amount of assured return / commitment

charges from April, 2020 till date that remain outstanding on part of the Respondent.

xviii. That the complainants since 2018 had persistent follow-ups and personal visits to the office of the respondent and had repeatedly asked to provide the assured monthly return of the unit booked by them and also to provide for the progress report of the project, site plan and building plans of the allotted units and about the time of completion of the project by repeatedly asking the sales executive telephonically as well as personally visiting the office of the respondent and also pressing for the regular payment of the assured monthly return but all the just and genuine requests of our the complainants fell on deaf ears and no positive and satisfying reply came forth from the respondent.

xix. That the respondent wrote letter to the complainant regarding the construction update and status of monthly assured return payments. It was also mentioned that that they will adjust the monthly assured return payments towards the balance outstanding on side of the complainant at the time of possession which was clear breach of trust and commitment made by the respondent at the time of signing MoU.

xx. That the truth of the assurances made by the respondent surfaced when the respondent started delaying the monthly assured return and ultimately the payment of the assured return were completely stopped and are due since April,2020. That the mala fide intentions of the respondent also become conspicuous when the respondent communicated its unilateral decision of not paying any assured return till the completion of the project.

xxi. That the payment toward VAT was made by Buyers in 2017 has not been deposited with the concerned authorities by the respondent and due to the said reason, the demand of VAT was being made again and again from the buyers.

xxii. That the respondent sent a letter dated 07.12.2021 to the complainant in order to obliviate itself from the responsibility of paying monthly assured return. that the respondent is forcing the complainants to sign the Lease Assignment Form by which the respondent intends to lease out the unit to a third party and has also inserted a clause according to which after the execution of Lease Assignment Form, the respondent will be obliviated from its responsibility to pay the monthly assured return.

xxiii. That the respondent again sent letter making empty promise to the complainant regarding the construction update and status of monthly assured return. It was also mentioned that that they will adjust the monthly assured return payments towards the balance outstanding on side of the complainant at the time of possession which was totally unilateral, one-sided decision on part of the respondent and against the terms and condition of executed MoU between the parties.

xxiv. That the complainant raised their concern about the timely delivery of the project with the officials of the respondent/ developer since the passing of due date of possession 04.11.2018 and demanded assured monthly return as well as delayed payment charges at RERA prescribed rate from the respondent/ developer but the genuine concerns of the Complainant were unheard off. That the complainant made various representations to the respondent seeking demand of due assured monthly returns since April, 2020 till handing over of possession or First lease along with possession of the allotted unit and OC and CC of the project and in case failure to redress the grievance of the Complainant then in that condition to approach RERA for redressal of their grievances but the complainants were not given any reply of the Genuine demand raised. That the complainant has made email dated 07.07.2022 to the respondent for their persistent failure to pay the monthly assured return

when he was confronted with and raised with as demand of Rs2,37,469 /- by the respondent without any rhyme and reason.

xxv. That in the aforementioned circumstances the complainants are now convinced that they have been taken for a ride and that the respondent neither had any initial intention nor sufficient means to have ever been able to complete the said project within the claimed period and the complainants were deceived and dishonestly induced by the respondent to part with their money and the said act on behalf of the respondent, amounts to 'cheating'.

xxvi. That the respondent's aforementioned acts of omission severely and drastically affected the health of the complainant who went into a severe depression resulting in other health complications and eventually leading to a complainant being hospitalized for months.

xxvii. That as aforementioned the complainants even after asking repeatedly for the timely payments of assured returns/commitment charges have not been given their lawful dues and the respondent have deliberately and fraudulently failed to execute its part of the agreement/ allotment letter.

xxviii. That the allotted units are till date existing in the name of the complainants and the respondent is bound by the RERA Act, to fulfil all its obligations and responsibilities and commitments made at the time of booking and issuance of allotment letter towards the complainants which are mandatory conditions as per RERA Act and in which the Respondent have completely failed.

xxix. That the respondent did not start anything for the timely completion of the project and kept on sitting on the hard-earned money of the complainant and many other similar allottees without even informing about the progress of the project. Compelled at the non-serious and highly unprofessional attitude on part of the respondent and seeing no positive reply from the office bearers of the respondent/ developer, Complainants many a times has repeatedly asked

telephonically as well as through personal visit of the office and site of the project about the status of the booked unit and completion of the project by the respondent, which was not replied by the respondent despite earlier making false promise of various tentative dates of handing over possession of the booked unit. The respondent misused its dominant position and the complainant seeing no other option have to approach the Hon'ble Authority for redressal of their grievances and for reliefs against the Respondent/ developer.

xxx. That the respondent failed to hand over the physical possession of the unit despite the receipt of substantial amount of the total sale price from the complainant. That the respondent failed to keep its assurance and promise made to the complainant and kept on minting money from the complainant like a cash cow without fulfilling obligations and duties on part of the respondent.

xxxi. That the complainant received letter dated 19.12.2024 informing about various illegal demand with exponential rise in amount to be paid on part of the complainant and made fake offer of possession claiming to have received the occupancy certificate. That the complainant raised protest email dated 23.12.2024 of not adjusting the amount of assured monthly return committed by the respondent themselves unilaterally to be adjusted at the time of offer for possession of the unit.

xxxii. That the Complainant visited and inspected the project site after letter of offer for possession and inquired and found that the project has not obtained OC and it was clearly shown on the Bill Boards displayed outside claiming to be obtaining OC soon but to the best of the knowledge of the Complainant the respondent has not obtained OC from the concerned departments and

blatantly failed to show the OC to the Complainant despite being asked for the same.

xxxiii. That the respondent again wrote reminder letter dated 25.02.2025 imposing holding charges and raised illegal high demand without adjusting the amount due towards the complainant from the respondent. In order to further succumb to the pressure tactics of not paying the assured return and not correcting the illegal and exponential high demand without any legal or legitimate basis the respondent wrote letter dated 28.02.2025 creating third party lease rights without prior approval of the complainant and without showing OC to the Complainant and to somehow obliviate itself from the responsibility and commitment to pay assured monthly return due towards the complainant. That the respondent also raised illegal demand of fit out charges of more than Rs 10 Lakhs to be paid by the Complainant to the third party without any term or condition existing in the MoU or BBA for the same.

xxxiv. That the complainants made various payments as and when demanded by the respondent so that the project is not delayed on part of the complainant.

xxxv. That despite assurance of completion of construction of the project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of 9 years. That the Building is nowhere near completion.

xxxvi. That the complaint is constrained to file the present complaint seeking the payment of assured return @ Rs 90 per sq. ft amounting to Rs 22,500 for unit admeasuring 250 sq. ft. since April,2020 till the handing over of the possession / lease out of the property after the completion of the construction.

C. Relief sought by the complainant

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

i. Direct the respondent to make the payment of the assured monthly return @ Rs. 22,500/- per month since April, 2020 till handing over of possession or Commencement of First Lease after obtaining OC along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.

ii. Direct the respondent to deliver the possession of the allotted units along with delay possession charges as per HARERA, complete in all respects along with OC and CC.

iii. Direct the respondent to pay delay penalty @ 18% per annum or at prescribed rate under HARERA on the amount due as assured rental w.e.f. from 01.04.2020 up to the date of actual delivery of assured monthly return.

iv. Direct the respondent to provide the copy of the OC and CC of the project.

v. Direct the respondent to issue letter of possession in favour of the complainant.

vi. Direct the respondent to provide the latest statement of account of complainant for the allotted units.

vii. Direct the respondent to execute conveyance deed in favour of Complainant for the allotted units

viii. Set aside the illegal demand vide letter dated 19.12.2024 / Directing the respondent to substantiate the justification for exponential increase in demand of VAT, Development charge, FITH, Labour cess, interest amount etc. vide letter dated 19.12.2024 and to charge the same on actual basis or as per HARERA guidelines and to withdraw the exponential increase in demand from the complainant.

ix. Directing the respondent not to levy holding charges on the complainant which is against the policies, guidelines and Judgement of HARERA.

x. Set aside the illegal demand vide letter dated 28.02.2025 / directing the respondent to withdraw the demand of fit out charges vide letter dated 28.02.2025 amounting to Rs 3500 per sq. ft. which is not part of MoU or BBA.

xi. Restraining the respondent from entering into any lease deed with third parties or to create any right, title and interest of third parties in the unit allotted to the complainant till the completion of the project and handing over the possession of the possession to the complainant

D. Reply by the respondent

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

i. That the instant reply to the above-captioned matter is being filed on behalf of the respondent i.e., M/s Neo Developers Pvt. Ltd. through its authorized representative, Mr. Manish Bhola, who is duly authorized to act on behalf of the Respondent vide Board Resolution dated 02.08.2023.

ii. That the complainant with an intention of earning a lease rental and assured return invested in the instant project, requested the respondent to allot a unit/space, admeasuring 250 sq. ft. super area in the project "NEO Square".

iii. Considering the request of the complainant, the respondent booked a unit bearing priority no. 59, on 3rd floor, admeasuring 250 sq. ft. super area.

iv. 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.

v. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 04.11.2015.

vi. 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 04.11.2015 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.

vii. 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.

viii. The occupation certificate of the project was granted by the Competent Authority on 14.08.2024.

ix. Thereafter, the respondent sent an offer of possession letter dated 19.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

x. 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 14.02.2025, 25.02.2025 and 21.03.2025 requesting the complainant to do the needful.

xi. That the respondent vide letters dated 28.02.2025, 02.04.2025 and 17.04.2025 requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.

xii. That the respondent vide letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.

xiii. It is further submitted that the respondent had duly discharged its obligations by paying a sum of ₹9,87,750/- to the complainant towards assured return up

to 29.02.2020. it is only subsequent to the complainant's default in fulfilling his contractual obligations and in view of the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act), that the Respondent was constrained to discontinue further payments under the assured return arrangement.

xiv. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

xv. The respondent seeks to raise the following objections/submissions, each of which has been taken in the alternative and are without prejudice to the other. Nothing contained in the preliminary objections/ and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be a direct and tacit admission of any allegation made by the complainants in the complaint.

xvi. 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.

xvii. 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.

xviii. That from a bare perusal of the aforementioned terms and conditions of the MOU, it is evident that the Complainant has invested in the instant Project with the sole motive of earning lease rental by getting the subject Unit lease through the Respondent. It was never agreed between the Complainant and the Respondent that the physical possession of the subject Unit shall be handed over to the Complainant or that the Complainant shall lease out the subject Unit by himself. That the whole idea behind the leasing of the Subject Unit through the Respondent was that the Subject Unit should be leased out along with other Units of the Project, thereby generating lease rental for all the Allottees of the Project who, by themselves, could not get big brands to take their units on lease. It is further submitted herein that the Complainant has invested in the instant Project for earning lease rental can be verified from the fact that under Clause 6 of the BBA, it is clearly mentioned that the terms and conditions pertaining to leasing of the unit are mentioned in the MOU.

xix. It is reiterated herein that from the very beginning, the understanding between the parties was to lease out the unit through the Respondent. That it was never agreed between the parties that physical possession of the Unit shall be handed over to the Complainant. That a MOU recording the terms and conditions of the Leasing and lease rental is executed between the Parties. It is pertinent to mention herein that no protest in this regard has ever been raised by the Complainant and the same was willingly and voluntarily agreed upon between the Parties.

xx. 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.

xxi. 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.

xxii. 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.

xxiii. 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.

xxiv. 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.

xxv. It is reiterated herein that the Complainant has invested in the Project with the sole intent of earning an assured return and lease rental by leasing the unit through the Respondent. Since, the understanding between the Parties was very clear that the unit was to be leased out to a prospective lessee and the Parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the Complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, in case the lessee desires any infrastructural changes in the Unit, then the Complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee.

xxvi. 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.

xxvii. 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.

xxviii. 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.

xxix. 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.

xxx. 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.

xxxi. In light of the above referred Order and the foregoing submissions, it is evident that the Fit-out charges levied by the Respondent are as per the provisions of the said MoU and therefore, lawful and valid. That the Complainant can-not shy away from fulfilling his obligation under the said MoU, especially when the Complainant is relying on the same MoU for claiming the alleged Assured Return/Penalty.

xxxii. 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 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.

xxxiii. 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.

xxxiv. 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.

xxxv. 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.

xxxvi. 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.

xxxvii. 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.

xxxviii. That the real estate firm "Embassy Group", one of the leading commercial real estate developer in its statement released on 08.08.2018 said it shall develop 11,00,000 sq. feet. Built-to-suit facility "Embassy Tech Village" project in Bengaluru in phases, with the first phase expected to be delivered by the first quarter of 2021. In the same statement, it was also mentioned that they have signed a long-term lease agreement with JP Morgan for commercial office space in the same Project. It is pertinent to note herein that the said statement was released by the Embassy Group on 08.08.2018, when the project was under construction, and the expected date of completion of the first phase, in which office spaces were leased out by the Promoter was 2021.

xxxix. Similarly, the Embassy Office Parks REIT leased 1.8 million sq. ft. across 25 deals, including a 5.50 lakh sq. ft. pre-commitment from JP Morgan at Embassy Tech Village in the June quarter of 2022. Hence, it proves that executing a lease deed before the completion of the project is valid in the eyes of the law.

xl. In a news article, it is stated that Real Estate firm DLF has leased nearly 3,00,000 sq. ft. office space to three companies in Gurugram. The majority of the space has been taken at DLF Downtown, an upcoming project in Gurgaon. It was further stated that the leasing is part of this company's expansion plan once the current Covid-19 situation stabilises. The building where space was leased out was under construction and was expected to be ready by December 2021.

xli. In another article, Embassy Group stated that it has leased 85,000 sq. ft. of office space to automotive software company Acsia Technologies at Embassy Taurus TechZone (ETTZ) in Trivandrum in April 2022, before the completion of the Project, which is scheduled for handover in April 2023.

xlii. In view of the above-mentioned submissions, it is evident that executing a lease deed before the completion of a project or grant of the Occupation

Certificate is a common practice adopted by the Developers/Promoters in the Real Estate Sector. It is noted herein that leasing the Unit before the issuance of the Occupation Certificate does not mean that the Unit is occupied by the Lessee or that any business activities are conducted on the said Unit. That the units/spaces are taken on lease by the Companies/Lessee in an under-construction project, solely to reserve the said Units/spaces to be opened for business after issuance of the Occupation Certificate.

xliii. It is reiterated herein that the Complainant under Clause 8 (a) of the MOU has authorized the Respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the Lease, the amount of lease, usage or to who the unit is leased out.

xliv. It is noted herein that under Clause 8 (b) of the MOU, it is categorically agreed between the Complainant and the Respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the Respondent and the prospective lessee, the Complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the Complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the Respondent shall be entitled and authorized to execute the lease deed on behalf of the Complainant. It is further noted herein that under the said Clause the Complainant authorized the Respondent to execute the lease deed or agreement with the third party with prior intimation to the Complainant.

xlv. 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.

xlvi. Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand the Complainant is seeking payment of assured return on the basis of MOU, and on the other hand the Complainant denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the Complainant cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the Complainant are claiming his right under the MOU, then he should also be ready to fulfil his responsibility under the MOU. It is most humbly submitted that if the Ld. Authority considers the right of the Complainant in seeking the payment of assured return, then the right of the Respondent with respect to leasing of the unit, and payment of fit-out charges under the MOU should also be allowed.

xlvii. That the Complainant, vide the present Complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016. That

xlviii. 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.

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

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

		concerned authorities and have the Environment Clearance from the competent Authority.			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 ban 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 October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity,		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

		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.			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.

i. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of force majeure. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the

agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

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

8. 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

9. 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

10. 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.

11. 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 the complainant being investor.

12. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, she is not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant are buyers, and she has paid a considerable amount to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the

promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

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

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

14. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 04.11.2018. It is observed that orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

I. Direct the respondent to pay due assured returns till commencement of first lease of unit.

G.I) Assured Returns

15. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 04.11.2015 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

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

(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including

(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance

is adjusted against such immovable property as specified in terms of the agreement or arrangement.

18. 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 an immovable property*
>
> *(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

19. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the promoter at the time of booking or immediately thereafter and as agreed upon between them.

20. 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.

21. 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.

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

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

24. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 04.11.2015, which is reproduced below for the ready reference:

> ***Clause 4.***
> ***"The Company shall pay a monthly assured return of Rs.25,500/- on the total amount received with effect from 14.11.2015*** *before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I.* ***The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit****. This shall be paid from the effective date."*

25. Thus, as per the abovementioned clause the assured return was payable @Rs.25,500/- per month w.e.f. 14.11.2015, till the commencement of valid first lease.

26. In light of the above, the Authority is of the view that as per the MoU dated 04.11.2015, it was obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.25,500/- from the date i.e., 14.11.2015 till the commencement of the valid first lease on the said unit after deducting the amount already paid on account of assured return to the complainant.

27. 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.25,500/- with effect from 14.11.2015 till the commencement of first lease.

G.II) Delay Possession Charges:

28. 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".*

29. The subject unit was allotted to the complainant vide MOU/BBA dated 04.11.2015. 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., 04.11.2015 being later. Accordingly, the due date of possession comes out to be 04.11.2018.

30. **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"*

31. 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.

32. 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;"*

33. 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.

34. 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 04.11.2018.

35. 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?

36. 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 04.11.2015. 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. 22,500/- on the total amount received with effect from 04.11.2015 till the commencement of first lease. 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.

37. 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.

38. 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 04.11.2015, the promoter had agreed to pay to the complainant allottee @Rs.22,500/- with effect from 04.11.2015 till the commencement of first lease.

39. 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.22,500/- with effect from 04.11.2015 till the commencement of first valid lease.

II. **To restrain the respondent to charge anything not part of the MOU and BBA.**

III. **To set aside the letter which has raised illegal demand of Fit out charges.**

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.**

40. The complainant has further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated 04.11.2015 or the MoU executed on the same date. The impugned demand letter dated 04.12.2024 reflects components such as IFMS, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainant. The Authority of the view that:

- **Labour cess**

Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee.

Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Development charges**

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

> *"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.

- **Maintenance charges**

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021,*** the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **Fit-out Charges**

41. The letter dated 28.02.2025, demands Fit-out charges which amounting Rs.10,32,500/-. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.10,32,500/- and has directed the complainant to make the said payment in favor of a third party, namely *Shalom Restaurants Private 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.

42. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 28.02.2025 towards fit-out

charges amounting to Rs.10,32,500/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.

43. Further, it is observed that the demand of Fit-outs has been raised strictly in terms of clause 8(d) and 7(d) of the Memorandum of Understanding and clause 11 of the Buyer's Agreement dated 04.11.2015. It was further argued that under Clause 9 of the MOU, the complainant had authorized the respondent to finalize the terms and conditions of the lease. Upon perusal of the MOU dated 04.11.2015, this Authority finds that the said MoU does not contain any 8(d) clause or 7(d) authorizing the respondent to levy fit-out charges. In the absence of any contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law.

44. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment/MoU.

VI. The respondent may kindly be directed to hand over the possession
VII. To execute the Sale Deed and convey the unit in favour of the Complainants for the Unit immediately.

45. 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.

46. The complainant is seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

47. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the 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. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

H. Directions of the Authority

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

I. The respondent/promoter is directed to pay the assured return to the complainants at the agreed rate of @Rs.25,500/- per month as per the effective date i.e., 04.11.2015 till the commencement of the first lease on the said unit after deducting the amount already paid on account of assured return to the complainants.

II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the

date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% 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 holding charges and labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.***

V. The respondent is directed to recover development charges and maintenance 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.

49. The complaint stand disposed of.

50. File be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated:12.02.2026