

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

Complaint no.	:	5160 of 2025
Date of Filing:		15.10.2025
Date of Decision:		30.01.2026

Surinder Kumar

R/o: GH5/7, Flat no. 375, Paschim Vihar,
Meera Bagh, Sunder Vihar, S.O. West Delhi,
Delhi-110057

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Office: 32B, Pusa Road, Karol Bagh, New
Delhi-110005

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Hemant Phogat

None

Advocate for the complainant

Advocate for the respondent

ORDER

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

A. Unit and project related details

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

S. 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.	5 th floor (page no. 27 of complaint)
7.	Unit area admeasuring	300 sq. ft. (page no. 27 of complaint)
8.	Date of buyer's agreement	28.02.2018 (page no. 24 of complaint)
9.	MOU	28.02.2018 (page no. 50 of complaint)
10.	Assured return Clause	<i>4. The Company shall pay a monthly assured return of Rs. 19,500/- on the total amount received with effect from 28.02.2020 before deduction of Tax at source, Cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date.</i>

		<i>(page no. 53 of complaint)</i>
11.	Basic sale consideration	Rs. 11,97,000/- (as per MOU at page 52 of complaint)
12.	Amount paid by the complainant	Rs. 15,00,000/- (as per SOA at page 62 of complaint)
13.	Occupation certificate	14.08.2024
14.	Offer of possession	04.10.2024 (page no. 60 of complaint)

B. Facts of the complaint

3. The complainant has made the 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 complainant had booked a commercial space in the area designated for food court bearing no. 75, on 5th floor having its super area 300 Sq. ft. which was later shifted to 13th Floor 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. 11,97,000/- and total sale price of Rs. 15,67,404/- and the complainant had paid a sum of Rs. 15,00,000/-.
 - II. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 28.02.2018.
 - III. That the complainant has abided by all the terms of MOU and builder buyer agreement dated 28.02.2018 and has 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 basic sale price of the unit as per the payment schedule of the builder buyers agreement.
 - IV. That the respondent has also delayed the project and has committed to the complainant at the time of booking that the project will be

- completed within 36 months from the date of execution of builder buyers agreement or start of construction whichever is later, but the respondent has failed to complete the project and handover the possession of the unit within the committed time period and the respondent has delayed the project.
- V. That as per clause-4 of the MOU dated 28.02.2018, the respondent was/is under legal obligation and was bound to pay the penalty/Assured Return of Rs. 19,500/- on the total amount receipt w.e.f. 28.02.2020 until the commencement of first lease on the said unit.
- VI. That the respondent has failed to honour its own commitment of paying the monthly assured returns and has not paid a single installment towards the monthly assured returns. The complainant has 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 complainant and has been lingering on the demands of the complainant on one pretext or the other.
- VII. That upon communication with the respondent/ developer, the complainant were given verbal assurance that the respondent/ developer will settle the due assured returns at the time of receiving of occupation certificate and offer of possession and now even after the receiving of occupation certificate as informed by the respondent/ developer, the respondent/ developer has clearly denied to pay the assured returns.
- VIII. That the respondent in contravention to the terms of builder buyer agreement dated 28.02.2018 has raised unlawful demands via demand



notice and offer of possession letter dated 04.10.2024 on account of development charges to the tune of Rs. 2,12,400/-, FTTH charge to the tune of Rs. 6,490/-, Labour cess to the tune of Rs. 7500/-.

- IX. That the respondent has further raised a unlawful demand of Rs. 8,85,000/- on account of FITOUT charge vide letter dated 19.12.2024. The fitout charges are unlawfully imposed by the respondent in an arbitrary manner in order to illegally extort money from the complainant as the said charges are not part of the buyers agreement and neither such charges were disclosed to the complainant at the time of booking of the unit.
- X. That the complainant has requested the respondent to waive of the demands toward development charges, FTTH Charges and Labour Cess and the interest /penalty imposed and FITOUT Charges, but the respondent has clearly denied to waive off the demand and is bent upon to recover this amount from the complainant in unlawfully manner.
- XI. That the respondent is completely ignoring the terms of the buyers agreement and is acting in an unlawful and arbitrary manner by making demands upon his whims and fancies which are not part of the buyers agreement with a sole intention to extort money out of the complainant in order to cause wrongful loss to the complainant.
- XII. That the complainant have taken all possible requests and gestures to persuade the respondent whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyers agreement and to pay him the assured returns, but the respondent has completely ignored the just and genuine demands of complainant.

XIII. That till today the complainant has not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter dated 04.10.2024 and letter of FITOUT charges letter dated 19.12.2024 and therefore, the complainant is suffering from harassment and is going through a lot of mental and financial agony.

C. Relief sought by the complainant:

4. The complainant in the present complaint is seeking the following relief(s).
 - (i) Direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.
 - (ii) Direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.10.2024 on account of Development charges, FTTH, Labour Cess charges and interest/penalty charges.
 - (iii) Direct the respondent to withdraw and waive off the demands made in letter dated 19.12.2024 on account of fitout charges.
 - (iv) Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement dated 28.02.2018.
 - (v) Direct the respondent to execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainant.
5. The present complaint was filed on 15.10.2025. The respondent has not filed the reply in the complaint till date. Despite specific directions on dated 31.10.2025, 05.12.2025, 12.12.2025, it failed to comply with the orders of the authority. It shows that the respondent was

intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority struck off the defense of the respondent on 30.01.2026.

6. 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.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D.II Subject-matter jurisdiction

9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the reliefs sought by the complainant:

E.I Direct the respondent to pay the due monthly assured returns until the commencement of first lease of unit.

11. The complainant is 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.
12. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.
13. 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.

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

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

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

15. 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.

16. 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.
17. 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.
18. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an



agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

19. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 28.02.2018, which is reproduced below for the ready reference:

4.

*The Company shall pay a monthly assured return of Rs. 19,500/- on the total amount received with effect from 28.02.2020 before deduction of Tax at source, Cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) **until the commencement of the first lease on the said unit.** This shall be paid from the effective date.*

20. Thus, as per the abovementioned clause the assured return was payable @Rs.19,500/- per month w.e.f. 28.02.2020 till commencement of the first lease on the said unit.
21. In light of the above, the Authority is of the view that as per the MoU dated 28.02.2018, it was obligation on part of the respondent to pay the assured return till commencement of first lease of the unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered for possession on 04.10.2024. However, there is no document on record to substantiate the leasing of unit. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.19,500/- from the date i.e., 28.02.2020 till the commencement of



the first lease on the said unit after deducting the amount already paid on account of assured return to the complainant.

E.II Direct the respondent to withdraw and waive off the demands made in demand notice & offer of possession letter dated 04.10.2024 on account of Development charges, FTTH, Labour Cess charges and interest/penalty charges.

E.III Direct the respondent to withdraw and waive off the demands made in letter dated 19.12.2024 on account of fitout charges..

E.IV Direct the respondent not to charge anything which is not the part of payment schedule of buyer's agreement dated 28.02.2018.

22. The complainant has raised objection towards the fit out charges raised by the respondent vide letter dated 04.10.2024 and is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The clause 7 is reiterated below for ready reference:

(d)

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

23. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes.



However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainant should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

24. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.
25. Further, the complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges.

- **Labour cess**

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

• **Development charges**

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

"11.

That the Allottee agrees to pay all taxes, charges, Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST, Development charges, Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like. These shall be paid on demand and in case of delay, these shall be payable with interest by the Allottee"



28. In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainant viz- à-viz the total area of the particular project. The complainant will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

29. The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding charges**

30. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and



physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

31. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

32. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.
- E.V Direct the respondent to execute sale deed/ conveyance deed in favour of the complainant as entire payment towards the total sale price in respect of the unit/ space has been paid by the complainant.**
33. 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 complainant. Whereas as per Section 19(11) of the Act of 2016, the



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

34. 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.

F. Directions of the authority

35. 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(I):
- i. The respondent/promoter is directed to pay the assured return to the complainant per month as per the MoU dated 28.02.2018 at the agreed rate i.e., @ Rs.19,500/- from the date i.e., 28.02.2020 till the commencement of the first lease on the said unit after deducting the amount already paid on account of assured return to the complainant.
 - 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 @8.85% p.a. till the date of actual realization.
 - iii. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges from the complainant/



allottee at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.*

- 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.
36. Complaint as well as applications, if any, stands disposed off accordingly.
37. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2026