

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

Date of Order: 27.01.2026

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|----------------------------|-----------------|--|---|
| NAME OF THE BUILDER | | M/s Neo Developers Private Limited. | |
| PROJECT NAME | | "Neo Square" | |
| S. No. | Case No. | Case title | Attendance |
| 1. | CR/5932/2024 | S K Mittal V/S NEO Developers Private Limited | Garvit Gupta (Complainant) Venkat Rao (Respondent) |
| 2. | CR/5933/2024 | S K Mittal V/S NEO Developers Private Limited | Garvit Gupta (Complainant) Venkat Rao (Respondent) |

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of the aforesaid 2 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 and amount are given in the table below:

| | |
|----------------------------------|---|
| Project Name and Location | "Neo Square", Sector 109, Gurugram, Haryana |
| Nature of the project | Commercial Colony |
| 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 | Lease Rental Clause 7 of the MoU | Total Sale Consideration / Total Amount paid by the complainant |
|---------|---|---|--|---|---|
| 1 | CR/5932/2024 S K Mittal V/S NEO Developers Private Limited DOF: 04.12.2024 DOFAC: 17.10.2025 RR: 18.11.2025 | Unit no. 24A And 5 th floor 300 Sq. ft. (page 30 of complaint) Priority Unit No. 24A And 5 th floor 300 Sq. ft. (page 30 of complaint) | BBA: 05.01.2017 (page 27 of complaint) MOU: 05.01.2017 (page 53 of complaint) | Clause 7 of the MoU 7(a) "That the responsibility of assured returnswhereupon the Allottee(s) shall be entitled to receive the lease rentals" 7(b) In case of any increase in the monthly rental in excess of the Assured Return of Rs.53.17/- per sq. ft., the same shall be divided in the ratio of 50:50 between Allottee(s) and the Company. 7(c) In case monthly rental is below Rs.53.17/ per Sq. Ft., then in that case company shall pay the shortfall only for the period of first entered lease. After the lease with the first tenant comes to an end the company shall be under no obligation to lease out the premises on behalf of the | T.S.C: Rs. 14,95,050/- (as per payment plan at page no. 45 of complaint) A.P.: Rs. 14,89,050/- (as per pg. no. 19 the reply) |

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|---|---|---|--|--|---|
| 2 | CR/5933/2024 S K Mittal V/S NEO Developers Private Limited DOF: 25.04.2025 DOFAC: 17.10.2025 RR: 18.11.2025 | Unit no. Priority No. 24 5 th floor And 600 Sq. ft. (page 43 of complaint) | BBA: 05.10.2016 (page 39 of complaint) MOU: 05.10.2016 (page 36 of complaint) | <i>Allottee(s) or to offer any kind of assured returns.</i> <i>(As per pp. no. 55 of the Complaint)</i> <i>Clause 7 of the MoU</i> <i>7(a) "That the responsibility of assured returnswhereupon the Allottee(s) shall be entitled to receive the lease rentals"</i> <i>"7(b) In case of any increase in the monthly rental in excess of the Assured Return of Rs.53.17/- per sq. ft., the same shall be divided in the ratio of 50:50 between Allottee(s) and the Company."</i> <i>"7(c) In case monthly rental is below Rs.53.17/ per Sq. Ft., then in that case company shall pay the shortfall only for the period of first entered lease. After the lease with the first tenant comes to an end the company shall be under no obligation to lease out the premises on behalf of the Allottee(s) or to offer any kind of assured returns."</i> <i>(As per page no. 56 of the complaint)</i> | T.S.C.: Rs. 30,52,890/- (as per page no. 45 of complaint) A.P.: Rs. 30,43,800/- (as per page no.22 of reply) |
|---|---|---|--|--|---|

Reliefs sought by the complainant -

- Respondent be directed to make payment towards the assured return till the commencement of the first lease of the unit along with interest as per law.
- Respondent be directed to make payment of delayed interest on the amount paid by the Complainant from the due date of offer of possession till the date of issuance of the valid offer of possession.
- Direct the Respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the Buyer's Agreement.
- Direct the Respondent to revoke the letters dated 03.01.2025 and 01.03.2025.
- Direct the Respondent to revoke the letter dated 28.02.2025 demanding fitout charges.
- Respondent be directed not to charge any illegal demands under the garb of 'fitout charges', 'development charges', 'labour cess' and 'FTTH'.
- Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental.

8. In case the Respondent does not lease out the unit to any prospective allottee for one year from the date of receipt of occupation certificate, then the Respondent would be liable to make payment towards lease rental from the date of lapse of one year from the date of receipt of Occupation certificate or to demarcate the unit and handover the physical possession of the unit to the Complainant.
9. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.
10. Respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

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 |
| DOFAC | Date of filing of amended complaint |
| BBA | Builder Buyer's Agreement |
| MOU | Memorandum of Understanding |
| AP | Amount paid by the allottee/s |
| T.S.C | Total Sale Consideration |
| RR | Reply received |

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, revoking illegal demands and setting aside the 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/5932/2024 titled as S K Mittal 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/5932/2025 titled as S K Mittal Vs. M/s Neo Developers Pvt. Ltd.

| S. N. | Particulars | Details |
|-------|--|---|
| 1. | Name of the project | Neo Square, Sector-109, Gurugram |
| 2. | Project area | 3.08 acres |
| 3. | Nature of the project | Commercial colony |
| 4. | RERA Registered or not | Registered Vide no. 109 of 2017 dated 24.08.2017 valid up to 22.02.2024 |
| 5. | DTCP License no. | 102 of 2008 dated 15.05.2008 valid up to 14.05.2025 |
| 6. | Unit no. | Priority no. 24A, 5 th Floor, 300 sq.ft. area (as per offer of possession letter dated 06.03.2025 on page no. 16 of reply) |
| 7. | Date of MoU | 05.01.2017 (As on page no. 53 of complaint) |
| 8. | Date of execution of apartment buyer's agreement | 05.01.2017 (As on page no. 27 of complaint) |
| 9. | Possession clause | Clause 3 of MoU <i>"The company shall complete the construction of the said building/complex within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction whichever is later and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues."</i> |
| 10. | Lease Rental Clause | 7(a) <i>"That the responsibility of assured returnswhereupon the Allottee(s) shall be entitled to receive the lease rentals"</i> 7(b) <i>"In case of any increase in the monthly rental in excess of the Assured Return of Rs.53.17/- per sq. ft., the same shall be divided in the ratio of 50:50 between Allottee(s) and the Company."</i> |

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| | | <p><i>"7(c) In case monthly rental is below Rs.53.17/- per Sq. Ft, then in that case company shall pay the shortfall only for the period of first entered lease. After the lease with the first tenant comes to an end the company shall be under no obligation to lease out the premises on behalf of the Allottee(s) or to offer any kind of assured returns."</i></p> <p><i>(As per pg. no. 55 of the complaint)</i></p> |
| 11. | Date of start of construction | The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015. |
| 12. | Due date of possession | 05.01.2020 (Calculated from date of agreement being later) |
| 13. | Basic sale consideration | Rs. 14,95,050/- (As on page no. 30 of complaint) |
| 14. | Amount paid by the complainant | Rs.14,89,050/- (As on page no. 19 of reply) |
| 15. | Occupation certificate | 14.08.2024 (as per DTCP website) |
| 16. | Offer of possession | 06.03.2025 (page 16 of reply) |
| 17. | Demand for Fit-out charges | 06.03.2025 (page 16 of reply) |

B. Facts of the complaint.

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

- i. That the present complaint has been filed by the complainant under section 31 of the Real Estate (Regulations and Development) Act, 2016 read with Rule 28 Haryana Real Estate (Regulation & Development) Rules, 2017 seeking

relief in respect of the lapses, defaults and unjust and unfair trade practices on the part of the respondent.

- ii. That the complainant is a simple, law abiding and peace-loving person. the complainant has throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to his contractual obligations. The booking has been made by the complainant and the payments have been made by him with all the efforts and hope to fulfil his dream of his own space for a peaceful and secured life.
- iii. That the respondent offered for sale units in a commercial complex known as 'NEO Square' which claimed to comprise of several facilities on a piece and parcel of land situated in Sector-109, Gurugram, Haryana. The respondent stated that it is well established in the business of real estate development and has significant expertise in developing and marketing of commercial complexes in various parts of India.
- iv. That the complainant received a marketing call from the office of the respondent in the month of January, 2017 for booking in the said project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity done by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. The marketing staff of the respondent also assured timely completion of all the obligations of the allotment.

- v. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as he required the same in a time bound manner. Accordingly, a unit bearing priority no. 24A having super area admeasuring 300 sq. ft on 5th Floor for the basic sale consideration of Rs.12,30,000/- was allotted to the Complainant under the assured return plan.
- vi. That the complainant paid a sum of Rs.12,85,350/- towards the said allotted unit including service tax for Rs 55,350/- @ 4.50 % of basic sale consideration. The said payment was acknowledged by the respondent vide its receipt dated 05.01.2017.
- vii. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the agreement to the respondent. the complainant repeatedly requested the respondent for execution of an agreement with balanced terms. during such discussions, the respondent assured the complainant that no illegality whatsoever, would be committed by them at that the assured return payable by the respondent to the complainant would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the agreement was not signed and submitted. The complainant was left with no other option but to sign the one-sided agreement.
- viii. That on the said date, a memorandum of understanding (MOU) was executed between the respondent and the complainant. as per clause 4 of the MOU, the total basic sale consideration of the unit was Rs. 12,30,000/- and vide the said clause the respondent acknowledged the receipt of Rs.12,85,350/- as paid by the complainant. The respondent had categorically

assured at the time of the booking that it would be diligent in making payment towards the assured return and in adhering to its contractual obligations, it is submitted that as per clause 4 of the said mou, it was agreed that the respondent would pay monthly assured return of Rs.19,500/- on the total amount received with effect from 05.01.2017 till the 'commencement' of first lease. The relevant portion of Clause 4 of the MOU is reproduced hereunder.

"The Company shall pay a monthly assured return of Rs. 19,500/- (Rupees Nineteen Thousand Five Hundred Only) on the total amount received with effect from 05- Jan- 2017....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"

- ix. Furthermore, it was also agreed vide clause 7(a) of the said mou that the responsibility of assured returns to be paid by the company would cease on commencement of first lease of the said unit and thereafter the allottee would be entitled to receive lease rentals. Clause 7(a) of the said MOU is attached herewith :-

"7(a). That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals."

- x. That the complainant paid another sum of Rs.1,42,200/- to the respondent vide cheque no.307427 dated 03.10.2017 towards EDC and IDC strictly based on the demands raised by the respondent. Subsequently, the complainant paid a sum of Rs.61,500/- to the respondent on 15.05.2017 towards VAT. The respondent accordingly acknowledged the receipt of the said amount vide receipt dated 15.05.2017.
- xi. That the complainant had paid a sum of Rs.14,89,050/- out of the total sale consideration of Rs.12,30,000/- (more than 100%) as evident from the receipts issued by the respondent acknowledging the said payments.

- xii. That the respondent finally, after a considerable delay, sent a demand notice and offer of possession dated 06.03.2025 intimating the complainant that the unit allotted to them was ready for possession as the respondent had obtained the occupation certificate. On-going through the terms of the offer of possession, the complainant realized that respondent had failed to adjust the amount of the monthly penalty as assured by the respondent.
- xiii. It is pertinent to mention herein that the respondent vide the said letter has demanded additional amounts against labour cess, FTTH, Development charges, Interest on delayed payment and fitout charges. The complainant was in complete shock and was surprised to note that the respondent vide the said demand letter and offer for fit-out illegally demanded the amount of Rs. 5,62,984/-.
- xiv. That the respondent has illegally demanded Rs. 7,500/- towards labour cess and Rs. 6,490/- towards FTTH. The respondent has demanded FTTH without even disclosing what the said component is and how the said can unilaterally become part of the sale consideration of the unit. The said demand is vague and hence not payable by the complainant.
- xv. The furthermore, per the judgment titled 'Varun Gupta Vs Emaar Mgf Land Limited', it has already been decided that the payment against labour cess cannot be demanded by the promoter. Hence, there are no grounds for the respondent to claim and demand labour cess and FTTH charges from the complainant and the same are liable to be revoked.
- xvi. That the respondent has illegally and in a completely malafide manner demanded Rs. 2,12,400/- as development charges. It is submitted that the respondent has already demanded charges against the external development Charges (EDC) of Rs. 1,26,300/- and against the Internal Development Charges (IDC) of Rs. 15,900/- and the said fact is evident from a perusal of

Annexure-I of the offer of possession. When charges towards EDC and IDC have already been demanded and forms part of the pre-decided total sale consideration amount, there is no question to demand payment against the development charges.

- xvii. The respondent in the said letter charged interest of Rs. 1,63,365/- from the complainant. The said interest is charged on baseless grounds as there has been no delay on part of the complainant in making the payment towards the sale consideration of the said unit. It is also pertinent to mention herein that the respondent has not even provided any explanation or justification of charging such additional amount from the complainant. Hence, the respondent cannot demand unlawful interest from the complainant.
- xviii. The respondent has illegally demanded Rs. 1,61,438/- from the complainant. The said demand has been raised despite this hon'ble authority directing the respondent not to raise any such demand towards VAT while deciding complaint titled '*S.K Mittal V.S M/S Neo Developers Private Limited*' bearing complaint no. 4282 of 2020.
- xix. That the complainant were shocked to see that vide the letter of possession, respondent illegally demanding an additional amount of Rs. 8,85,000/- as fit-out charge from the complainant. The parameter of fit-out charges never found mentioned in buyer's agreement or in the MOU and the complainant was informed about the same for the first time at the time of receipt of the letter dated 06.03.2025 only. There is no locus or ground for the respondent to have demanded such fitout charges from the complainant especially when no such demand has been defined in any of the agreement/MoU executed between the parties.
- xx. That it is pertinent to mention here that the respondent failed to remit the amount of the assured return and lease rental as agreed upon between the

parties in the mou dated 05.01.2017 and despite the repeated reminders by the complainant, moreover, despite the lapse of due date within which the construction of the said project was to be completed, the needful was not done by the respondent, thereby compelling the complainant to file a complaint titled '*S.K Mittal V.s M/s Neo Developers Private Limited*' bearing complaint no. 4282 of 2020 before the hon'ble real estate (Regulation and Development) Act, 2016, Gurugram seeking the relief of the handing over of possession and payment of delayed possession charges. This Hon'ble Authority vide order dated 17.11.2021 instead of granting the relief of delayed possession charges ordered that assured returns till the commencement of first lease is to be given to the complainant. The relevant part of order dated 17.11.2021 is reproduced herein below :-

- a) *The respondent is directed to pay assured return as agreed upon till the commencement of first lease of the allotted unit as per clause 4 of the memorandum of understanding dated 05.01.2017.*
- b) *Since the assured return has been allowed till the first lease of the allotted unit and being beneficial than delay possession charges, so the amount on account of delay possession charges as agreed upon between the parties is disallowed.*
- c) *It has been clarified by the authority in a number of orders that VAT is not chargeable in those cases where for the period 01.04.2014 to 30.06.2017 if amnesty scheme has been availed by the promoter. If for this period any VAT has been paid, the same is refundable in case of availing amnesty scheme availed by the promoter. Thus, without providing justification and admissibility of VAT demand being raised now is quashed.*

xxi. That the complainant has been apprised of the fact that the occupation certificate of the unit was obtained by the respondent on 14.08.2024 and hence is in the position to lease the unit, as per law, to the prospective vendee, if already not done. As per the terms and conditions of the mou, more specifically clauses 7(a) read with clause 9(a), the respondent is under an

obligation to lease out the unit to a lessee and is liable to provide lease rentals to the complainant.

- xxii. That it is pertinent to mention herein that similarly aggrieved allottees have already obtained same reliefs, as demanded by the complainant in the present complaint from this hon'ble authority including affirmation of the obligation of the respondent to provide lease rentals from the date of commencement of the first lease.
- xxiii. That moreover as per clause 11 of the mou dated 05.01.2017, the sale deed had to be executed and registered in favour of the allottee within 45 days from the date of receipt of occupation certificate. the complainant requested the respondent to proceed for registration of the unit with regards to stamp duty and conveyance deed. It is submitted that even as per the terms of the agreement, the respondent was duty bound and had a contractual obligation to execute the conveyance deed of the unit in favour of the complainant.
- xxiv. That it is pertinent to mention here that the complainant thereafter from time to time kept on following up with the respondent and requested them to comply with its contractual obligations and execute the conveyance deed. It is pertinent to mention that the respondent has failed to pay any heed to the genuine concerns of the complainant and has again failed miserably to comply with the timeline it provided to execute the conveyance deed towards the unit in question.
- xxv. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent has been least bothered about the timely execution of the conveyance deed. The respondent has deliberately, mischievously, dishonestly and with mala fide motives cheated and defrauded the complainant. it is submitted that as per

section 4(2)(g) of the real estate (regulation and development) act, 2016, a promoter is bound to submit proforma of the conveyance deed proposed to be signed with the allottees. thus, in its deliberate and illegal omission to get the conveyance deed registered and signed, the respondent has failed to comply with the provisions as laid down in law.

xxvi. That the complainant has been duped of his hard-earned money paid to the respondent regarding the unit in question. the complainant requested the respondent to execute the conveyance deed in his favour but the respondent has been dilly-dallying the matter. It is a settled law that the title of the unit is only conferred post execution and registration of conveyance deed. the complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent. The complainant has an apprehension that the respondent will illegally demand additional charges from the complainant and until the same is paid, the respondent will not execute the conveyance deed in favour of the complainant. Hence, the complainant is entitled to a relief that the respondent cannot charge/demand any additional charges from the complainant for the purpose of execution of conveyance deed except the applicable charges towards stamp duty and registration charges.

xxvii. That the respondent by adopting unfair trade practices, misuse of funds, failed to execute the conveyance deed of the unit allotted to the complainant. Moreover, apart from clause 11 of the mou and clause 5.5 of the buyer's agreement, the obligation to execute the conveyance deed has been detailed in the provisions of real estate (regulation and development) act, 2016 as well. it is submitted that as per section 11(4)(f) and section 17 of the real estate (regulation and development) act, 2016, the promoter is duty bound to execute a registered conveyance deed in favour of an allottee.

xxviii. That there is an inordinate delay of several years up to November 2024 and till date basic requirements including payment of lease rentals and execution of conveyance has not been completed due to default of respondent. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the complying with the terms of the agreement, mou and even the provisions laid down by law, despite repeated assurances.

xxix. That the respondent has misappropriated and siphoned the funds of the complainant and by doing so, cheated the complainant. The complainant had trusted the respondent with a dream to have a unit to themselves but the respondent has breached the trust of the complainant and snatched away such dream and also caused huge financial losses to the complainant.

xxx. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame, the cause of action again arose when the respondent failed to provide lease rentals after obtaining the occupation certificate and when the respondent failed to execute the conveyance deed in favour of the complainant as per the terms of the mou and agreement.

C. Relief sought by the complainant

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

- 1) Direct the respondent to provide lease rentals to the complainant from the date of 'commencement' of the first lease. if the 'commencement' of the first lease has already started, then the said lease rental amount be paid

along with interest at the applicable rate to the complainant by the respondent.

- 2) Respondent be directed, as per section 17 of the RERA act, 2016 read with clause 11 of the mou to execute and get registered conveyance deed/sale deed in favour of the complainant.
- 3) Respondent be directed not to charge/demand any additional charges from the complainant for the purpose of execution of conveyance deed except the applicable charges towards stamp duty and registration charges.
- 4) Direct the respondent to revoke the illegal charges demanded vide demand letter & offer for fit-out dated 06.03.2025.
- 5) Direct the respondent not to demand any fitout charges from the complainant.
- 6) The respondent be directed not to charge the labour cess FTTH charges, interest on delay payment and VAT charges. further, the respondent be directed not to charge development charges of Rs. 2,12,400/- from the complainant or any amount towards development charges from the complainant.

D. Reply by the respondent

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

- i. That the complainant 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 300 sq. ft. super area in the project "NEO Square" (hereinafter referred to as the "Project).

- ii. That, considering the request of the complainant, the respondent allotted a unit bearing priority no. 24 A, on 5th Floor, admeasuring 300 sq. ft. super area, (hereinafter referred to as the "*Subject Unit/Unit*).
- iii. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. however, the complainant failed to come forward to do the needful.
- iv. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 05.01.2017 (hereinafter referred to as the "BBA").
- v. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 05.01.2017 (hereinafter referred to as the "MOU") was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- vi. It is noted herein that since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. that the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit, requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- vii. The Occupation Certificate of the Project was granted by the Competent Authority on 14.08.2024.

- viii. Thereafter, the respondent sent an offer of possession letter dated 06.03.2025, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- ix. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- x. That the present complaint has been preferred by the complainant before the Id. authority on frivolous and unsustainable grounds and the complainant has not approached the Id. authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merit and is fit to be dismissed in limine.
- xi. The complainant has neither approached the respondent nor taken any steps to settle the outstanding dues, despite having full knowledge of the respondent's communication dated 06.03.2025. The complainant has therefore not come forward with clean hands, and the present complaint is liable to be dismissed on this ground alone.
- xii. It is submitted that the persistent non-payment of dues by the complainant has adversely affected the cash flow of the project, contributing significantly to delays in project timelines. Many allottees, including the present complainant, are in default, thereby hampering the financial discipline required for timely execution of the project. Thus, the complainant cannot now claim any deficiency or delay attributable to the respondent.

- xiii. The respondent reserves its right to take appropriate action as per the terms of the agreement, including but not limited to charging interest on delayed payments, imposing consequences for default, or initiating cancellation in accordance with the contract, rules, and applicable law.
- xiv. It is submitted that as per the mutually agreed terms under the memorandum of understanding (mou), the complainant was mandatorily required to sign and execute the lease assignment form to enable the respondent to lease out the said unit in accordance with the agreed arrangement.
- xv. It is specifically submitted that the respondent had duly issued a letter dated 01.10.2020 calling upon the complainant to sign the lease assignment form so that the process of leasing the unit to a third-party lessee could be initiated in compliance with the MoU. The said communication was clear, unambiguous, and required immediate action by the complainant.
- xvi. However, despite receiving the said letter and being fully aware of the requirement to sign the lease assignment form, the complainant failed to take any action. no response was received, nor was any attempt made by the complainant to visit the respondent's office, complete the formalities, or express any difficulty in signing the said form.
- xvii. It is denied that there was any delay or deficiency on the part of the respondent. On the contrary, the respondent acted diligently and promptly by issuing the letter dated 01.10.2020, but the complainant wilfully ignored the same. The complainant's conduct is mala fide and intended to create a false narrative before this hon'ble authority.
- xviii. It is submitted that as per the MoU executed between the parties, it was the complainant's contractual obligation to sign the lease assignment form in order to enable the respondent to lease out the said unit. Despite issuance of

the letter dated 01.10.2020, the complainant failed, neglected, and refused to sign the said form.

- xix. It is submitted that in order to protect the interest of the Complainant and to avoid vacancy of the unit, the Respondent, acting in good faith and in line with the MoU, still proceeded to lease out the said unit to a suitable lessee. The respondent took all possible steps to ensure that the complainant does not suffer any loss due to his/her own non-cooperation.
- xx. It is further submitted that the said lessee requested certain infrastructure modifications and fit-out related changes as a pre-condition for occupation and commencement of business from the said unit. These changes were necessary for finalizing the lease arrangement and ensuring continuity of the lease.
- xxi. As per clause 7(d) of the mou, any additional charges, costs, or expenses incurred for fit-out modifications or infrastructure changes demanded by the lessee are required to be borne by the allottee/complainant. This clause is binding and was duly agreed to by the complainant at the time of execution of the MoU.
- xxii. Acting strictly in accordance with Clause 7(d), the respondent undertook the necessary modification works and incurred additional expenditure solely for the benefit of the complainant so that the lease could be finalized and the unit could start generating rental income.
- xxiii. It is a settled principle of law that a party in breach cannot take advantage of his own wrong. the complainant, having failed in both (i) signing the lease assignment form and (ii) paying the infrastructure modification charges, is estopped from claiming any rental benefits under the MoU.
- xxiv. Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand the complainant is seeking payment of

assured return on the basis of mou, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the mou. it is pertinent to mention herein that the complainant cannot partly rely on the mou and claim their right and shrug off their responsibilities under the MOU. That if the complainant is claiming his right under the mou, then he should also be ready to fulfil his responsibility under the mou. it is most humbly submitted that if the ld. authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to leasing of the unit, and payment of fit-out charges under the mou should also be allowed.

xxv. It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. that the demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit. That under Clause 11 of the BBA, the Complainant has agreed to pay all applicable charges, including Development Charges, as may be levied at the time of execution of the BBA or at any future date. Clause 11 of the BBA is reproduced herein below:

“11. DEVELOPMENT CHARGES, TAXES, CESSSES, LEVIES, ETC.

*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 said the 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, BOCW 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.”*

xxvi. It is to be noted that this Ld. Authority in Complaint No. 755 of 2025, titled Mahender Singh vs. M/s Neo Developers Pvt. Ltd., vide Order dated 16.09.2025, has already decided on the issue of fit-out charges, wherein the

authority has interpreted the clauses of the MoU to come to a conclusion that these charges are lawful and valid as per the provisions.

- xxvii. In light of the above referred order and the foregoing submissions, it is evident that the fit-out charges levied by the respondent are as per the provisions of the said mou and therefore, lawful and valid. That the complainant can-not shy away from fulfilling his obligation under the said mou, especially when the complainant is relying on the same MoU for claiming the alleged assured return/penalty.
- xxviii. That it is evident that the entire case of the complainant 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. It is noted herein that the complainant has 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 complainant is entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.
- xxix. That the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- xxx. That a perusal of Section 13(2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.
- xxxi. 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 is being mandated.

- xxxii. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under Section 31 of the Act. Further, the Provisions of Section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the Act and Rules/Regulations made there under.
- xxxiii. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the Promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.
- xxxiv. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The Rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. The rules also keep "assured return" out of their scope. Rule 8 provides a clear indication as to the matters which are to be covered under the Agreement of Sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.
- xxxv. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The Rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That

even this agreement does not contain any condition governing assured returns. Thus, any order of payment of assured return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.

xxxvi. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

xxxvii. On the basis of the above, it may be considered that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.

xxxviii. Also, a perusal of the Section 2(d) defining allottee as well as Section 2 (zk) which defines "Promoter" does not include any transaction regarding

“assured return”. Therefore, the Assured Return scheme is beyond the scope of the Act, 2016 and jurisdiction of the Authority.

xxxix. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the Agreement for Sale (buyer’s agreement). However, in the present matter the complainant is relying upon the terms of mou which is a distinct agreement than the Buyer’s agreement and thus, the MOU is not covered under the provisions of the Act, 2016. 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 their grievance.

xl. That the buyer’s agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the judgement of the Hon’ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon’ble High Court held as under:

“11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent’s contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.

xli. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.

- xlii. 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.
- xliii. 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 to the Allottees/Complainant due above said prevailing confusion/anomaly. The preamble of the act reads as under:
- "An Act 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."*
- xliv. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.
- xlvi. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- xlvii. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act.

- xlvi. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- xlviii. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- xlix. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.
- l. That recently 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. 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 is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

- li. That as the complainant in the present complaint is seeking the relief of assured return/penalty, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.
- lii. A bare reading of Section 13(2) demonstrates that assured return/penalty is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.
- liii. That moreover, the present complaint is based on the terms of an mou entered into between the parties, which is distinct from the builder-buyer agreement. The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on **M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd.** (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.
- liv. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

- iv. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.
- lvi. That the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.
- lvii. That the demand of VAT is done as per clause 11 of the buyer's agreement. the said clause clearly states that the allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainant is liable to pay the vat demands as the respondent has not availed any amnesty scheme.
10. All other averments made in the complaint were denied in toto.
11. 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

1. 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

2. 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

3. 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:

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

F. Findings on the objections raised by the respondent.

F.1. Objection regarding the complainant being investor.

5. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the

promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 05.01.2017, it is revealed that the complainant is buyer, and he has paid a total price of Rs.14,89,050/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

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

7. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 05.01.2020. It is observed that

orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

- I. Direct the respondent to provide lease rentals to the complainant from the date of 'commencement' of the first lease. if the 'commencement' of the first lease has already started, then the said lease rental amount be paid along with interest at the applicable rate to the complainant by the respondent.
- II. Respondent be directed, as per section 17 of the RERA act, 2016 read with clause 11 of the mou to execute and get registered conveyance deed/sale deed in favour of the complainant.
- III. Respondent be directed not to charge/demand any additional charges from the complainant for the purpose of execution of conveyance deed except the applicable charges towards stamp duty and registration charges.
- IV. Direct the respondent to revoke the illegal charges demanded vide demand letter & offer for fit-out dated 06.03.2025.
- V. Direct the respondent not to demand any fitout charges from the complainant.
- VI. The respondent be directed not to charge the labour cess FTTH charges, interest on delay payment and VAT charges. further, the

respondent be directed not to charge development charges of Rs. 2,12,400/- from the complainant or any amount towards development charges from the complainant.

- VII. Direct the respondent to issue a valid offer of possession of the unit with proper bifurcation of the demanded amount as per the specifications and terms as provided in the buyer's agreement.
- VIII. Direct the respondent to revoke the letters dated 03.01.2025 and 01.03.2025.
- IX. Respondent be directed not to charge any illegal demands under the garb of 'fitout charges', 'development charges', 'labour cess' and 'FTTH'.

8. The above mentioned reliefs are interconnected and arise out of the same cause of action, and therefore are being taken together.
9. The Authority observed that in complaint titled *S.K. Mittal v. M/s Neo Developers Private Limited Bearing Complaint No. 4282 of 2020*, the Authority, vide order dated 17.11.2021, held that the respondent is liable to pay assured returns to the complainant in terms of clause 4 of the MOU dated 05.01.2017 till the commencement of the first lease of the allotted unit. It was further observed that since assured returns are more beneficial in nature, the claim for delay possession charges is not sustainable and stands disallowed. The Authority also reiterated that no VAT is chargeable for the period 01.04.2014 to 30.06.2017 where the promoter has availed the amnesty scheme, and any such unjustified demand is liable to be quashed.
10. It is submitted by the complainant that the complainant has approached this Authority by way of the present complaint on account of a fresh cause of action arising subsequently, inasmuch as new and arbitrary demands have been raised by the respondent and the occupancy certificate of the project has also been

obtained on 14.08.2024. In view of the changed circumstances, the complainant has sought revised reliefs before this Authority, inter alia, seeking direction to the respondent to pay lease rentals from the date of commencement of the first lease (along with applicable interest, if already commenced), to execute and register the conveyance deed in terms of Section 17 of the RERA Act, 2016, to restrain the respondent from levying any charges except stamp duty and registration charges, to quash illegal demands raised vide demand letter and fit-out offer dated 06.03.2025, to restrain the respondent from charging fit-out charges, labour cess, FTTH charges, interest on delayed payment, VAT, and development charges, to issue a valid offer of possession with proper bifurcation of charges, and to revoke letters dated 03.01.2025 and 01.03.2025. The complainant has further prayed that the respondent be restrained from raising any illegal demands under the guise of fit-out charges, development charges, labour cess, and FTTH charges.

11. The complainant is seeking reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clauses 7(a), 7(b) and 7(c) of the MoU dated 05.01.2017, it was agreed that the respondent would make payment of lease rentals at Rs.53.17/- per sq. ft. per month to the complainant from commencement of first lease. The said clause of the MOU is reproduced hereunder:

“7(a) That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals.

7(b) In case of any increase in the monthly rental in excess of the Assured Return of Rs.53.17/- per sq. ft., the same shall be divided in the ratio of 50:50 between Allottee(s) and the Company.

7(c) In case monthly rental is below Rs.53.17/- per Sq. Ft., then in that case company shall pay the shortfall only for the period of first entered lease. After the

lease with the first tenant comes to an end the company shall be under no obligation to lease out the premises on behalf of the Allottee(s) or to offer any kind of assured returns."

12. Further, vide clause 8(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a perspective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 05.01.2017.
13. The complainant is seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.
14. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
15. The complainant has further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated

05.01.2017 or the MoU executed on the same date. The impugned demand letter dated 06.03.2025 reflects components such as IFMS, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainant. The Authority of the view that:

- **Labour cess**

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

- **Development charges**

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

"11.

That the Allottee agrees to pay all taxes, charges, Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST.

Development charges, Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like. These shall be paid on demand and in case of delay, these shall be payable with interest by the Allottee?

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

- **FTTH Charges**

The respondent during proceedings dated 16.09.2025 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**

The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been

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

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

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

Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.

- **Maintenance charges**

In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance

maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **VAT**

16. Insofar as the issue pertaining to levy of VAT is concerned, the principle of Res Judicata squarely applies in the present case. It is an admitted position that the Authority, in earlier proceedings, has already adjudicated upon the applicability and admissibility of VAT for the relevant period and has issued clear directions in that regard. Once the issue has been conclusively determined between the parties by a competent authority, the same cannot be re-agitated or reopened in subsequent proceedings. Therefore, the respondent is estopped from raising the demand of VAT afresh, and the same, being hit by the principle of Res Judicata, is liable to be set aside.
17. The respondent, vide letter dated 06.03.2025, raised a demand of Rs.8,85,000/- towards fit-out charges and directed the complainant to remit the said amount in favour of a third party, namely H5 Hospitality LLP, by furnishing bank details not pertaining to the respondent company. The complainant objected to the said demand on the ground that such charges were neither contemplated under the Agreement nor under the MoU executed between the parties. It is pertinent to note that during the course of proceedings dated 27.01.2026, the counsel for the complainant submitted that the unit is presently not under any active lease and that the demand for fit-out charges is in the nature of a post-lease obligation. It was further contended that the respondent is required to place a valid lease deed on record prior to raising any such demand. The counsel for the respondent also conceded that the unit is not presently under lease.
18. In view of the above admitted position, it becomes evident that the levy of fit-out charges, if any, can arise only when the unit is placed under a valid and subsisting

lease arrangement. In the absence of any such lease, the demand raised by the respondent is premature and lacks contractual foundation. Furthermore, the respondent has failed to demonstrate that any prior written intimation or demand, as envisaged under the MoU, was issued to the complainant before allegedly incurring such expenditure. Consequently, the demand raised vide letter dated 06.03.2025 appears to be unilateral, arbitrary, and contrary to the principles of natural justice, and therefore cannot be sustained in the eyes of law.

19. The respondent has relied upon clause 7(d) of the MoU to justify the imposition of such charges, contending that the complainant had agreed to bear expenses arising out of infrastructural changes required by a prospective tenant. A plain reading of the said clause indicates that the liability of the allottee is conditional upon specific requirements raised by a tenant and is further subject to prior written notification by the respondent. However, in the present case, neither has any tenant been shown to exist, nor has any material been placed on record to establish that the alleged fit-out works were necessitated by tenant-specific requirements or were duly communicated to the complainant in accordance with the terms of the MoU. The said clause is reiterated below for ready reference:

Clause 7(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."

20. Although clause 7(d) broadly contemplates the possibility of additional infrastructural expenses, the same cannot be interpreted to confer unfettered discretion upon the respondent to raise arbitrary demands in the absence of a lease or without substantiating the necessity and reasonableness of such expenses. The clause must be read in a reasonable and restricted manner, keeping in view the intent of the parties and the surrounding circumstances.
21. Accordingly, it is held that if the respondent intends to levy any fit-out charges in future, the same must be preceded by the execution of a valid lease, supported by proper justification demonstrating that such works were necessary for making the unit fit for leasing purposes. The respondent shall further be required to furnish a detailed break-up of the expenditure along with certification from a competent professional, such as an architect or engineer, confirming the necessity and reasonableness of the work undertaken. In the absence of such compliance, no liability can be fastened upon the complainant under the guise of fit-out charges.

H. Directions of the Authority

22. 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 ensure that the unit in question is leased out in terms clause 7 of the said MOU dated 05.01.2017 and the committed lease rentals are duly paid to the complainant without any delay.
 - II. The respondent/promoter is directed to handover possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the

conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

- III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement.
- IV. The respondent is not entitled to charge holding charges and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020*.
- V. The respondent is directed to supply a copy of the updated statement of account within a period of 30 days to the complainant.

23. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
24. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
25. Files be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.01.2026