

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

**Complaint no.:** 4900 of 2025  
**Date of filing of complaint:** 09.10.2025  
**Date of Order:** 12.03.2026

Shashi Kiran

**Complainant**

**R/o:** - Kothi no.-796, Phase 1, Urban Estate, Patiala  
University, Patiala, Punjab-147002

Versus

M/s Neo Developers Private Limited.

**Respondent**

**Regd. office:** 32-B, Pusa Road, New Delhi-110005.  
**Corporate Office at:** 1507, Tower-D, Global  
Business Park, Gurugram-122022.

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Babrubhan (Advocate)

Complainant

Shri Dushyant (Advocate)

Respondent

**ORDER**

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**



2. The 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.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	Unit and Floor no.	04 and 1 <sup>st</sup> floor (As per page no. 47 of the complaint)
8.	Revised unit no.	1-02 and 1 <sup>st</sup> floor (As per page no. 65 of the reply)
9.	Unit area admeasuring	483 sq. ft. (Super Area) (As per page no. 47 of the complaint)
10.	Revised area of the unit	466.27 sq. ft. (As per page no. 65 of the reply)
11.	Welcome letter	19.03.2019 (As per page no. 32 of the complaint)
12.	Date of execution of MoU's	19.03.2019 (As per page no. 33 of the complaint)
13.	Date of execution of flat buyer's agreement	19.03.2019 (As per page no. 44 of the complaint)
14.	Assured return clause	4. <i>The company shall pay a penalty of Rs.70,397/- per month on the said unit, on the total amount received with effect from 19.03.2020 (Effective Date-II) Subject to TDS, Taxes, cess or any other levy which is due and payable by the allottee(s) and which shall be adjusted in total</i>



		<p><i>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.</i></p> <p>(As per page no. 36 of the complaint)</p>
15.	Leasing clause	<p><b>8.(a)</b> <i>That the company takes the responsibility of the first lease of the said unit whereupon <b>the allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs.119.25/- per sq. ft. per month.</b></i></p> <p>(As per page no. 36 of the complaint)</p>
16.	Possession Clause (As per MoU dated 19.03.2019)	<p><b>9.(e)</b> <i>That <b>the unit will be constructed and completed by the company and will be handed over to the lessee directly. The company is duly authorized by the allottee(s) to enter into a lease deed with the lessee of their choice either before or after the execution of the sale deed in favour of the allottee(s).</b> The allottee undertakes to not raise objection regarding the same at any stage and bear all costs and expenditure for leasing.</i></p> <p>(As per page no. 38 of the complaint)</p>
17.	Total Sale Consideration	<p>Rs.49,31,369/- (As per statement of account on page no. 67 of the reply)</p>



18.	Amount paid by the complainants	Rs.31,38,936/- (As per statement of account on page no. 67 of the reply)
19.	Due date of possession	Not specified
20.	Occupation certificate /Completion certificate	14.08.2024 (As per DTCP website)
21.	Demand notice and offer of possession	30.11.2024 (As per page no. 65 of the reply)
22.	Reminder letters	03.01.2025, 25.02.2025 and 04.03.2025 (As per page no. 70, 69 and 68 of the reply)
23.	Leasing out of the unit to the core-fitness	04.07.2025 (As per page no. 62 of the complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That the complainant is a law-abiding and citizen of the country and is in dire need of the assured amounts as promised/ assured by the respondent and is currently residing at above mentioned address.
- II. That in 2008, the respondent company issued an advertisement announcing a Commercial Complex "Neo Square" at Sector-109, Dwarka Expressway, Gurugram was launched by respondent, 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. The respondent confirmed that the projects had got building plan approval from the authority.
- III. That the complainant while searching for a commercial unit was lured by such advertisements and calls from the brokers of the respondent for buying a commercial space in its project namely Neo Square. The respondent company told the complainant about the moonshine



reputation of the company and the representatives of the respondent company made huge presentations about the project mentioned above and also assured that it has delivered several such projects in the National Capital Region. The respondent 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. That relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainant booked a unit in the project by paying a booking amount of Rs.5,00,000/- on 28.01.2019 towards the booking of the unit on first floor of the project 'Neo Square' in Sector-109, having super area measuring 483 sq. ft. to the respondent and the same was acknowledged by the respondent vide its invoice cum receipt dated 28.01.2019.
- V. That as per assurance and on the basis of the representation by the respondent builder a buyer's agreement dated 19.03.2019 and a Memorandum of Understanding "hereinafter called as MOU" of even date were executed between the parties to the present complaint. Moreover, as per the demand raised by the respondent company, the complainant made a further payment of Rs.4,50,000/- on 4.12.2020 & Rs.2,34,390/- on 20.12.2025 & Rs.1,16,352/- on 21.03.2025 & Rs.2,32,628/- on 25.03.2025 & Rs.1,99,986/- on 28.03.2025 through various mode on the different dates towards the consideration of the unit in question.
- VI. That as per rule and regulation of the RERA act 2016, no builder can demand/take more than 10% of the total sale consideration without executing a written agreement. However, the respondent violated the



same. It is most respectfully prayed that this Hon'ble Authority be pleased to take penal action against the respondent for violation of various provisions of the RERA Act, 2016.

- VII. That as per clause no. 3 of the said MOU, the respondent assured the complainant that it shall complete the construction of the said building/complex within which the unit is located within 36 months from the date of execution of the said MOU i.e. 19.03.2019. Hence, the date of completion of construction comes to 19.03.2022.
- VIII. That it is pertinent to mention herein that as per clause 4 of the said MOU, the respondent shall pay a penalty of Rs.70,397/- with effect from 19.03.2020 to the complainant. Further, as per clause 8(a) of the said MOU states that the responsibility of assured returns to be paid by the respondent shall cease on commencement of the first lease of the said unit whereupon the allottee shall be entitled to receive the lease rentals. But even till date the respondent has failed to pay the assured return and the said lease rentals as promised in the said MOU. Moreover, as per clause 8(b) of the said MOU states that in case of any increase in the monthly rental in excess of the assured return the allotment consideration shall be enhanced by Rs.66.66/- per sq. ft. for each rupee increase in the monthly rental of per sq. ft. per month. Similarly, in case the monthly rental is reduced from the assured return then for each decreased rupee of per sq. ft. per month, the allotment consideration shall stand decreased by Rs.133.33/-per sq. ft. The allottee(s) agrees to settle the final sale consideration in terms of the present clause (b).
- IX. That as per agreed terms of MOU and agreement the respondent agreed to put the said unit on lease and to effectuate the same. But the



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

- X. That as per the said assurance at the time of booking, and the clause 3 of the said MOU the respondent was liable to handover the possession of the said unit on or before 19.03.2022 i.e., 36 months from the date of MOU, therefore, the respondent was liable to pay interest as per the prescribed rate as laid under the Act, 2016 & 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.
- XI. That the respondent by falsely mis-representing the complainant and thereby making her to act in accordance to its misrepresentations.
- XII. That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of more than 3 years.
- XIII. That by falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession, the complainant has been subjected to unethical/unfair trade practice as well as subjected to harassment in the guise of a biased allotment letter. The above said acts of the opposite party clearly reveals that it with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such Act and omissions on the part of the opposite party have caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in



- accordance to its misrepresentations and owing to all the deliberate lapses/delays on the part of the "opposite party", the opposite party is liable to make as being requisitioned/claimed by the complainant.
- XIV. That during the period the complainant went to the office of respondent several times and requested it to allow her to visit the site and to pay the assured return and the penalty to the complainant which she is entitled to but it was never allowed saying that it do not permit any buyer to visit the site during construction period. However, 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 him.
- XV. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.
- XVI. That the complainant kept pursuing the matter with the representatives of the respondent by visiting its office regularly as well as raising the matter and asked when it will 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.
- XVII. That the complainant continuously asking the respondent company about the status of the project, time by which the project is expected to be completed, when the respondent will start paying the assured returns amount that respondent is liable to pay but respondent was never able to give any satisfactory response to the complainant.



- XVIII. That 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.39,22,292/- against the total sale consideration of Rs.38,83,803/-.
- XIX. That allotment of the unit was made on 19.03.2019, after coming into force of the 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., 483 sq. ft. which is against the provisions of the Act, 2016 and the rules, 2017 made thereof. Hence, in accordance to the provisions of the Act, 2016 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.
- XX. That the complainant after many visits; received the fit-out letter dated 04.07.2025. It is pertinent to note here that vide the above said letter dated 04.07.2025 respondent raised an illegal demand of fit-out charges of Rs.19,25,695/- (Rs.3,500/- per sq. ft.) which is actually not payable as per the builder buyer's agreement.
- XXI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the



services/utilities as promised in the brochure or through not delivering the project in time.

- XXII. That the complainant is the one who has invested their life savings in the said project and are dreaming of a unit for himself and the respondent has not only cheated and betrayed her but also used his hard-earned money for its enjoyment.
- XXIII. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act and also the penalty and monthly assured amount till the handing over of possession or first lease of the said unit. The complainant is also entitled for any other relief which he is entitled by this Hon'ble Authority.
- XXIV. That the complainant after losing all the hope from the respondent company, having his dreams shattered of owning a commercial space in the vicinity of the project and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of their grievance.
- XXV. That the present complaint is within the prescribed period of limitation.
- XXVI. That the complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law. Hence, the present complaint.

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

4. The complainant has sought following relief(s):
- Direct the respondent to pay the penalty of Rs.70,397/- per month w.e.f. 19.03.2020 in accordance with the clause 4 of MOU dated 19.03.2019 along with interest at the prescribed rate.



- ii. Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest as per Act, 2016 from due date of possession till the handing over of possession.
- iii. Direct the respondent to pay the amount due to the complainant, from the respondent, on account of the interest, as per the guidelines laid in the RERA, 2016 and the monthly assured amount(s) as per clauses of the MOU.
- iv. 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.70,397/- per month till possession of the said property as per terms and conditions of the MOU.
- v. Direct the respondent to pay the due and payable monthly assured return/ lease rentals in accordance with the clause 8(a) and clause 8(b) of MOU dated 19.03.2019.
- vi. Direct the respondent to hand over the possession of unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.
- vii. Direct the respondent to offer the possession of the unit in question to the complainant.
- viii. Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainant.
- ix. Restrain the respondent from raising fresh demand(s) for payment under any head, as the complainant had already made payment as per the payment plan.
- x. Direct the respondent 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.



- xi. Direct the respondent to set a side illegal letter dated 04.07.2025 along with the huge demand of fit/out charges and restore the unit which was allotted initially to the complainant.
  - xii. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like fit-out charges, Labour Cess, FTTH Charges, maintenance charges etc, which in any case is not payable by the complainant.
  - xiii. To take penal action against the respondent for violation of various provisions of the RERA Act,2016.
5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Reply by the respondent:**

6. The respondent has contested the complaint on the following grounds:
- I. That the complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this Authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.
  - II. That by way of filing the complaint the complainant is trying to negotiate on the fit-out demand being raised by the respondent and also to gain some more time to make the payment.



- III. That the respondent after making the dues of the DTCP and other formalities of the department which also includes the completion of construction has obtained the completion certificate/occupancy certificate from the department of DTCP.
- IV. That the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. The Act, 2016 was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between the builders and buyers and the reliefs sought by the complainant cannot be construed to fall within the ambit of Act, 2016. The complainant herein, has failed to provide the correct/complete facts that he is investor and not an allottee.
- V. That the complainant with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 28.01.2019, whereby seeking allotment of unit no. 1-02, admeasuring 466.27 sq. ft. (Super Area) on the 1<sup>st</sup> floor having a Basic Sale Price of Rs.8,041/- per sq. ft.
- VI. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 19.03.2019 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainant in the project and leasing of the unit/space thereof. As per terms of MOU, the returns were to be paid from 19.03.2020 till offer of possession. As per terms of the MOU, the



complainant herein had duly authorised the respondent to put the said unit on lease.

- VII. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainant cannot be dealt with by this Authority. Without prejudice to the rights of the respondent, at the utmost *bonafide*, the Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.
- VIII. That the complainant voluntarily also executed the buyer's agreement dated 19.03.2019 for shop no. 1-02 on 1<sup>st</sup> floor admeasuring 466.27 sq. ft. Super Area in the project.
- IX. That the complainant is seeking relief of assured return which is not maintainable before the Authority upon enactment of the BUDS Act. Any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. There is no provision under the Act, 2016 for examining and deciding the issues relating to the provisions of Assured Return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.
- X. That the respondent cannot pay "Assured Returns" to the complainant by any stretch of Imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. None of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe



penalties and hence the respondent had no other alternative but to stop the payment of any return etc. On 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

- XI. That the BUDS Act is a central Act came subsequent to the Companies Act and the Act, 2016, therefore, directing the respondent to pay Assured Returns shall be violation of the provisions of BUDS Act. It is also pertinent to note herein that for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- XII. That as per clause 11 of the MOU, the respondent was obligated to complete the construction of the complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate. As per clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made. Accordingly, as per clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.
- XIII. That the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons. The complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent.



The complainant as per the records of the respondent had only paid Rs.31,38,936/- against the total due amount of Rs.49,31,369/-. It is to be noted that there is still an outstanding due of Rs.22,43,635/- which is to be paid by the complainant against the unit booked as per the demand letter dated 30.11.2024.

- XIV. That the complainant is trying to negotiate to the demand of respondent on fit-out, the respondent has raised the demand of Rs.3,500/- per sq. ft. to the complainant which is sum of Rs.19,25,695/- for getting the unit fit out which is essential for getting the said unit leased out. The respondent avoided making the payment for the demand for fitout and deliberately filed the present complaint.
- XV. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act, 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the Competent Authority.
- XVI. That 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.
- XVII. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline.

However, the respondent has completed the project in all aspect and obtained the completion certificate from DTCP.

**E. Jurisdiction of the Authority:**

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

**E.I Territorial Jurisdiction**

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**

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)(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.*

8. 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 objection raised by the respondent:**

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

9. The respondent took a stand that the complainant is the investor and not the consumer and therefore, is 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 buyer's agreement, it is revealed that the complainant is a buyer and has 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;"*

10. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the builder buyer's agreement dated 19.03.2019, it is crystal clear that the complainant is not the allottee as the subject unit was allotted to her by the promoter. 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 investor is not entitled to protection of this Act also stands rejected.

**F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.**



11. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in *CR/8001/2022* titled as "*Gaurav Kaushik and Anr. Vs. Vatika Ltd.*" has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

**G. Findings on relief sought by the complainant:**

- G.I Direct the respondent to pay the penalty of Rs.70,397/- per month w.e.f. 19.03.2020 in accordance with the clause 4 of MOU dated 19.03.2019 along with interest at the prescribed rate.
- G.II Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest as per Act, 2016 from due date of possession till the handing over of possession.
- G.III Direct the respondent to pay the amount due to the complainant, from the respondent, on account of the interest, as per the guidelines laid in the RERA, 2016 and the monthly assured amount(s) as per clauses of the MOU.
- G.IV 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.70,397/- per month till possession of the said property as per terms and conditions of the MOU.
- G.V Direct the respondent to pay the due and payable monthly assured return/ lease rentals in accordance with the clause 8(a) and clause 8(b) of MOU dated 19.03.2019.



12. The above sought relief(s) by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

• **Assured returns**

13. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 19.03.2019 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, an amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

14. A memorandum of 19.03.2019 by which a specific unit bearing no. 1-02 has been allotted to the complainant for sale consideration of Rs.49,31,369/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 4 of the MOU, the respondent has promised an amount of Rs.70,397/- per month in the form of assured return from 19.03.2020 till the offer of possession. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced 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;"*



Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

15. The money was taken by the promoter as 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 promoter promised certain amount by way of assured return for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of her grievances by way of filing a complaint.
16. 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.
17. In the present complaint, the assured return was payable as per clause 4 of MoU, which is reproduced below for the ready reference:

*5. The company shall pay a penalty of Rs.70,397/- per month on the said unit. On the total amount received with effect from 19.03.2020 (Effective Date-II). Subject to TDS, Taxes, cess or any other 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.*

Thus, the assured return was payable @ Rs.70,397/- per month w.e.f. 19.03.2020, till offer of possession i.e., 30.11.2024.

• **Delay possession charges.**

18. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges with respect to the subject unit 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."*

19. In the present case, the builder buyer agreement was executed on 19.03.2019. As per clause 5.2 of the buyer's agreement dated 19.03.2019, the construction of the said commercial unit shall be deemed to be the date when the application for grant of occupation certificate is made. Clause 5.2 of the buyer's agreement is reproduced below for the ready reference:

**5. Construction and Possession**

*5.2 That the construction completion date shall be deemed to be the date when the application for grant of completion/occupancy certificate is made.*

20. On perusal of the copy of occupation certificate dated 16.08.2024, the Authority has observed that the application for occupation certificate has been made on 15.05.2024. Thus, the construction of the unit of the complainant has to be completed by 15.05.2024.

21. **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, *ibid*. 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."*

22. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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., 12.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%. 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;"*
23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The construction of the project was to be completed by 15.05.2024. However now, the proposition before the Authority 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?
25. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per the MOU dated 19.03.2019 and



the respondent is liable to pay assured return to the complainant-allottee @ Rs.70,397/- on monthly basis till offer of possession i.e., 30.11.2024. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.70,397/- per month till offer of possession i.e., 30.11.2024 whereas the delayed possession charges are payable approximately Rs.28,250/- per month.

26. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 19.03.2019, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 19.03.2019. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MoU is still continuing. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 4 of MoU dated 19.03.2019 at the agreed rate i.e., @ Rs.70,397/-per month from 19.03.2020 till offer of possession i.e., 30.11.2024.

- **Lease Rentals**

27. The complainant is seeking lease rentals as per clause 8(a) and 8(b) of the MOU dated 19.03.2019. Clause 8(a) of the MOU enumerates the liability of the respondent to pay lease rental to the complainant. Clause 8(a) of the MOU is reproduced herein for the ready reference:

***“8.(a)***

*That the company takes the responsibility of the first lease of the said unit whereupon **the allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs.119.25/- per sq. ft. per month.***

28. After careful perusal of the documents placed on record, the Authority observed that the respondent has obtained the occupation certificate of the subject unit on 14.08.2024 and thereafter the unit has been leased out to Core Fitness vide letter dated 04.07.2025 issued by the respondent. Thus,



the respondent is directed to pay the lease rentals to the complainant as per terms and conditions of the letter dated 04.07.2025.

**G.VI Direct the respondent to hand over the possession of unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.**

**G.VII Direct the respondent to offer the possession of the unit in question to the complainant.**

29. The above sought relief(s) by the complainant are taken together being inter-connected.
30. On perusal of the documents placed on record and submissions made by the parties as well as the information available on the website of DTCP, the Authority observed that the respondent has offer the possession of the unit on 30.11.2024 after obtaining the occupation certificate on 14.08.2024.
31. The Authority further observed that as per clause 9(e) of the MOU dated 19.03.2019, the unit has to be handed over directly to the lessee after completion. The relevant clause is reproduced below for the ready reference:

*"That the unit will be constructed and completed by the company and will be handed over to the lessee directly. The company is duly authorized by the allottee(s) to enter into a lease deed with the lessee of their choice either before or after the execution of the sale deed in favour of the allottee(s). The allottee undertakes to not raise objection regarding the same at any stage and bear all costs and expenditure for leasing."*

32. After considering the above stated facts, the Authority is of the view that there is no clause for physical handover of the unit in the MOU/agreement dated 19.03.2019. However, the offer of possession of the unit has already been made on 30.11.2024 after obtaining occupation certificate on 14.08.2024. Thus, no direction to this effect.

**G.VIII Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainant.**

33. 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 allottee



is also obligated to participate towards registration of the conveyance deed of the unit in question.

34. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. Thus, the respondent shall execute the conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

**G.IX Restrain the respondent from raising fresh demand(s) for payment under any head, as the complainant had already made payment as per the payment plan.**

35. The Authority herein observes that the builder buyer's agreement is executed inter-se parties. Hereby, both the parties are bound to adhere to the contractual obligations agreed between the parties vide the said agreement. Therefore, the respondent shall raise demands only in accordance with the agreed builder buyer's agreement and the complainant is also bound to make payment of demands raised if any as per the builder buyer's agreement.

**G.X Direct the respondent 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.**

• **Indemnity-cum-undertaking**

36. The Authority observes the said issue has already been decided by this Authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.** wherein it is held that the respondent shall not place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights. Ordered accordingly.

**G.XI Direct the respondent to set a side illegal letter dated 04.07.2025 along with the huge demand of fit/out charges and restore the unit which was allotted initially to the complainant.**

**G.XII Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like fit-out charges, Labour**



**Cess, FTTH Charges, maintenance charges etc, which in any case is not payable by the complainant.**

37. The above sought relief(s) by the complainant are taken together being inter-connected.
38. The complainant has sought relief to direct the respondent set aside the letter dated 04.07.2025 as they were not part of agreement nor the MoU executed between parties. However, as per clause 8 of the MoU dated 19.03.2019 executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

(d)

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

39. Upon understanding of the said clause, it is clear that clause 8(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes, which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.



40. Therefore, if the respondent seeks to levy fit-out charges, it must first provide a proper justification of demands by showing that the work was required for making the unit fit for lease. The fit-out charges should be supported with proper details, including a break-up of expenditure and certification or report from an authorized architect, engineer or other competent professional confirming both the necessity and reasonableness of the work carried out. Only after such justification is provided respondent can charge from the complainant under the MoU.

**G.XIII To take penal action against the respondent for violation of various provisions of the RERA Act,2016.**

41. No material evidence has been placed on record w.r.t defaults of respondent-builder. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

**H. Directions of the authority:**

42. 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 is directed to pay the assured return/penalty at the rate i.e., Rs.70,397/- per month as per agreed terms of MoU from the date i.e., 19.03.2020 till offer of possession i.e., 30.11.2024.
- ii. The respondent is also directed to pay the lease rentals to the complainant as per terms and conditions of the letter dated 04.07.2025.
- iii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 19.03.2020 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any,



- from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
- iv. The respondent is directed to execute the conveyance deed of the allotted unit in terms of Section 17 of the Act, 2016 on payment of requisite stamp duty by the complainant.
- v. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement and no holding charges shall be levied as per law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020.**
- vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
43. Complaint stands disposed of.
44. File be consigned to registry.



**(Phool Singh Saini)**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.03.2026