BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 30.01.2026

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		Neo Square	
S. No.	Case No.	Case title	Appearance
1.	CR/1032/2025	Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Private Limited	Sh. Naveen Single (Advocate) Ms. Anjalika Sharma (Advocate)
2.	CR/1033/2025	Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Private Limited	Sh. Naveen Single (Advocate) Ms. Anjalika Sharma (Advocate)
3.	CR/1034/2025	Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Private Limited	Sh. Naveen Single (Advocate) Ms. Anjalika Sharma (Advocate)

CORAM:
Shri Arun Kumar **Chairman**

ORDER

1. This order shall dispose of the aforesaid complaints titled above 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.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, ***Neo Square*** Sector 109, Gurugram being developed by the same respondent/promoter i.e., ***M/s Neo Developers Pvt. Ltd.*** The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with assured return, waiver of fit out charges and other reliefs.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Neo Square", sector 109, Gurugram, Haryana
Nature of the project	Commercial
Project area	3.08 acres
Occupation certificate	14.08.2024

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA /MoU	Assured Return Clause/Possession Clause	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession /Date of lease Deed
1	**CR/1032/2025** Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Pvt. Ltd. **DOF:**	1st Floor 408 sq. ft. (page 24 of complaint)	**BBA:** NA **MOU:** 01.12.2012 (page 23 of complaint)	3. That the Company hereby has agreed to allot to the Allottee(s) premises measuring 408 sq. ft. super built up area on the First Floor of Tower B of the said project. The Allottee has opted for the 'Investment	**01.12.2015** (calculated as 3 years from the date of MOU)	**T.S.C:** Rs. 28,86,303/- (as per SOA on page no. 57 of complaint) **A.P.:** Rs. 28,27,372/-	**O.O.P:** 29.11.2024 (page no. 55 of complaint)

	28.02.2025 **Reply:** 05.12.2025			Return Plan' and has agreed thet the basic consideration for allotment of the premises is to be determined at Rs. 5000/- per sq. ft. taking into consideration a return of Rs. 96/- per sq. ft. per month, subject to the terms of this MOU.. ***Possession Clause:*** ***NA***		(as per SOA on page no. 57 of complaint)	
2	**CR/1033/2025** Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 28.02.2025 **Reply:** 05.12.2025	1st Floor 412 sq. ft. (page 24 of complaint)	**BBA:** NA **MOU:** 01.12.2012 (page 23 of complaint)	3. That the Company hereby has agreed to allot to the Allottee(s) premises measuring 412 sq. ft. super built up area on the First Floor of Tower B of the said project. The Allottee has opted for the 'Investment Return Plan' and has agreed thet the basic consideration for allotment of the premises is to be determined at Rs. 5000/- per sq. ft. taking into consideration a return of Rs. 96/- per sq. ft. per month, subject to the terms of this MOU. ***Possession Clause:*** ***NA***	**01.12.2015** (calculated as 3 years from the date of MOU)	**T.S.C:** Rs. 29,13,692/- (as per SOA on page no. 37 of reply) **A.P.:** Rs. 28,07,737/- (as per SOA on page no. 37 of reply)	**O.O.P:** 29.11.2024 (page no. 37 of reply)
3	**CR/1034/2025**	1st Floor	**BBA:** NA	3. That the Company hereby has agreed to allot	**01.12.2015**	**T.S.C:** Rs. 27,01,180/-	**O.O.P:** 29.11.2024

	Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 28.02.2025 **Reply:** 05.12.2025	369 sq. ft. (page 24 of complaint)	**MOU:** 01.12.2012 (page 23 of complaint)	to the Allottee(s) premises measuring 369 sq. ft. super built up area on the First Floor of Tower B of the said project. The Allottee has opted for the 'Investment Return Plan' and has agreed thet the basic consideration for allotment of the premises is to be determined at Rs. 5000/- per sq. ft. taking into consideration a return of Rs. 99/- per sq. ft. per month, subject to the terms of this MOU.. ***Possession Clause:*** ***NA***	(calculated as 3 years from the date of MOU)	(as per SOA on page no. 56 of reply) **A.P.:** Rs. 26,18,247/- (as per SOA on page no. 56 of reply)	(page no. 54 of reply)

Relief sought by the complainant(s) in abovementioned complaints: -

1. Direct the respondent to make the payment of the assured monthly return @ Rs. 39,168/- (Thirty-Nine Thousand One Hundred Sixty-Eight Rupees including TDS) per month since August 2019 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.
2. Direct the respondent to return the excess amount of Rs. 10,00,000/- (paid on 07.03.2013), collected by the respondent company for unit no. 47 now (1-03A) under the MOU dated 01.02.2013 for the increased area, along with interest at the rate of 18% per annum or the prescribed rate under HARERA.
3. Direct the respondent to refrain from charging the Preferential Location Charge (PLC) to complainants as the respondent has modified the plan, and the unit is no longer located in a preferential or corner position.
4. Direct the respondent to deliver the possession of the allotted units along with delay possession charges as per RERA Act, complete in all respects along with OC and CC.
5. 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 01.08.2019 up to the date of actual delivery of assured monthly return.
6. Direct the respondent to pay Delay Possession Charges on the amount paid, starting from the due date of possession, as per HARERA regulations.
7. Direct the respondent to provide the copy of the OC and CC of the project.
8. Direct the respondent to issue letter of possession in favour of the complainants.
9. Direct the respondent to provide the latest statement of account of complainants for the allotted units.
10. Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:	
Abbreviation	**Full form**
DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
MOU	Memorandum of Understanding
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer Of Possession

4. The aforesaid complaints were filed by the complainants-allottee(s) against the promoter on account of violation of the builder buyer's agreement /MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the delayed possession charges, assured return and other charges.

5. The facts of all the complaints filed by the complainants-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/1032/2025 titled as Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details.

6. 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:

CR/1032/2025 titled as Ashok Kumar and Parveen Kumar Vs. M/s Neo Developers Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024

5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	47 on 1st Floor (page no. 24 of complaint)
7.	Unit area admeasuring	408 sq. ft. (page no. 24 of complaint)
8.	Date of MOU	01.12.2012 (page no. 23 of complaint)
9.	Possession clause	NA
10.	Assured return Clause	*3. That the Company hereby has agreed to allot to the Allottee(s) premises measuring 408 sq. ft. super built up area on the First Floor of Tower B of the said project. The Allottee has opted for the 'Investment Return Plan' and has agreed thet the basic consideration for allotment of the premises is to be determined at Rs. 5000/- per sq. ft. taking into consideration a return of Rs. 96/- per sq. ft. per month, subject to the terms of this MOU.* *(page no. 25 of complaint)*
11.	Due date	*01.12.2015* *(Calculated as 3 years from the date of MOU as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018])*
12.	Basic sale consideration	Rs. 28,86,303/- (As per SOA at page no. 57 of complaint)
13.	Amount paid by the complainants	Rs. 28,27,372/- (As per SOA at page no. 57 of complaint)
14.	Occupation certificate	14.08.2024
15.	Offer of possession	29.11.2024 (page no. 55 of complaint)

B. Facts of the complaint.

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

I. That the MOU was executed between the complainants and the respondent-builder on 01.12.2012 but it is considered to have taken effect from 01.02.2013.

II. That in response to the advertisement and the false promises made by the respondent, the complainants were enticed and convinced to submit applications for the booking of three commercial units: Unit No. 47 (1-03A), Unit No. 48 (1-03B), and Unit No. 49 (1-03C) all on First Floor, with super areas of 408 sq. ft., 412 sq. ft., and 369 sq. ft. respectively, in the aforementioned Neo Square project. The price was set at Rs. 5000/- per sq. ft., resulting in total basic sale considerations of Rs. 22,03,200/- , Rs. 22,24,800/- and Rs. 20,66,400/- for each unit which included the PLC (Preferential Location Charges) for each of the commercial units.

III. That the respondent assured the complainants that the commercial units would be located at the corner and for this, the complainants were required to pay the PLC (Preferential Location Charge) on all three units. The complainants agreed to pay the PLC based on the total basic sale price.

IV. This complaint specifically concerns Unit No. 47 (1-03A) on the first floor, with a super area of 408 sq. ft., in the Neo Square project at Sector 109, Gurugram.

V. That the complainants made a total payment of Rs. 65,48,380/-.

VI. That as per the terms and conditions of both the allotment letters referred to above the respondent had committed to remit an assured monthly return at the rate of Rs 96 per square feet of the super area of the unit till completion of the building. It was also stated in the MOU based on the respondent's present plans and estimates that the project is in an advanced stage of construction and the developer (Respondent) would be completing the construction of the said building /commercial units soon.

VII. That the respondent subsequently approached the complainants with an offer to increase the area of the units for which the complainants were required to pay an additional Rs. 10,00,000/- for each of the three units, totaling Rs. 30,00,000/- for all three. Believing the respondent's assurances, the

complainants agreed to make the payment of Rs. 30,00,000/- which was transferred to the respondent on 07.03.2013. The respondent assured the complainants that the details of the increased area and the associated price would be clearly outlined in the buyer's agreement.

VIII. That the complainants on 02.05.2013 received the 10 cheques of assured return for the period 01.06.2013 to 31.03.2014. The respondent continuously paid the assured return of Rs. 39,168/- till July 2019.

IX. That on 18.12.2019 the respondent sent a letter to the complainants providing a construction update and the status of the monthly interest cheques. In the letter, the respondent-builder informed the complainants that under the RERA Act, 70% of the funds received from the sale of the real estate project must be deposited into a separate account in a scheduled bank to cover construction costs. Due to this restriction, the respondent stated that it was illegal to withdraw funds from the account to make the monthly interest payments. The respondent further stated that, given this situation, the only option available was to adjust the complainant's payments for the monthly interest at the time of possession.

X. That On 01/02/2022, the respondent sent a letter to the complainants providing a construction update and the status of the monthly interest cheques. In the letter, the respondent-builder informed that due to Covid/Omicron restrictions and NGT bans respondent would able to complete the work tentatively within 3-4 months to meet out the requirements of DTCP for obtaining the OC. The respondent further assured the complainants that after getting occupancy certificate, he would immediately offer possession. Apart from this the respondent again informed the complainants that, under the RERA Act, 70% of the funds received from the sale of the real estate project must be deposited into a separate account in a scheduled bank to cover

construction costs. Due to this restriction, the respondent stated that it was illegal to withdraw funds from the account to make the monthly interest payments. The respondent further stated that, given this situation, the only option available was to adjust the complainants' payments for the monthly interest at the time of possession.

XI. That the respondent, through demand letters dated 21.10.2020, requested the registration fee from the complainants, along with documents such as ID Proof, Address Proof, PAN Card, and photographs. The complainants visited the respondent's office, provided the required documents, and raised an objection to the registration fee, as they had already paid more than the agreed consideration amount. In response to the complainants' objection, the respondent waived the registration fee and obtained their signatures on the buyer's agreement. The complainants then requested a copy of the agreement, to which the respondent assured them that it would be provided by the legal team after being stamped and signed. The complainants, trusting the respondent's assurances, left, but to date, their copy of the agreement has not been delivered, with various excuses given.

XII. That on 01/02/2022, the respondent sent a letter to the complainants providing a construction update and the status of the monthly interest cheques. In the letter, the respondent-builder explained that due to Covid/Omicron restrictions and NGT bans, the completion of the work would be delayed, with a tentative timeline of 3-4 months to meet the requirements of the DTCP for obtaining the occupancy certificate (OC). The respondent further assured the complainants that possession would be offered immediately after receiving the OC. Additionally, the respondent reiterated that, under the RERA Act, 70% of the funds received from the sale of the real estate project must be deposited into a separate account in a scheduled bank

to cover construction costs. As a result of this restriction, the respondent stated that it was illegal to withdraw funds from the account to make the monthly interest payments. Given this situation, the respondent stated that the only available option was to adjust the complainants' payments for the monthly interest at the time of possession.

XIII. The respondent-builder, through three demand letters dated 29.06.2022, once again requested payment from the complainants, including interest charges. The complainants visited the respondent's office to object to the interest charges and requested that the respondent waive the interest. The respondent agreed to waive the interest and instructed the complainants to make a payment of Rs. 9,69,157/- into the respondent's escrow account with RERA and Rs. 5,05,047/- into the respondent's account. The total amount paid for all three units was Rs. 14,72,206/-.

XIV. That the complainants received a demand notice and an offer of possession letter dated 29.11.2024. It is pertinent to mention here that the offer of possession was without occupation certificate (O.C) & completion certificate (C.C). It is important to mention here that when the complainants visited the project site they discovered that their units were not ready. It is pertinent to mention that upon reviewing the offer of possession complainants discovered that the revised areas for units 47 (1-03A), 48 (1-03B), and 49 (1-03C) were 362.07 sq. ft., 365.55 sq. ft., and 327.36 sq. ft., respectively. The complainants were shocked to learn that the respondent had misled them. Despite taking Rs. 30,00,000/- for all three units (Rs. 10,00,000/- for unit no. 47 (1-03A), the respondent did not increase the area of their units as promised and instead reduced the area outlined in the MOU dated 01.02.2013.

XV. That the respondent builder never issued any payment receipts for the amounts paid by the complainants. The complainants approached the

respondent and requested their payment receipts and buyer's agreement. The respondent falsely claimed that the receipts had already been sent to their address, but the complainants never received any receipts. In January 2025, the complainants escalated the issue at the respondent's office, demanding the receipts. The complainants also requested the receipts and buyer's agreement via email dated 29.01.2025. Despite numerous follow-ups, the respondent refused to issue the original payment receipts and also denied providing the buyer's agreement claiming it was never signed.

XVI. That upon reviewing the statement of account dated 29.11.2024, the complainants discovered that the respondent had deceived them by failing to acknowledge the payment of Rs. 30,00,000/- made on 07.03.2013 in the statement which can be verified through the bank passbook entry. When the complainants questioned the respondent about why interest was being charged despite the extra Rs. 10,00,000/- being paid for the increased area which was not reflected in the statement of account and the area itself had not been increased, the respondent denied receiving this payment. Furthermore, the respondent refused to acknowledge the payment or issue original receipts for all of the transactions.

XVII. That the complainants paid Rs. 38,27,372/- for unit no. 47 (1-03A) while the statement of account only reflects Rs. 28,27,372/-. Furthermore, the demand in the letter is inflated, as several unjustified charges have been levied on the complainants that were never disclosed in the MOU. The basic sale price, including the PLC, for Unit no. 47 was Rs. 22,03,200/- as per the area specified in the MOU. The respondent has fraudulently collected excess payments from the complainants and continues to charge interest, which is both unfair and illegal.

C. Relief sought by the complainants

8. The complainants have sought the following relief(s):

I. Direct the respondent to make the payment of the assured monthly return @ Rs. 39,168/- (Thirty-Nine Thousand One Hundred Sixty-Eight Rupees including TDS) per month since August 2019 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.

II. Direct the respondent to return the excess amount of Rs. 10,00,000/- (paid on 07.03.2013), collected by the respondent company for unit no. 47 now (1-03A) under the MOU dated 01.02.2013 for the increased area, along with interest at the rate of 18% per annum or the prescribed rate under HARERA.

III. Direct the respondent to refrain from charging the Preferential Location Charge (PLC) to complainants as the respondent has modified the plan, and the unit is no longer located in a preferential or corner position.

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

V. 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 01.08.2019 up to the date of actual delivery of assured monthly return.

VI. Direct the respondent to pay Delay Possession Charges on the amount paid, starting from the due date of possession, as per HARERA regulations.

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

VIII. Direct the respondent to issue letter of possession in favour of the complainants.

IX. Direct the respondent to provide the latest statement of account of complainants for the allotted units.

X. Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.

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

D. Reply by the respondent

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

I. That the complainants with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 408 sq. ft. super area in the project "NEO Square".

II. Considering the request of the complainants, the respondent booked a unit bearing priority no. 47 on 1st floor, admeasuring 408 sq. ft. super area.

III. Thereafter, the respondent made multiple requests to the complainants 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 complainants failed to come forward to do the needful.

IV. Since, the complainants have 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 01.12.2012 was executed between the parties, recording the lease grant rights in favour of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.

V. 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 requested the complainants to forward to complete the formalities with respect to leasing of the unit.

VI. That the occupation certificate of the project was granted by the competent authority on 14.08.2024.

VII. Thereafter, the respondent sent an offer of possession letter dated 29.11.2024, wherein the respondent requested the complainants to clear the outstanding amounts payable against the unit.

VIII. Despite receiving the offer of possession the complainants failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminder dated 03.01.2025, 29.01.2025 and 20.02.2025 requesting the complainants to do the needful.

IX. That the respondent vide letters dated 24.04.2025 requested the complainants to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.

X. That the respondent had duly discharged its obligations by paying a sum of ₹30,15,947 /- to the complainants towards assured return up to 21.10.2019. 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.

XI. That the complainants, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

XII. That the complainants have 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 complainants at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainants have 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.

XIII. That the complainants were duly called upon to execute the builder-buyer agreement (BBA) in accordance with the terms and conditions of the allotment. The respondent, vide reminder letters dated 01.10.2020 and 21.10.2020, specifically requested the complainants to appear and complete the formalities for execution of the BBA.

XIV. That despite service of the aforesaid reminders, the complainants wilfully failed and neglected to come forward for execution of the BBA, which was an essential requirement for crystallising the contractual rights and obligations of both parties. The respondent acted with full diligence, whereas the complainants adopted an indifferent and non-cooperative approach.

XV. That there is no additional demand nor any price escalation, and the unit sold to the complainants is of the same price. That the demand of the development charges as have been sought in the demand letter from the complainants, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit.

XVI. That as per the agreed terms and conditions of the MOU the complainants are 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.

XVII. That the complainants have 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 complainants, 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, the complainants, under clause 8(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the unit, then the complainants shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee.

XVIII. That the complainants themselves 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 complainants about the details of the lease and requested the complainants to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be

utilised to make ready the space in terms of the requirements of the lessee for their business operation.

XIX. That the complainants 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 complainants cannot be permitted to partly rely on the MOU which are beneficial to him and denies the other.

XX. That it is evident that while the complainants 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 complainants cannot be permitted to partly rely on the mou which are beneficial to him and denies the other.

XXI. 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.

XXII. 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.

XXIII. 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 complainants 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 complainants. 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 complainants are bound to pay the fit-out charges.

XXIV. 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. 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.

XXV. 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.

XXVI. That after the first lease of the units, intimations were sent to the complainants to come forward for completion of the formalities with respect to 1st lease with the Lessees. However, the complainants failed to come forward and to do the needful.

XXVII. 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.

XXVIII. 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. 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.

XXIX. 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.

XXX. That the complainants under clause 9 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.

XXXI. That under clause 10 of the MOU, it is categorically agreed between the complainants 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 complainants, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainants fails to come forward to execute the lease deed, the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainants. 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 complainants are valid as the same are executed as per the terms and conditions of the MOU.

XXXII. That the complainants are seeking payment of assured return on the basis of MOU, and on the other hand the complainants denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the complainants cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the complainants 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 complainants 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.

XXXIII. That the complainants, vide the present complaint, are 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.

XXXIV. 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.

XXXV. That a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of "Vatika Ltd. Vs Union of India & Anr."- CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the petitioner therein, seeking recovery of deposits till the next date of hearing.

XXXVI. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court, and the same has been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication and now coming up for hearing on 25.08.2025. Without prejudice to the rights of the respondent and submissions made herein, it is noted herein that the payment of assured return shall be subject to the outcome of the decision of the Hon'ble High Court of Punjab and Haryana.

XXXVII. That time was essence in respect to the complainant's obligation to make the respective payment. and, as per the agreement so signed and acknowledged

the complainants were bound to make the outstanding payment as and when demanded by the respondent.

XXXVIII. That construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:

- **NGT ORDERS/ CONSTRUCTION BANS:** That the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
- **Demonetization of Rs. 500 and Rs. 1000 currency notes:** The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.
- **GST Implications:** It is pertinent to apprise to the Ld. Authroity that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction,

business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of respondent is situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work due to the fear of riots and remobilisation of work workforce took considerable time of 3-4 months.
- **Cascading Impact of Default of the Buyer's on Project Progress: That** due to persistent and simultaneous defaults by several buyers including the respondent faced severe financial constraints, which significantly hampered the timely progress of construction of the project. The financial model of the project was structured on the timely inflow of funds from buyers, which was disrupted due to non-payment of dues. This led to a shortage of working capital, affecting procurement, labour payments.

XXXIX. That from the facts indicated above, it is comprehensively established 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 stated hereinabove come within the meaning of force majeure, as stated above. 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 above and therefore the same is not to be taken into reckoning while computing the completion period 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.

XL. That the construction/ completion work of the project was hampered due to force majeure situations beyond the control of the respondent. That the respondent despite facing the force majeure situations beyond its control, has completed the construction/development of the project, obtained the occupation certificate and offered possession of the subject unit in terms with MOU.

XLI. That the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. The complainants have vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainants are entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.

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

12. 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

13. 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

14. 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

15. 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.*

16. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

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

17. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainants are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) **"allottee"** in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter vide said MoU dated 01.12.2012. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to make the payment of the assured monthly return @ Rs. 39,168/- (Thirty-Nine Thousand One Hundred Sixty-Eight Rupees including TDS) per month since August 2019 till handing over of possession along with interest @ 18% per annum or at prescribed rate as per HARERA Rules.

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

G.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 01.08.2019 up to the date of actual delivery of assured monthly return.

G. IV Direct the respondent to pay Delay Possession Charges on the amount paid, starting from the due date of possession, as per HARERA regulations.

Assured Return

19. In the instant complaint, the complainants duly booked a unit located on the 1st Floor admeasuring 408 sq. ft. in the respondent's project namely, Neo Square situated at Sector-109, Gurugram. The Memorandum of Understanding (MOU) was executed between the parties dated 01.12.2012.

20. The complainants in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the MoU dated 01.12.2012. The complainant has submitted that as per clause 3 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs. 96/- per sq. ft. per month. The complainants are seeking unpaid assured return on monthly basis as per the MoU dated 01.12.2012 at the rates mentioned therein. It is pleaded by the

complainants that the respondent has not complied with the terms and conditions of the said MoU.

21. The respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.*** wherein the authority has 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 Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

22. Further respondent raised an objection that MOU dated 01.12.2012 cannot be treated as agreement for sale. The authority is of the view that the MoU dated 01.12.2012 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement

defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

23. The money was taken by the builder 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 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.

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

25. In the present complaint, the assured return was payable as per clause 3 of the MoU dated 01.12.2012, which is reproduced below for the ready reference:

> *3. That the Company hereby has agreed to allot to the Allottee(s) premises measuring 408 sq. ft. super built up area on the First Floor of Tower B of the said project. The Allottee has opted for the 'Investment Return Plan' and has agreed thet the basic consideration for allotment of the premises is to be determined at Rs. 5000/- per sq. ft. taking into consideration a return of Rs. 96/- per sq. ft. per month, subject to the terms of this MOU.*

26. Thus, the assured return was payable @ of Rs. 96/- per sq. ft. per month. However, the clause is silent that from where the assured return is to be paid and upto when. Therefore, the Authority is of the view that the said clause is effective from the date of execution of MOU till the date of offer of possession.

27. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 01.12.2012, it was obligation on 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 01.12.2012. Further, it is to be noted that on 14.08.2024 the occupation certificate for the unit was received and thereafter the possession of the unit was offered on 29.11.2024. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @ Rs. 96/- per sq. ft. per month from the date of execution of MOU i.e., 01.12.2012 till the till the offer of possession of the said unit i.e., 29.11.2024.

Delay Possession Charges:

28. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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. In the present matter, MOU was executed between the parties on 01.12.2012. However, no buyer's agreement was executed and there is no possession clause in the MOU. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that* ***when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.***

30. In view of the above-mentioned reasoning, the date of MOU i.e., 01.12.2012 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 01.12.2015.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at prescribed rate of interest. 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]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates

which the State Bank of India may fix from time to time for lending to the general public.

32. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

33. 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., 30.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

36. On consideration of documents available on record and submissions made by the complainants and the respondent, 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 by 01.12.2015. The occupation certificate for the said project was received on 14.08.2024 and subsequently unit was offered for possession on 29.11.2024. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

37. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

38. To answer the above proposition, it is worthwhile to consider that the assured return/penalty charges is payable to the allottee on account of a provision in the MoU at the rate at which assured return has been committed by the promoter i.e., @ of Rs. 96/- per sq. ft. per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the allottee will be entitled for this specific amount from 01.12.2015 till the offer of possession of the said unit i.e., 29.11.2024. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay 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 allottee as his money is continued to be used by the promoter even after the promised due date and in

return, he is to be paid either the assured return or delay possession charges whichever is higher.

39. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

40. In the present complaint, as per clause 3 of the MoU dated 01.12.2012, the amount on account of assured return was payable from 01.12.2015 till the offer of possession of the said unit i.e., 29.11.2024. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @ of Rs. 96/- per sq. ft. per month from the date i.e., 01.12.2015 till the offer of possession of the said unit i.e., 29.11.2024 after deducting the amount, if any already paid on account of assured return to the complainants.

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

41. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to occupation certificate, completion certificate, sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the copy of occupation certificate and completion certificate to the complainants.

G.VI Direct the respondent to issue letter of possession in favour of the complainants.

42. The complainants are seeking relief w.r.t the offer of possession. The Authority observes that the occupation certificate for the project was received on

14.08.2024 and subsequently the respondent has offered the possession of the unit on 29.11.2024. Therefore, the said relief sought by the complainants becomes redundant.

G.VII Direct the respondent to execute conveyance deed in favour of complainants for the allotted units.

43. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainants. 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.

44. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

G.VIII Direct the respondent to return the excess amount of Rs. 10,00,000/- (paid on 07.03.2013), collected by the respondent company for unit no. 47 now (1-03A) under the MOU dated 01.02.2013 for the increased area, along with interest at the rate of 18% per annum or the prescribed rate under HARERA.

G.IX Direct the respondent to refrain from charging the Preferential Location Charge (PLC) to complainants as the respondent has modified the plan, and the unit is no longer located in a preferential or corner position.

G.X Direct the respondent to provide the latest statement of account of complainants for the allotted units

45. It is observed that the respondent, vide memorandum of understanding dated 01.12.2012 had allotted to the complainants a unit admeasuring 408 sq. ft. situated on the first floor. Subsequently, the respondent vide offer of possession dated 29.11.2014 revised the area of the said unit to 362.07 sq. ft.

46. The complainants have approached this authority seeking refund of the amount paid towards the increased area. Upon consideration of the record, this Authority observes that there has been a reduction in the area of the unit to the extent of 11.27%. The 'agreement for sale' annexed to the Haryana Real Estate (Regulation and Development) Rules, 2017 provides that any increase in area shall be permissible only up to a maximum of 5%. Accordingly, the respondent is entitled to charge the complainants only for the increase in area up to the permissible limit of 5%, and shall refund any amount received in excess thereof.

H. Directions of the authority

47. 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 per month as per the MoU dated 01.12.2012 at the agreed rate i.e., @ Rs. 96/- per sq. ft. per month from the date i.e., 01.12.2012 till offer of possession i.e., 29.11.2024 after deducting the amount already paid on account of assured return to the complainants.

ii. In CR/1033/2025 the respondent/promoter is directed to pay assured return to the complainants per month as per the MoU dated 01.12.2012 at the agreed rate i.e., @ Rs. 96/- per sq. ft. per month from the date i.e., 01.12.2012 till offer of possession i.e., 29.11.2024 after deducting the amount already paid on account of assured return to the complainants.

iii. In CR/1034/2025 the respondent/promoter is directed to pay assured return to the complainants per month as per the MoU dated 01.12.2012 at the agreed rate i.e., @ Rs. 99/- per sq. ft. per month from the date i.e., 01.12.2012 till offer of possession i.e., 29.11.2024 after

deducting the amount already paid on account of assured return to the complainants.

iv. 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.

v. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement.

vi. 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.

48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

49. The complaints stand disposed of.

50. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated:30.01.2026