

**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/785/2025	Anshu Agarwal and Pankaj Babu Agarwal Vs. M/s Neo Developers Private Limited	Sh. Hemant Phogat (Advocate) Sh. Venket Rao (Advocate)
2.	CR/786/2025	Anshu Agarwal and Pankaj Babu Agarwal Vs. M/s Neo Developers Private Limited	Sh. Hemant Phogat (Advocate) Sh. Venket Rao (Advocate)
3.	CR/787/2025	Anshu Agarwal and Pankaj Babu Agarwal Vs. M/s Neo Developers Private Limited	Sh. Hemant Phogat (Advocate) Sh. Venket Rao (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	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession /Date of lease Deed
1	CR/785/2025 Anshu Agarwal and Pankaj Babu Agarwal Vs. M/s Neo Developers Pvt. Ltd. DOF: 04.03.2025	601, 6 th floor 525 sq. ft. (page 26 of complaint)	BBA: 13.04.2018 (page 23 of complaint) MOU: 13.04.2018 (page 46 of complaint)	4. The Company shall pay a monthly return of Rs. 34,,125/- on the total amount received with effect from 13.04.2020 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale	T.S.C: Rs. 21,60,837/- (as per payment plan on page no. 41 of complaint) A.P.: Rs. 17,93,862/-	O.O.P: NA

	Reply: 05.12.2025			consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- 1. The monthly assured return shall be paid to the Allottee until the possession of the said unit. This shall be paid from the effective date.		
2	CR/786/2025 Anshu Agarwal and Pankaj Babu Agarwal Vs. M/s Neo Developers Pvt. Ltd. DOF: 04.03.2025 Reply: 05.12.2025	617, 6 th floor 1058 sq. ft. (page 26 of complaint)	BBA: 20.01.2018 (page 23 of complaint) MOU: 20.01.2018 (page 44 of complaint)	4. The Company shall pay a monthly return of Rs. 68,770/- on the total amount received with effect from 20.01.2020 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1. The monthly assured return shall be paid to the Allottee until the possession of the said unit. This shall be paid from the effective date.	T.S.C: Rs. 43,54,601/- (as per payment plan on page no. 41 of complaint) A.P.: Rs. 36,15,059/-	O.O.P: NA
3	CR/787/2025 Anshu Agarwal and Pankaj Babu Agarwal Vs.	602, 6 th floor 967 sq. ft. (page 28 of	BBA: 19.12.2017 (page 23 of complaint) MOU: 19.12.2017	4. The Company shall pay a monthly return of Rs. 62,855/- on the total amount received with effect from 19.12.2019 before deduction of Tax at Source and GST, cess or	T.S.C: Rs. 39,80,055/- (as per payment plan on page no. 40 of complaint)	O.O.P: NA

	M/s Neo Developers Pvt. Ltd. DOF: 04.03.2025 Reply: 05.12.2025	complaint) (page 46 of complaint)	<i>any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1. The monthly assured return shall be paid to the Allottee until the possession of the said unit. This shall be paid from the effective date.</i>	A.P.: Rs. 32,49,120/-															
Relief sought by the complainant(s) in abovementioned complaints: - <ol style="list-style-type: none"> 1. Direct the respondent to pay monthly assured return until the possession of the unit. 2. Direct the respondent to offer possession of the unit after adjustment of due EDC, IDC, IFMS in respect of unit towards the pending assured returns. 3. Direct the respondent to get the conveyance deed executed in favor of complainants. 4. Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement. 																			
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: <table border="1" data-bbox="197 1187 1487 1458"> <thead> <tr> <th>Abbreviation</th> <th>Full form</th> </tr> </thead> <tbody> <tr> <td>DOF</td> <td>Date of filing of complaint</td> </tr> <tr> <td>BBA</td> <td>Builder Buyer's Agreement</td> </tr> <tr> <td>MOU</td> <td>Memorandum of Understanding</td> </tr> <tr> <td>TSC</td> <td>Total sale consideration</td> </tr> <tr> <td>AP</td> <td>Amount paid by the allottee/s</td> </tr> <tr> <td>OOP</td> <td>Offer Of Possession</td> </tr> </tbody> </table>						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
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4. The aforesaid complaints were filed by the complainant-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 complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/785/2025 titled as Anshu Agarwal and Pankaj Babu Agarwal 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/785/2025 titled as Anshu Agarwal and Pankaj Babu Agarwal 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.	601 on 6 th Floor (page no. 26 of complaint)
7.	Unit area admeasuring	525 sq. ft. (page no. 26 of complaint)
8.	BBA	13.04.2018 (page no. 23 of complaint)
9.	Date of MOU	13.04.2018 (page no. 46 of complaint)
10.	Possession clause	3. The Company shall complete the construction of the said building within which the said space is located within 36 months from the date of execution of this Agreement or from start of construction, whichever is later and apply for grant of completion /occupancy certificate. (as per MOU at page no. 48 of complaint)

11.	Assured return Clause	4. <i>The Company shall pay a monthly return of Rs. 34,,125/- on the total amount received with effect from 13.04.2020 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee until the possession of the said unit. This shall be paid from the effective date. (page no. 49 of complaint)</i>
12.	Due date	13.04.2021 (calculated as 3 years from the date of MOU)
13.	Basic sale consideration	Rs. 21,60,837/- (As per payment plan at page no. 41 of complaint)
14.	Amount paid by the complainants	Rs. 17,93,862/- (As alleged by complainants at page no. 13 of complaint)
15.	Occupation certificate	14.08.2024
16.	Offer of possession	NA

B. Facts of the complaint.

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

- i. That after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainants booked a commercial "space" bearing unit no. 601 on 6th floor, measuring super area of 1058 sq. feet and covered area of 262.5 sq. feet in the area designated for office space in the upcoming project of the respondent named "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 15,75,000/- and total sale price of Rs. 21,60,837/- which includes the BSP, EDC, IDC, IFMS, GST and the complainants have paid a sum of Rs. 17,93,862/- including BSP and GST.

- ii. That the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
- iii. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainants on 13.04.2018.
- iv. That the complainants have abided by all the terms of MOU and builder buyer agreement dated 13.04.2018 and have made all the payments/ installments in a timely manner as and when demanded by the respondent and there are no dues pending in respect of the total basic sale price of the unit/space.
- v. That as per clause-3 of the MOU dated 13.04.2018, the respondent was/is under legal obligation to complete the construction of the project within 36 months from the date of execution of MOU but the respondent has failed to complete the project and handover the possession of the space/unit within the committed time period and the respondent has delayed the project.
- vi. That as per clause-4 of the MOU dated 13.04.2018, the respondent was/is under legal obligation and was bound to pay the monthly assured return of Rs. 34,125/- on the total amount receipt w.e.f. 13.04.2020 until the possession of the said unit/space.
- vii. That the respondent/ developer has failed to honour its own commitment of paying the monthly assured returns and has not paid a single installment towards the monthly assured return. The complainants have been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns by visiting the respondent/ developer personally but the respondent/ developer has not paid any heed to the just and genuine demands of the complainants and has been lingering on the demands of the complainants on one pretext or the other.

- viii. That upon communication with the respondent/ developer, the complainants were given several assurances verbally and through email dated 15.01.2020 that the respondent/ developer will settle the due assured returns after adjustment of dues in respect of the said unit/space at the time of receiving of occupation certificate and offer of possession and now even after the receiving of occupation certificate, the respondent/ developer has clearly denied to pay the assured returns.
- ix. That the complainants have come to know that the respondent has received the occupation certificate in respect of the project but the respondent has not offered possession to the complainants and has neither issued any letter of possession of the said unit/space to the complainants.
- x. That the complainants have approached the respondent by visiting at their office and by sending repeated mails requesting the respondent to offer the possession of their unit/space and to adjust the pending assured returns towards the amount due for EDC, IDC, IFMS in respect of the unit/space as verbally committed by the respondent, but the respondent has not provided any satisfactory reply to the complainants and is further not offering the possession of the said unit/space of the complainants.
- xi. The complainants had taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to offer them the possession of their unit /space and to execute the conveyance deed /sale deed in their favour, but the respondent has not paid any heed to the just and genuine request of the complainants.
- xii. That the respondent is completely ignoring the terms of the buyers agreement and is acting in an unlawful and arbitrary manner by not offering the possession of the space/unit and further by not paying the monthly assured

returns as per the MOU dated 13.04.2018 in order to cause wrongful loss to the complainants.

- xiii. That till today the complainants have not received any satisfactory reply from the respondent regarding payment of assured returns as well as offer of possession of their unit/space and therefore, the complainants are suffering from harassment and are going through a lot of mental and financial agony.
- xiv. The respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by not offering the possession of the unit/space to the complainants as per the terms of the buyers agreement which is immoral, illegal and amounts to unfair trade practice.
- xv. The cause of action accrued in favour of the complainants and against the respondent, when complainants booked the said unit and it further arose when respondent failed/neglected to pay the assured returns and further by not offering the possession of the unit/space to the complainants. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

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

- I. Direct the respondent to pay monthly assured return until the possession of the unit.
- II. Direct the respondent to offer possession of the unit after adjustment of due EDC, IDC, IFMS in respect of unit towards the pending assured returns.
- III. Direct the respondent to get the conveyance deed executed in favor of complainants.
- IV. Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement.

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, applied for and were allotted a commercial unit in the project titled "NEO SQUARE" situated at Sector-109, Dwarka Expressway, Gurugram. The said unit with no. 601, allotted on the 6th Floor, measuring approximately 525 square feet super area in the designated food court and entertainment space. A builder buyer agreement executed on 13.04.2018 and a memorandum of understanding executed between the parties on 13.04.2018, copies whereof are annexed with the complaint.
- II. That as per clause 10 TO 12 of the duly executed BBA, the Allottee was contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clause expressly provides that the Allottee shall be liable to make timely payment of maintenance charges and other related dues, as determined by the builder or its nominated maintenance agency from time to time in accordance with the applicable maintenance cost.
- III. That as per clause 4.4 of the BBA executed between the parties, the timely payment of all installments and other applicable charges, including stamp duty, registration fees, maintenance charges, service tax, BOCW cess, and all other statutory dues, was expressly stated to be the essence of the agreement. The said clause formed a foundational obligation of the Allottee under the contract and was critical for the sustenance and continuation of the contractual relationship.

- IV. However, the Allottee wilfully failed to make payment of the said charges within the stipulated time, despite being duly notified and reminded on multiple occasions. Such non-payment on part of the Allottee amounts to a clear and deliberate deviation from the essential terms and conditions of the contract.
- V. Furthermore, clause 4.5 of the BBA specifically empowers the respondent/promoter to terminate the agreement in the event of such default, treating it as a breach of contractual obligations.
- VI. That the said clause also outlines the mechanism for refund, after deduction of 20% of the basic sale price and other amounts expended by the promoter, including brokerage and assured return/penalties. Accordingly, in view of the continuing default by the Allottee in making timely payment of legitimate dues, the respondent was well within its contractual rights to terminate the allotment and cancel the unit. The respondent's action was neither arbitrary nor unjust but strictly in conformity with the binding agreement voluntarily executed between the parties.
- VII. That the complainants have persistently defaulted in clearing their outstanding dues despite repeated requests and reminders issued by the respondent. The respondent, in good faith and in accordance with the contractual terms, made multiple attempts to secure compliance by the complainants, who wilfully ignored such communications.
- VIII. That the respondent despite not being under any contractual obligation to issue reminders or follow-ups, has, in good faith and as a gesture of fairness, issued multiple written communications to the complainants demanding the outstanding dues payable in relation to the allotted unit. Specifically, demand vide letter dated 22.10.2019 were duly served upon the complainants, clearly intimating the amount due and calling upon the complainants to make payment

in accordance with the terms of the builder buyer agreement. As per clause 4.6 of the said agreement, the respondent is under no obligation to issue such reminders or notices for payment and it is the duty of the Allottee to comply with the payment schedule independently.

- IX. That the respondent herein had been running behind the complainants for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainants herein has failed to pay the outstanding dues on time. That though the complainants may have cleared the basic sale price of the said commercial property however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MoU. The complainants failed to clear the outstanding dues of Rs. 14,57,260/-.
- X. That under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return/penalty also the Ld. Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return/penalty on investment which is separate from the agreement of sale or allotment which grants right in immovable property.
- XI. That the RERA Act, specifically provides for the matters which are mandatory to be included this attains more importance where the project was an ongoing project and provisions of the act were being made applicable in such a situation, a strict interpretation of the statutory provisions are being mandated.
- XII. That the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under Section 13. It is submitted that Section 13 nowhere mentions the agreements pertaining to assured return/penalty are covered under the RERA Act, 2016, it is imperative

that a strict interpretation is given to its provisions while deciding the matters pertaining to assured return/penalty.

- XIII. That the respondent cannot pay "assured return/penalty" to the complainants 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. It is pertinent to note that 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.
- XIV. That 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.
- XV. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (*hereinafter referred to as "the BUDS Act"*) notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the respondent upon the introduction of BUDS Act, cease to make further payments pertaining to assured return/penalty to the allottees/complainants due above said prevailing confusion/anomaly.
- XVI. 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.

- XVII. 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.
- XVIII. 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. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
- XIX. 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.

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 13.04.2018. 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 pay monthly assured return until the possession of the unit.

19. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
20. The respondent has submitted that the complainants in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.
21. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service,*

with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

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

(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.

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

(i) as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

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

24. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business

and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

25. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
26. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the 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.
27. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 13.04.2018, which is reproduced below for the ready reference:

4.
The Company shall pay a monthly return of Rs. 34,125/- on the total amount received with effect from 13.04.2020 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- I. The monthly assured

return shall be paid to the Allottee until the possession of the said unit. This shall be paid from the effective date.

28. Thus, as per the abovementioned clause the assured return was payable @Rs.34,125/- per month w.e.f. 13.04.2020, until the possession of the said unit.

29. In light of the above, the Authority is of the view that as per the MoU dated 13.04.2018, it was obligation on part of the respondent to pay the assured return till the possession of said unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 however, till today no offer has been made by the respondent for possession even no document has been annexed in the complaint as well as reply which substantiate the offer of possession. Accordingly, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs. 34,125/- per month from the date i.e., 13.04.2020 till the date of possession of the unit after deducting the amount already paid on account of assured return to the complainants.

G.II Direct the respondent to offer possession of the unit after adjustment of due EDC, IDC, IFMS in respect of unit towards the pending assured returns.

30. The complainants are seeking relief w.r.t the handing over of possession. The Authority observes that the occupation certificate for the project was received on 14.08.2024 however, till today no offer has been made by the respondent for possession even no document has been annexed in the complaint as well as reply which can substantiate the offer of possession. Therefore, the respondent is directed to handover the possession of the unit within 60 days of this order.

G.III Direct the respondent to get the conveyance deed executed in favor of complainants.

31. 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.

32. 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.IV Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement.

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

H. Directions of the authority

34. 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 13.04.2018 at the agreed rate i.e., @Rs.34,125/- per month from the date i.e., 13.04.2020 till the date of possession of the unit after deducting the amount already paid on account of assured return to the complainants.
- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- iii. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges from the complainants/ allottee at any point of time even after being part of the builder buyer's

agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.*

iv. 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.

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

36. The complaints stand disposed of.

37. Files be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated:30.01.2026