

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

<b>Complaint no.:</b>	<b>5995 of 2024</b>
<b>Date of filing:</b>	<b>06.12.2024</b>
<b>Date of Order:</b>	<b>20.01.2026</b>

Urmila Sharma and Ved Parkash  
R/o: - 3, Oxford RD # 03-07, Singapore - 218814  
Also at: S 144 LGF Greater Kailash 1 New Delhi

**Complainants**

**Versus**

M/s Neo Developers Pvt. Ltd.  
Regd. Office at: - 32-B, Pusa Road, New Delhi-110005

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Rajinder Singh (Advocate)

Counsel for Complainants

Shri Venkatesh Dubey (Advocate)

Counsel for Respondent

**ORDER**

1. This order shall dispose of the aforesaid complaint 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.

**A. Project and unit related details.**

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	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	14.05.2015 (As per pg. no.24 of the complaint)
7.	Unit no.	Priority No. 36 (Floor 3 <sup>rd</sup> ) (As per pg. no. 29 of the complaint)
8.	Unit area admeasuring	1500 sq. ft. (Super Area) (As per pg. no. 29 of the complaint)
9.	Date of MoU	14.05.2015 (As per pg. no. 55 of the complaint)
10.	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.
11.	Possession clause	Not Available
12.	Due date of possession	14.05.2018

		[3 years - Calculated as <i>per fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors, (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
13.	Assured return Clause	<p><i>Clause 4.</i></p> <p><i>"The company shall pay a monthly return of @Rs.1,35,000/- on the total amount received with effect from 14.05.2017 after 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 from 14<sup>th</sup> may 2017 onwards (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. 57 of the Complaint)</i></p>
14.	Total basic Sale consideration	<p>Rs. 1,31,96,663/-                      (including GST, IFMS, EDC, IDC and taxes)</p> <p><i>As per pg. no. 50 of the Complaint)</i></p>
15.	Amount paid by the complainants	<p>Rs. 1,21,48,171/-</p> <p><i>(As per pg. no. 06 of the Complaint)</i></p>
16.	Occupation certificate	<p>14.08.2024</p> <p><i>(As per DTCP site)</i></p>
17.	Offer of possession	Not Available

**B. Facts of the complaint.**

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

- i. That the complainants Mrs. Urmila Sharma and Mr. Ved Parkash, R/o 3, Oxford RD # 03-07, Singapore - 218814, who purchased the unit on 14.05.2015 and are law-abiding citizens, taxpayers to the public exchequer and entitled to the Constitutional right to property as envisaged in the Constitution of India. The complainants are husband and wife and are overseas citizen of India and resides in Singapore currently.
- ii. That the respondent i.e., M/S Neo Developers Private Limited (hereinafter referred to as "the Company") and the directors are having its registered office at 32-B, Pusa Road, New Delhi and branch office at 1205-b, 12<sup>th</sup> floor, tower-b, signature towers, south city-i, nh-8, Gurugram, haryana-122001. the respondent is engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
- iii. That the directors and employees of the company finally induced the complainants to purchase the unit in their assured return plan wherein the company would make the payment at the rate of Rs. 90 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainants at the time of booking or at the time of execution of memorandum of understanding (MOU). Mr. Ashish Anand and Mr. Manish Bholra, directors of the company, assured the complainants that there will be no delay in making payment towards the assured return under any circumstances whatsoever. That the assurances made by the directors and employees of the company and after purchasing the said unit, the complainants also purchased 3 other office units in the same project with a goal of receiving good returns on the said investment.
- iv. That complainants entered memorandum of understanding and builder buyer agreement executed on 14.05.2015. It was agreed under the MOU that a

monthly return of Rs.1,35,000/- shall be payable as assured return from 14.05.2017. Mr. Ashish Anand and Mr. Manish Bhola directors of the company explained the site plan wherein it was provided that the third floor of the building consists of restaurant and food court, which is above the floors consisting of retail stores. It was explained that the 3<sup>rd</sup> floor would be solely dedicated to modern restaurants, lounge and food court. Mr. Ashish Anand and Mr. Manish Bhola, directors of the company again assured that there will be no delay in making payment towards the assured return under any circumstances and the property would be constructed and delivered within 36 months period from entering of the MOU since company has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC, Nike, Inox Cinema etc.

- v. That, in view of the above assurance an impression was given to complainants that since the Project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the restaurant in future. Based on the above inducement and assurance of Mr. Ashish Anand and Mr. Manish Bhola and the employees of the company, the complainants purchased a commercial unit (restaurant) on the third floor and executed the memorandum of understanding and builder buyer's agreement dated 14.05.2015 having area admeasuring 1500 sq. ft. super built-up area at the rate of Rs. 7809.21/- per sq. ft. wherein commercial unit no. 36 was assigned on floor 3.
- vi. That, the complainants paid a sum of Rs.1,21,48,171/- towards consideration of the commercial unit no. 36, through cheques vide cheques no. 258077, 258076 and 258078 dated 10.05.2015 drawn on DBS Bank. It was agreed under the MOU that a monthly return of Rs. 1,35,000/- (Rupees One Lakh Thirty-Five Thousand only) shall be payable as assured return from

14.05.2017. The price of the unit @rs.7809.21/- per sq. ft was arrived after adjusting the two-year assured return in advance. because of the said reason only the assured return w.r.t. the unit of the complainants commenced from 14.05.2017 i.e., after two years of entering into bba and mou.

- vii. That the relevant clause of the mou dated 14.05.2015 is reproduced hereunder for the reference of this hon'ble tribunal.

*"The Company shall pay a monthly assured return of Rs.1,35,000/- (Rupees One Lakh Thirty-Five Thousand only) on the total amount received with effect from 14<sup>th</sup> May 2017 after deduction of Tax at Source and service tax, 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) from 14<sup>th</sup> May 2017 onwards until the commencement of the first lease on the said unit."*

- viii. That the company demanded VAT from complainants, several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to Rs. 6,21,241/- (Rupees Six Lakh Twenty-One Thousand Two Hundred Forty-One Only) on 30.03.2017 for unit no. 336, wherein a payment of Rs. 6,21,241/- was made by the complainants vide telegraphic transfer bearing reference no. 2780805062543 dated 08.05.2017 drawn on hdfc global business park (914289).

- ix. That the truth of the assurances made by the directors and employees of the company surfaced when the company in discharge of its liability of paying assured return to the complainants for the period of april, 2018 to march, 2019 issued 2 cheques, one in the name of each complainant. A cheque bearing No. 004707 amounting to Rs.1,82,250/- (Rupees One Lakh Eighty-Two Thousand Two Hundred and Fifty Only), dated 25.11.2019 was issued in the name of complainants no. 2 which was drawn on HDFC Bank, 13-B, pusa road,

- Rajinder Nagar, new Delhi, whereas a cheque bearing no. 004708 amounting to Rs. 1,82,250/- (Rupees One Lakh Eighty-Two Thousand Two Hundred and Fifty Only), dated 25.11.2019 was issued in the name of complainants no. 1 which was drawn on hdfc bank, 13-b, Pusa road, Rajinder Nagar, new Delhi.
- x. That the complainants presented both the above-mentioned cheques for encashment in their joint account with its banker dbs bank india limited, branch barakhamba road on 25.11.2019. However, the said cheques got dishonoured according to the cheque return memos dated 27.11.2019 stating the reason of dishonour as "funds insufficient". The complainants' communicated about the dishonour of the said cheques to the directors and employees of the company. The complainants also requested the directors and employees of the company to clear the due payment of assured return. but all these requests were falling on deaf ears as no reply ever came from directors and employees of the company. This reflects that there is a deliberate attempt on part of the accused persons to usurp the hard-earned money of the complainants and incur wrongful gain.
- xi. That the mala fide intentions of the company also became conspicuous when the company *vide* letter dated 30.12.2019 took a unilateral decision of not paying any assured return till the completion of the project. such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the agreement entered between the parties since the payment towards the assured return was integral part of the agreement.
- xii. That it is submitted by the complainants that they received the said letter via aramex courier on 02.03.2020 pursuant to which a reply was sent to the respondent - company on 19.03.2020 wherein the complainants told the respondent that the letter dated 30.12.2019 was not received by the complainants until 02.03.2020.

- xiii. It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent-company and due to the said reason, the respondent-company is demanding vat again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside. The respondent company sent a letter for payment request dated 22.01.2020 for VAT outstanding payment of Rs. 9,35,916/- to the complainants without any explanation.
- xiv. That the complainants sent a letter dated 14.02.2020 to the respondent company wherein the complainants asked the respondent for clarification of the said illegal demand.
- xv. That the company sent an email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibility of paying monthly assured return, the company invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in MOU or BBA. The company is forcing complainants to sign lease assignment form by which the company intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliterated from its responsibility to pay the monthly assured return and communicated to sign the lease assignment form. This shows that the company from the inception had no intention to pay the assured return to the buyers and had prepared biased mou to suit its whims and wishes.
- xvi. That on 01.10.2020 the respondent sent an email for invitation for signing lease agreement and registration of BBA and MOU. It is submitted that the respondent company cannot lease out the unit prior of obtaining the occupancy certificate for the project.

- xvii. The wrongful acts of the company are not only limited to this, the company deducted TDS on the assured return paid by it in the financial year of may 2017-march 2018, but till date the company has neither issued tds certificate for the same nor deposited the deducted tax to the authorities due to while tax liabilities of the complainants are increased due to the fault of the respondent.
- xviii. That the respondent vides its letter dated 01.02.2022 informed the complainants that the respondent had applied for the Occupation Certificate in 2021, and that this Hon'ble Authority wanted to make certain modifications before the grant of the OC and thus, the respondent had withdrawn the application for OC. Furthermore, the respondent vides the said letter also assured the complainants that payment towards the monthly interest would be adjusted at the time of possession.
- xix. The respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. Further, by refusing to give assured return, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement rather illegal and unreasonable demands with respect to the vat has been raised again and again.
- xx. The respondent under the garb of force-majeure is delaying the completion of the project. It is submitted that no fresh construction has been carried out in the project since 2019. The completion certificate of the respondent has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the senior town planner, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.

- xxi. That the complainants are constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 90 per sq feet amounting to Rs. 1,35,000/ (Rupees One Lakh Thirty-Five Thousand Only) for unit admeasuring 1500 sq feet, since 2018 till the handing over the possession/ Lease out of the property after the completion of the construction. The Respondent may be directed to complete the project as promised to the Complainants and execute the Sale deed in favor of the complainants with respect to the restaurant space purchased by him, Further, to set aside the illegal demand of VAT by the Respondent and compensation towards the delay in completing the project. The complainants reserves the right to amend the submission made herein, to produce documents and alter the prayer as and when deem necessary or on the direction of this hon'ble tribunal.
- xxii. The cause of action to file the present complaint first arose when the builder failed to construct and handover the possession after 36 months from entering the mou and bba. it further arose when the respondent stopped making payments towards the assured return in 2018. it further arose when the cheques given by the respondent company in 2019 got dishonoured. it further arose when the force-majeure clause was enforced illegally by the respondent.
- xxiii. That the complainants urmila sharma is giving a power of attorney to complainants ved parkash for filing the complaint on behalf of her and to represent her in legal proceedings arising from or related to said complaint.
- xxiv. The complainants declares that the complainants have filed a criminal complaint no. 3398 of 2020 under section 138 of the negotiable instruments act, 1881 before the court of chief metropolitan magistrate, Patiala house courts, new Delhi on 20.02.2020 and the matter is still pending.

### **C. Relief sought by the complainants**

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

- 1) Direct the Respondent to pay Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 1,35,000/ (Rupees One Lakh Thirty-Five Thousand Only) for Unit No. 36, situated on 3<sup>rd</sup> floor of the project, since 2018 till handing over the possession/leasing out the property after completion.
- 2) To direct the Respondent to pay the interest as per RERA Act.
- 3) Restrain the Respondent from entering the lease deed with 3<sup>rd</sup> party till the completion of project and handing over the possession to the Complainants.
- 4) To execute the Sale Deed after the completion of the project after receiving Completion Certificate and Occupation Certificate, in favor of the Complainants.

#### **D. Reply by the respondent**

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

- i. That the complainants requested the Respondent to allot a Unit/Space, admeasuring 1500 sq. ft. super area in the Project "NEO Square" (hereinafter referred to as the "Project).
- ii. That considering the request of the complainants, the respondent booked a unit bearing no. 36, on 3<sup>rd</sup> floor, admeasuring 1500 sq. ft. super area, (hereinafter referred to as the "Subject Unit/Unit).
- iii. That thereafter, the respondent made multiple requests to the complainants to visit the office of the respondent for executing the builder buyer's agreement. however, the complainants failed to come forward to do the needful.

- iv. That after much persuasion by the Respondent, the Complainants came forward and executed the Builder Buyer's Agreement on 14.05.2015 (hereinafter referred to as the "BBA") and executed MoU on 14.05.2015.
- v. That the complainants failed to come forward to complete the formalities of possession and payment of outstanding dues. therefore, the respondent was constrained to issue reminders dated 16.12.2015 and 02.05.2017 requesting the complainants to do the needful.
- vi. That, despite repeated reminders and ample opportunities granted by the respondent, the complainants failed to come forward to clear the outstanding dues. consequently, the respondent was constrained to issue a final notice dated 07.06.2021, calling upon the complainants to make payment of the outstanding amount of Rs.10,28,286/- towards the said unit.
- vii. It is pertinent to note herein that the complainants, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- viii. That the present complaint has been preferred by the complainants before the Id. authority on frivolous and unsustainable grounds and the complainants has not approached the Id. authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainants 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.
- ix. That as per clause 9-11 of the duly executed bba, the allottee was contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, and allied services in

relation to the said unit and the project as a whole. The said clause expressly provides that the allottee shall be liable to make timely payment of maintenance charges and other related dues, as determined by the builder or its nominated maintenance agency, from time to time, in accordance with the applicable maintenance cost. clauses 9-11 of BBA clearly states that the allottee(s) are duty bound to pay charges, taxes etc.

- x. It is to be noted that even in clause 12 of mou, it is clearly agreed between the parties that all charges related to tax etc will be paid by the complainants.
- xi. That the respondent, in good faith and in compliance with the contractual provisions, issued several written communications and demand notices to the complainants through letters, emails, and reminders dated 16.12.2017, 05.03.2018 and 24.02.2020, requesting him to make timely payment of all lawful charges. the said intimations were duly served upon the complainants at his registered address/email id as mentioned in the bba, but the complainants neither replied nor complied, thereby wilfully defaulting in his obligations.
- xii. That it is respectfully submitted that despite not being under any legal obligation to issue reminders as per clause 4.4 of BBA which is not repeated for the sake of brevity. The respondent, with the intent to uphold its contractual commitments and to ensure timely completion and handover of the unit, issued multiple demand notices to the complainants-allottee, dated 16.12.2017, 05.03.2018 and 24.02.2020 and 07.06.2021. These communications clearly manifest the bona fide intent and seriousness of the respondent company to honour its part of the bargain under the builder buyer agreement.
- xiii. It is pertinent to highlight that the respondent was duly served with a formal demand notice dated 07.06.2021, explicitly calling upon him to clear the

outstanding dues amounting to Rs.10,28,286/- (including interest, if any) within 15 days, i.e., on or before 21st June 2021. The said notice clearly reiterated that timely payment of installments was the essence of the Agreement, as per Clause 4.4 thereof, and that continued default would amount to breach of contract, thereby inviting consequences as stipulated in the Agreement.

- xiv. Despite this final opportunity, the complainants failed to discharge his financial obligations within the stipulated time. accordingly, the respondent was constrained to treat the allotment of unit no. 36 in neo square as cancelled. The notice unequivocally stated that in the event of non-payment, the complainants would be left with no lien, right, title, interest or claim of whatsoever nature in the said unit, and that the respondent would be free to deal with or resell the said unit at its sole discretion. hence, the cancellation was not abrupt or arbitrary, but a consequence of persistent and willful default, despite adequate notice and opportunity, and is fully justified under the contractual framework binding both parties.
- xv. That the complainants/allottee had conducted complete due diligence before executing the builder buyer agreement ("BBA") with the respondent. It is categorically mentioned under clause 18 of the BBA that the Allottee, after being fully satisfied with the title of the project land, approvals, licenses, layout plans, building plans, and all relevant permissions, voluntarily entered into the said agreement. The allottee acknowledged that he/she had verified all documents and had understood the nature, scope, and obligations arising out of the BBA prior to signing the same.
- xvi. It is a matter of fact, that time was essence in respect to the Complainants' obligation to make the respective payment. And, as per the agreement so

signed and acknowledged the Complainants was bound to make the outstanding payment as and when demanded by the Respondent.

- xvii. That the complainants/allottee wilfully failed to comply with his contractual obligations to pay the requisite charges as stipulated under the builder buyer agreement, which included maintenance charges, IFMS, registration fees, stamp duty, taxes, levies, and other lawful dues. Despite repeated intimations and reminders issued by the respondent demanding payment of the said charges, the complainants deliberately chose to ignore the same. Such conduct amounts to a material breach of the terms of the agreement, consequently, the respondent, being left with no other recourse, lawfully invoked clause 4.5 of the BBA.
- xviii. 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.
- xix. 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.
- xx. That the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under Section 13. Section 13 nowhere mentions the Agreements pertaining to Assured Return are covered under the Act, 2016.
- xxi. 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.

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

- xxvi. 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.
- xxvii. 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.
- xxviii. 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 complainants 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 complainants is raising their grievance.

xxix. 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.*

- xxx. 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.
- xxxi. 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.
- xxxii. 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/Complainants 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."*

- xxxiii. 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.
- xxxiv. 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.
- xxxv. 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.
- xxxvi. 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.
- xxxvii. 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.

- xxxviii. That the respondent has offered assured returns to the complainants 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 thereof 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.
- xxxix. 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.
- xl. That as the complainants 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.

- xli. 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.
- xlii. 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.
- xliii. That as per the terms of the MOU the complainants explicitly agreed to the complainants 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 complainants then in that event the complainants shall bear the same from its own pocket.
- xliv. 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 complainants, as the same has been assessed and demanded by the competent Authority.

- xlv. 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.
- xlvi. 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 complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.
- xlvii. 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. No.	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 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	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had



		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.			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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 <sup>th</sup> Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 <sup>th</sup> Nov 2017 till further notice.	Till date the order has not been vacated.	90 days	The bar for the closure of stone crushers, simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of

					<p>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 Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21<sup>st</sup> Dec, 19 and 30<sup>th</sup> Jan, 20</p>
5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	<p>National Green Tribunal has passed the said order dated 9<sup>th</sup> 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<sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9<sup>th</sup> Nov, 17 was vacated vide order dated 17<sup>th</sup> Nov, 17.</p>		9 days	<p>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.</p>
6.	29 <sup>th</sup> October 2018	<p>Haryana State Pollution Control Board, Panchkula has passed the order dated 29<sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution</p>	1 <sup>st</sup> Nov to 10 <sup>th</sup> Nov, 2018	10 days	<p>On account of the passing of the aforesaid order, no construction activity could</p>

		<p>(Prevention and Control) Authority dated 27<sup>th</sup> Oct 2018. By virtue of order dated 29<sup>th</sup> 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<sup>st</sup> Nov to 10<sup>th</sup> Nov 2018.</p>			<p>have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.</p>
7.	24 <sup>th</sup> July, 2019	<p>NGT in O.A. no. 667/2019 &amp; 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.</p>		30 days	<p>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.</p>
8.	11 <sup>th</sup> October 2019	<p>Commissioner, Municipal Corporation, Gurugram has passed an order dated 11<sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11<sup>th</sup> Oct 2019 to 31<sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.</p>	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019	81 days	<p>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</p>

					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 Mohta 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 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 <sup>rd</sup> 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.

xlvi. 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.

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

7. 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.1 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 complainants at a later stage.

#### **F. Findings on the objections raised by the respondent.**

##### **F.1. Objection regarding the complainants being investor.**

5. The respondent has taken a stand that the complainants 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 14.05.2015, it is revealed that the complainants are buyers, and they have paid a total price of Rs.1,21,48,171/- 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 complainants 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.**

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 14.05.2018. 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 complainants.**

- I. Direct the Respondent to pay Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 1,35,000/ (Rupees One Lakh Thirty-Five Thousand Only) for Unit No. 36, situated on 3<sup>rd</sup> floor of the project, since 2018 till handing over the possession/leasing out the property after completion.**
- II. To direct the Respondent to pay the interest as per RERA Act.**

**G.I) Assured Returns**

8. The complainants is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 14.05.2015 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
9. The respondent has submitted that the complainants in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of

promoter-allottee in terms of the MoU, by virtue of which the complainants are raising their grievance.

10. 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.*

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

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

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

12. 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.
13. 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.
14. 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.
15. 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.
16. 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 complainants besides initiating penal proceedings. So, the amount paid by the complainants 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.

17. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 14.05.2015, which is reproduced below for the ready reference:

*Clause 4.*

*"The Company shall pay a monthly assured return of Rs.1,35,000/- (Rupees One Lakh Thirty-Five Thousand only) on the total amount received with effect from 14<sup>th</sup> May 2017 after deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s) from 14<sup>th</sup> May 2017 onwards until the commencement of the first lease on the said unit."*

18. Thus, as per the abovementioned clause the assured return was payable @Rs.1,35,000/- per month w.e.f. 14.05.2017, till the commencement of first lease as per clause 04 of the MoU.
19. Furthermore, the respondent promoter issued a letter on 01.10.2020 stating that the Assignment of Lease will be prepared and submitted to the complainants for review and signature. 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 validity of the said lease can be considered only upon obtaining the Occupation Certificate,

i.e., on 14.08.2024, and the liability shall extend up to the date of obtaining the Occupation Certificate

20. In light of the above, the Authority is of the view that as per the MoU dated 14.05.2015, it was obligation on part of the respondent to pay the assured return till the commencement of first lease on the subject unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.1,35,000/- from the date i.e., 14.05.2017 till obtaining of Occupancy Certificate after deducting the amount already paid on account of assured return to the complainants.

#### **G.II) Delay Possession Charges:**

21. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

***“Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”*

22. **Due date of possession:** The subject unit was allotted to the complainants vide MoU dated 14.05.2015. As per the documents available on record, nowhere in the MoU mentioned the period of possession/due date of possession hence the same cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 :-*

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"*

23. In the instant case, the MoU executed between the parties on 14.05.2015. In view of the above-mentioned reasoning, the date of MoU ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession comes out to be 14.05.2018.

**24. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

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

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.01.2026 is 8.80%. Accordingly,

the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

28. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 14.05.2018.

29. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

30. To answer the above proposition, it is worthwhile to note that the assured return is payable to the allottees in terms of the provisions of the MoU dated

14.05.2015. In the present case, the promoter had agreed to pay a fixed monthly assured return on the total amount received from the complainants with effect from 14.05.2017 till obtaining of Occupancy Certificate of the project. A comparison between the assured return stipulated under the MoU and the delayed possession charges payable under the proviso to Section 18(1) of the Act, 2016 reveals that the assured return is more beneficial to the allottees. By way of the assured return clause, the promoter assured the allottees of a specific monthly compensation until the unit is put on valid lease. Moreover, the interest of the allottees continues to remain protected even after completion of construction, as the assured return is payable till the unit or space is actually leased out. The underlying objective of delayed possession charges, namely safeguarding the interest of the allottees for continued use of their funds by the promoter beyond the stipulated date of possession, stands duly satisfied by the payment of assured return after the due date of possession. Accordingly, the allottees are entitled to receive either the assured return or delayed possession charges, whichever is higher, for the relevant period.

31. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
32. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 24.07.2020. 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, and the liability shall extend up to the date of possession is offered after obtaining the Occupation Certificate.

33. In the present complaint, as per clause 4 of the MOU dated 14.05.2015, the amount on account of assured returns was payable from effective date i.e., 14.05.2017 up to the commencement of the first lease which was executed on 24.07.2020. 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 not been offered by the respondent. 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.1,35,000/- per month from the effective date i.e., 14.05.2017 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants.

34. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

**III. Restrain the Respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the Complainants.**

**IV. To execute the Sale Deed after the competition of the project after receiving Completion Certificate and Occupation Certificate, in favor of the Complainants.**

35. In view of the fact that the complainants have already paid a substantial portion of the sale consideration towards the subject unit, the respondent is hereby restrained from creating any third-party rights, interest, charge, lien, encumbrance, or alienation of any nature whatsoever in respect of the said unit, till the handing over of possession of the unit to the Complainants in terms of this order.
36. 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 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.

**H. Directions of the Authority**

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

- I. The respondent/promoter is directed to pay the assured return to the complainants at the agreed rate of @Rs.1,35,000/- per month as per clause 4 of the MoU dated 14.05.2015 from the effective date i.e., 14.05.2017 till obtaining of Occupancy Certificate of the project i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants.

- II. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- III. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement.
- IV. The respondent/promoter is directed to handover possession of the unit to the complainants/allottee(s) 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.

38. The complaint stand disposed of.

39. File be consigned to registry.



(Phool Singh Saini)  
Member



(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated:20.01.2026**