

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

Date of Order: 06.01.2026

NAME OF THE BUILDER		M/s Neo Developers Private Limited.	
PROJECT NAME		"Neo Square"	
S. No.	Case No.	Case title	Attendance
1.	CR/2806/2025	Anand Gopal Jaiswal and Prachi Chandola V/S Neo Developers Private Limited	Abhilasha Yadav (Complainants) Venkat Rao (Respondent)
2.	CR/2814/2025	Anand Gopal Jaiswal and Prachi Chandola V/S Neo Developers Private Limited	Abhilasha Yadav (Complainants) Venkat Rao (Respondent)
3.	CR/2817/2025	Anand Gopal Jaiswal and Prachi Chandola V/S Neo Developers Private Limited	Abhilasha Yadav (Complainants) Venkat Rao (Respondent)

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of the aforesaid 3 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 & MoU, AR clause, total sale consideration and total paid 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				

S.no.	Complaint no./title/ date of filing complaint	Unit No. and Unit super area	Date of execution of BBA and MoU	Assured return clause in the MoU	Total sale consideration and Amount paid by the complainant
1.	CR/2806/2025 Anand Gopal Jaiswal and Prachi Chandola V/S Neo Developers Private Limited DOF: 04.06.2025 RR: 08.09.2025	Unit no. - Priority Allotment serial no.25, 3 rd floor And 270 Sq. ft. (as per page no. 29 of complaint)	BBA: 07.05.2018 (page 38 of complaint) MOU: 07.05.2018 (as per page no. 64 of complaint)	Clause 04 of MoU <i>"The company shall pay a monthly return of Rs.26,509/- on the total amount received with effect from 07.05.2020 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 Allottees to the Company in accordance with the Payment Schedule</i>	T.S.C: Rs. 25,23,495/- (as per page no. 56 of complaint) A.P.:- Rs.24,62,945/- (as per SOA at page no. 80 of complaint)

				<p><i>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></p> <p><i>(As per pg. no. 66 of the Complaint)</i></p>	
2.	<p>CR/2814/2025</p> <p>Anand Gopal Jaiswal and Prachi Chandola V/S NEO Developers Private Limited</p> <p>DOF: 04.06.2025</p> <p>RR: 08.09.2025</p>	<p>Unit no. - Priority Allotment serial no.26, 3rd floor</p> <p>And</p> <p>264 Sq. ft.</p> <p>(as per page no. 35 of complaint)</p>	<p>BBA: 07.05.2018 (as per page no. 32 of complaint)</p> <p>MOU: 07.05.2018 (as per page no. 58 of complaint)</p>	<p>Clause 04 of MoU</p> <p><i>"The company shall pay a monthly return of Rs.25,920/- on the total amount received with effect from 07.05.2020 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 Allottees 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></p> <p><i>(As per pg. no. 61 of the Complaint)</i></p>	<p>T.S.C: Rs. 24,67,417/- (as per page no. 50 of complaint)</p> <p>A.P.:- Rs. 24,08,213/- (as per page no. 73 of complaint)</p>
3.	<p>CR/2817/2025</p> <p>Anand Gopal Jaiswal and Prachi Chandola V/S NEO Developers Private Limited</p>	<p>Unit no. - Priority Allotment serial no.24, 3rd floor</p> <p>And</p> <p>285 Sq. ft.</p>	<p>BBA: 07.05.2018 (as per page no. 39 of complaint)</p> <p>MOU: 07.05.2018</p>	<p>Clause 04 of MoU</p> <p><i>"The company shall pay a monthly return of Rs.27,981/- on the total amount received with effect from 07.05.2020 before deduction of Tax at Source, cess or any</i></p>	<p>T.S.C: Rs. 26,63,889/- (as per page no. 57 of complaint)</p> <p>A.P.:- Rs. 25,99,776/-</p>

	DOF: 04.06.2025 RR: 08.09.2025	(as per page no. 42 of complaint)	(as per page no. 65 of complaint)	<i>other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees 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>(As per pg. no. 67 of the Complaint)</i>	(as per page no. 80 of reply)
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Reliefs sought by the complainants -

1. The complainant seeks direction for handing over peaceful possession of the allotted unit in "Neo Square," Sector-109, Gurugram, along with execution and registration of the conveyance deed.
2. The complainant prays for payment of assured returns along with applicable compound interest.
3. To prosecute the respondent company for failure to offer possession of the allotted unit, for misrepresentation regarding the super area, and for unilaterally offering an alternative unit on a different floor.
4. To revoke the registration of the respondent company under section 7 for engaging in unfair practices, and to impose a penalty of 5% of the estimated project cost under section 60 for making false and misleading representations in contravention of section 4.
5. Complainants be awarded compensation of Rs.10,00,000/- (Rupees Ten Lakh Only) towards mental harassment and legal expenses incurred by the Complainant.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF:	Date of filing of complaint
BBA:	Builder Buyer's Agreement
MOU:	Memorandum of Understanding
TSC:	Total Sale Consideration
AP:	Amount paid by the allottee/s
RR:	Reply received by the respondent

4. The aforesaid complaints were filed by the complainants-allottee(s) against the promoter on account of violation of the builder buyer's agreement/MoU executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the assured return, revoking illegal demands and respondent not doing conveyance deed in favour of the complainant.
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/2806/2025 titled as Anand Gopal Jaiswal and Prachi Chandola VS NEO Developers Private Limited** 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/2806/2025 titled as Anand Gopal Jaiswal and Prachi Chandola
VS NEO Developers Private Limited.**

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 upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	07.05.2018 (As per pg. no. 39 of the Complaint)
7.	Unit no.	Priority No. 25 on the 3 rd Floor

		(As per pg. no. 41 of the Complaint)
8.	Unit area measuring	285 Sq. Ft. (As per pg. no. 42 and 58 of the Complaint)
9.	Date of MoU	07.05.2018 (As per pg. no. 65 of the Complaint)
10.	Due date of possession	07.11.2021 (As per SC judgement (3 years) + 6 months covid grace period)
11.	Assured return Clause	<i>Clause 4.</i> <i>"The company shall pay a monthly return of Rs.26,509/- on the total amount received with effect from 07.05.2020 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 Allottees 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> (As per pg. no. 67 of the complaint)
12.	Payment Plan	Assured Return Plan on 3rd floor - Food Court (As per pg no. 56 of the complaint)
13.	Sale consideration	Rs. 28,79,084/-

		(As per pg. no. 80 of the Complaint)
14.	Amount paid by the complainant	Rs. 24,62,945/- (As per pg. no. 80 of the Complaint)
15.	Occupation certificate	14.08.2024 (As per DTCP site)
16.	Offer of possession	04.12.2024 (As per pg. no. 78 of the Complaint)
17.	Reminders for payment	14.02.2025, 24.02.2025, 04.03.2025 (As per pg. no. 85-93)

B. Facts of the complaint.

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

- i. That the respondent promoter / developer neo developers Pvt. Ltd., advertised about their real estate project commercial building / complex known as "Neo Square" on land situated in Sector-109, Dwarka Expressway, Gurgaon, through various mass media means. upon representations and promises made by the promoter, the complainants Mr. Anand Gopal Jaiswal and Mrs. Prachi Chandola both resident of C-47, 1st Floor, Anand Niketan, New Delhi-110021, applied for allotment of Shop in the Commercial building / complex known as "Neo Square" on land situated in Sector-109, Dwarka Expressway, Gurgaon.
- ii. That the complainants vide a buyer's agreement dated 07.05.2018 which was duly registered as builder buyer's agreement dated 19.09.2022, purchased / booked a shop bearing priority allotment serial no. 25 on 3rd floor (8 meter height) having a super area of 270 sq. ft. (108 sq. ft carpet area calculated @40%) for use as restaurant / office / entertainment / retail in the commercial building / complex known as "neo square" on land situated in

sector-109, Dwarka expressway, Gurgaon. the total sale price as agreed was rs.23,19,607/- inclusive of BSP and GST.

- iii. That together with the above said buyer's agreement dated 07.05.2018 the respondent also entered into a memorandum of understanding dated 07.05.2018 with my above said clients.

"the company shall pay a monthly assured return of Rs.26,509/- (rupees twenty six thousand five hundred and nine only) on the total amount received with effect from 07-may-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(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"

- iv. That the complainants received a communication dated 15.10.2020 from the respondent company intimating that they were in the process of applying "occupancy certificate" and on receipt of the same they shall immediately offer possession of the respective unit. It was further informed that owing to restrictions being imposed upon them as per RERA act & guidelines, it has become illegal for the respondent company to withdraw the funds from the bank account towards the monthly interest cheques. It was further detailed that the auditors were also refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of interest payments. it was thus detailed that bearing the commitment in mind, the respondent company was left with no other option but to pay / adjust the complainants payments towards monthly interest at the time of possession.
- v. That the respondent company without adjusting the over due amounts towards the agreed monthly interest, issued a final reminder letter dated 05.11.2020 calling upon the complainants to make payment towards the installment due and payable. The complainants promptly met the officials of

the respondent company to resolve the entire issue regarding the monthly interest payments, and were assured by the executives of the respondent company that the matter would be favourably looked into and dealt with.

- vi. That the respondent company further issued a communication dated 01.02.2022 intimating that they had withdrawn the OC application. It was informed that the respondent company shall be able to complete the works tentatively within 3-4 months to meet the requirements of DTCP for obtaining OC. The respondent company again reiterated that owing to restrictions being imposed upon them as per rera act & guidelines, it has become illegal for the respondent company to withdraw the funds from the bank account towards the monthly interest cheques. It was further detailed that the auditors were also refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of interest payments. it was thus detailed that bearing the commitment in mind, the respondent company was left with no other option but to pay / adjust the complainants payments towards monthly interest at the time of possession.
- vii. That respondent company vide their communication dated 04.12.2024 issued a demand notice and offer of possession, detailing therein the outstanding payments without adjusting the arrears of the monthly interest and subject to the payment of the outstanding amount offered possession of unit no. priority allotment s on 2nd floor, revised area 270 sq. ft at project 'neo square', india, instead of the agreed 3rd floor 8-meter height.
- viii. That the complainants immediately met with ms. neha relationship manager, who refused to listen and / or address the issue and retorted that 'this is the way it is'. Thereafter the complainants sought appointment with ms. manpreet kaur-president sales, but she did not turn up owing to her mother's ill health and the complainants were made to meet ms. heera

sachdeva who promised to intimate the meeting date with ms. manpreet kaur-president sales, but to no effect.

- ix. That the complainants thereafter vide their e.mail dated 06.02.2025 addressed to shri ashish anand-managing director m/s Neo developers pvt. ltd., raised their above-mentioned grievances regarding the monthly interest after its due adjustments.
- x. That the complainants thereafter again vide their e.mail dated 14.02.2025 requested the redressal of their grievance regarding the monthly interest and possession but to no effect.
- xi. That the respondent company vide their reminder-1 for demand of notice payment and offer of possession dated 14.02.2025 demanded an amount of Rs.2,66,894/- as outstanding amount. Needless to mention that the said demanded amount did not adjust the outstanding monthly interest which was all along been promised and assured to be adjusted and paid in their earlier communications.
- xii. That the respondent company vide their reminder-2 for demand of notice payment and offer of possession dated 24.02.2025 demanded an amount of Rs.2,66,894/- as outstanding amount. Needless to mention that the said demanded amount did not adjust the outstanding monthly interest which was all along been promised and assured to be adjusted and paid in their earlier communications.
- xiii. That the respondent company have been irregular in making the payments towards the agreed monthly assured return to the complainants and as on date there are arrears for about 58 months whereby a staggering amount of Rs.15,37,522/- is due and payable by the respondent company.
- xiv. That the respondent company in a most autocratic manner in their demand notice payment and offer for possession have offered to the complainant's

- possession of the booked / allotted unit / space on 2nd floor instead of the 3rd floor. needless to mention that the arrears of monthly assured returns have not been accounted for / adjusted towards the alleged outstanding amount.
- xv. That as on date a sum of Rs.12,70,628/- (after adjusting the balance payment of Rs.2,66,894/- from the accrued Monthly Assured return of Rs.15,37,522/-) (Calculated upto March 2025) together with compound interest is due and payable by the respondent company, besides handing over of the vacant peaceful, physical possession of the shop / unit bearing priority allotment serial no. 25 on 3rd floor (8 meter height) having a super area of 270 sq. ft. (108 sq. ft carpet area calculated @40%) for use as restaurant / office / entertainment / retail in the commercial building / complex known as "neo square" on land situated in sector-109, Dwarka expressway, Gurgaon.
- xvi. The respondent company further threatened to cancel / terminate the allotment of the said unit in name of the complainants in case the payment of balance amount of Rs.2,66,894/- is not made.
- xvii. That the entire practice and procedure being adopted by the company, its officials in collusion and in league with the property dealers, is not only unethical but against the basic tenements of business. The complainants are being blackmailed to agree to take possession of the unit / space on 2nd floor instead of the agreed 3rd floor, and also being coerced and arm twisted in paying Rs.2,66,894/- as balance payment, without adjusting and making the payment of the monthly assured return by the respondent company.
- xviii. That the complainants were constrained to get issued a legal notice dated 08.03.2025 calling upon the respondent company to forthwith within a period of 15 days hereto, withdraw the demand notice payment and offer of possession issued by the respondent company, and to further execute and register the conveyance deed of the above said space / unit bearing priority

allotment serial no. 25 on 3rd floor (8 meter height) having a super area of 270 sq. ft. (108 sq. ft carpet area calculated @40%) for use as restaurant / office / entertainment / retail in the commercial building / complex known as “neo square” on land situated in sector-109, dwarka expressway, gurgaon, together with payment of rs.12,70,628/- (after adjusting the balance payment of rs.2,66,894/- from the accrued monthly assured return of Rs.15,37,522/-) in favour of the complainants and also hand over the vacant, peaceful, physical possession of the above said shop / unit, but to no effect. The notices sent at the registered office have been duly delivered.

xix. That the respondent / promoter is in breach and abject violation of “haryana real estate regulation act & rules” by unilaterally changing the space / unit bearing priority allotment serial no. 25 on 3rd floor (8 meter height) having a super area of 270 sq. ft. (108 sq. ft carpet area calculated @40%) for use as restaurant / office / entertainment / retail in the commercial building / complex known as “neo square” on land situated in sector-109, Dwarka expressway, Gurgaon, to 2nd floor and further defaulting in the payment of the assured monthly interest.

C. Relief sought by the complainant

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

- 1) The complainant seeks direction for handing over peaceful possession of the allotted unit in “Neo Square,” Sector-109, Gurugram, along with execution and registration of the conveyance deed.
- 2) The complainant prays for payment of assured returns along with applicable compound interest.
- 3) To prosecute the respondent company for failure to offer possession of the allotted unit, for misrepresentation regarding the super area, and for unilaterally offering an alternative unit on a different floor.

- 4) To revoke the registration of the respondent company under section 7 for engaging in unfair practices, and to impose a penalty of 5% of the estimated project cost under section 60 for making false and misleading representations in contravention of section 4.
- 5) Complainants be awarded compensation of Rs.10,00,000/- (Rupees Ten Lakh Only) towards mental harassment and legal expenses incurred by 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 270 sq. ft. super area in the project "*NEO Square*" (hereinafter referred to as the "*Project*").
- ii. considering the request of the complainant, the respondent allotted a unit bearing priority no. 25, on 3rd floor, admeasuring 270 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 07.05.2018 (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 07.05.2018 (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 and *vide* letter dated 01.10.2020, 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 04.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- ix. Despite receiving the offer of possession, the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. therefore, the respondent was constrained to issue reminders dated 05.11.2020, 14.02.2025, 24.02.2025 and 04.03.2025 requesting the complainant to do the needful.
- x. That the respondent *vide* letter dated 26.03.2025, requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the mou.
- xi. That the respondent *vide* letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the mou.

- xii. That the respondent *vide* letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- xiii. 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.
- xiv. That the complainant is an investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.
- xv. That the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties.
- xvi. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an mou which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainant themselves has entrusted the respondent with the leasing rights of the units.
- xvii. 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.
- xviii. 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.

- xix. 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 promoter 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.
- xx. 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.
- xxi. 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.

- xxii. 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.
- xxiii. 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.
- xxiv. 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.

- xxv. 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.*
- xxvi. 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.
- xxvii. 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.
- xxviii. 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."

- xxix. 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.
- xxx. 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.
- xxxi. 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.
- xxxii. 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.
- xxxiii. 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.
- xxxiv. 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.

- xxxv. 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.
- xxxvi. 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.
- xxxvii. 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.
- xxxviii. 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.

xxxix. 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.

xl. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. N o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the



		permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old. Which are commonly used in construction activity. The Order had Completely Hampered The construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the



		crushers, hot mix plants, etc. With effect from 7 th Nov 2017 till further notice.		construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th	9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.



		Nov, 17 was vacated vide order dated 17 th Nov, 17.			
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could



		prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.			have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3 rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent.

					However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

xli. That a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances come within the meaning of force majeure. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

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

12. 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

13. 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

14. 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.

15. 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. I. Objection regarding the complainant being investor.

16. 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 07.05.2018, it is revealed that the complainant is buyer, and they have paid a total price of Rs.24,62,945/- to the promoter towards purchase of a 3rd floor 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;"

17. 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 are 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.

18. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 07.11.2021. It is observed that orders passed by NGT banning construction in the NCR region were 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 the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

I. The complainant seeks direction for handing over peaceful possession of the allotted unit in "Neo Square," Sector-109, Gurugram, along with execution and registration of the conveyance deed.

19. The complainants are 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 complainants. 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.

20. 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 complainants/allottee only in terms of the MoU as well as buyer's agreement dated 07.05.2018 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.

II. The complainant prays for payment of assured returns along with applicable compound interest.

21. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 07.05.2018 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

22. 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 promoter-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.

23. It is pleaded on behalf of respondent 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.

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

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

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of central or state government;

25. 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 promoter at the time of booking or immediately thereafter and as agreed upon between them.

26. 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.

27. 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.

28. The promoter is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement 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 addendum agreement.
29. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
30. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 07.05.2018, which is reproduced below for the ready reference:

Clause 4 of MoU

"The Company shall pay a monthly assured return of Rs.26,509/- on the total amount received with effect from 07.05.2020 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(s) to the Company in accordance with 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."

Thus, as per the abovementioned clause the assured return was payable @Rs.26,509/- per month w.e.f. 07.05.2020, till the commencement of first lease.

31. Further, it is observed that despite the assurances extended by the respondent/developer through its letter dated 15.10.2020, wherein it was specifically contended that the assured returns would be settled/adjusted at the time of offer of possession, the respondent has failed to honour the said commitment. Even after the receipt of the Occupation Certificate, the respondent has neither paid nor adjusted the assured returns as promised. Accordingly, the contention of the respondent in the aforesaid letters stands belied by its own conduct.
32. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 10.07.2020. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the Competent Authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. The validity of the said lease can be considered only after obtaining the Occupation Certificate, i.e., on 14.08.2024.
33. In the present complaint, as per clause 4 of the MOU dated 07.05.2018, the amount on account of assured returns was payable from 07.05.2020 up to the commencement of the first lease which was executed on 10.07.2020 but the first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 04.12.2024.

Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainants at the agreed rate i.e., @Rs.26,509/- per month from the effective date i.e., 07.05.2020 till obtaining of Occupancy Certificate of the concerned project i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants.

- III. To prosecute the respondent company for failure to offer possession of the allotted unit, for misrepresentation regarding the super area, and for unilaterally offering an alternative unit on a different floor.**
- IV. To revoke the registration of the respondent company under section 7 for engaging in unfair practices, and to impose a penalty of 5% of the estimated project cost under section 60 for making false and misleading representations in contravention of section 4.**

34. The Authority has perused the terms and conditions of the MoU and BBA executed between the parties, wherein it is recorded that the said unit is a commercial originally allotted unit on 3rd floor and that the leasing of the unit is to be undertaken through the respondent.

35. In view of the aforesaid BBA and MoU signed between the parties on dated 07.05.2018, the Authority observes that the leasing rights and related decisions vest with the respondent on the originally allotted unit on the 3rd floor, as mutually agreed between the parties, and are binding upon the complainants in terms of the executed documents.

- V. Complainants be awarded compensation of Rs.10,00,000/- (Rupees Ten Lakh Only) towards mental harassment and legal expenses incurred by the Complainant.**

36. The complainants in the aforesaid relief are seeking relief w.r.t compensation. *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Decided on 11.11.2021), has held that an allottee is entitled to claim

compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

37. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 07.05.2018.

H.Directions of the Authority

38. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to pay the assured return to the complainant at the agreed rate of @Rs.26,509/- per month from the effective date in clause 4 of the MoU i.e.,07.05.2020 till obtaining of Occupancy Certificate of the concerned project i.e.,14.08.2024, after deducting the amount already paid on account of assured returns to the complainants.
- II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- III. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement dated 07.05.2018.

IV.The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainants.

V.The complainants are directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.

VI.The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.

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

40. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

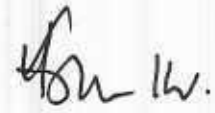
41. Files be consigned to registry.



Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2026



Arun Kumar
(Chairman)