

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

Complaint no. : 2525 of 2025
Date of filing : 26.05.2025
Date of decision : 20.01.2026

Avinash Kumar

R/o: - Bajrangpuri, P.O Gulzarbagh, P.S Alamgang,
Gaighat, Patna- 800007

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Regd. Office at: - 32-B, Pusa Road, New Delhi-
110005

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Garvit Gupta (Advocate)
Shri Dushyant Yadav (Advocate)

**Counsel for Complainant
Counsel for Respondent**

ORDER

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

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	07.09.2019 (As per pg no.37 of the reply)
7.	Unit no.	Unit no. virtual no. 105 on floor no. 5 th Floor Priority No.105, 12A Floor (New) (page no. 73 of the complaint)
8.	Unit area admeasuring	300 sq. ft. (Super Area) (As per pg. no. 40 of the complaint)
9.	Date of MoU	07.09.2019 (As per pg. no. 57 of the reply)
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	Clause 3 of MoU <i>The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate</i>
12.	Due date of possession	07.03.2021 [36 months from signing of the MOU plus 6 months for Covid-19]
13.	Assured return Clause	Clause 4. <i>"The Company shall pay a Penalty of Rs.21,723/- (Rupees Twenty One Thousand Seven Hundred Twenty Three only) per month on the said Unit, On the total amount received with effect from 07-09-2020 (Effective Date-II) Subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- I. The penalty shall be paid to the Allottee(s) from end of effective date II until the offer of possession letter date, on prorata basis". (As per pg. no. 50 of the REPLY)</i>
14.	Total basic Sale consideration	Rs. 15,00,000/- (including GST, IFMD, EDC, IDC and taxes) As per pg. no. 50 of the REPLY)
15.	Amount paid by the complainant	Rs. 13,08,384/- (As per pg. no. 50 of the REPLY)
16.	Occupation certificate	14.08.2024 (As per DTCP site)
17.	Offer of possession	04.10.2024

		(As per pg. no. 67 of the complaint)
18.	Reminders for payment	Letters dated 27.11.2024 (Demand of Rs. 9,23,002/- apart from Fit-outs)
19.	Fit-out charges demand	Letter dated 19.12.2024 of Rs.8,85,000/-
20.	Reminder for the registration of conveyance deed letter	07.03.2023

B. Facts of the complaint

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

- a. That the respondent offered for sale units in a commercial complex known as 'neo square' which claimed to comprise of several facilities on a piece and parcel of land situated in sector-109, Gurugram, Haryana. The respondent stated that it is well established in the business of real estate development and has significant expertise in developing and marketing of commercial complexes in various parts of India. The respondent also claimed that the dtcp, haryana had granted license bearing no. 102 of 2008 dated 15.05.2008 on a land area of about 3.06 acres in village Pawala, Khusropur, District Gurugram for development of the commercial complex in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- b. That the complainant received a marketing call from the office of the respondent in the month of may, 2019 for booking in the said project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity done by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing

staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. the marketing staff of the respondent also assured timely completion of all the obligations of the allotment.

- c. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as he required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively offered within the agreed time frame and thereafter the unit would be leased to the third party by the respondent. On the basis of the representations made by the respondent, the complainant decided to make the booking in the said project of the respondent. The complainant made a payment of rs. 2,00,000/- to the respondent vide cheque no.000014 dated 14.08.2019 and the same was acknowledged by the respondent vide its receipt dated 31.08.2019. Furthermore, the complainant made payment of Rs. 9,49,120/- to the respondent vide cheque No.1793799102 dated 06.09.2019 and of Rs.1,59,264/- vide cheque No.924914016856 dated 06.09.2019 and the same were acknowledged by the respondent vide its receipts dated 06.09.2019.
- d. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. during such discussions, the respondent assured the complainant that no illegality whatsoever, would be committed by them and that the interest payable by the respondent to

the complainant would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the buyer's agreement was not signed and submitted. hence, the complainant had no other option but to sign the buyer's agreement on 07.09.2019. As per clause 2.1 of the buyer's agreement the complainant was allotted a unit bearing priority no. 105, fifth floor admeasuring 300 sq.ft. in the said project. furthermore, as per annexure-i of the said buyer's agreement, the basic sale consideration including GST of the unit was Rs.16,97,064/- and the total consideration of the unit was Rs.19,06,764/. inclusive of the taxes, EDC, IDC and IFMS. It is pertinent to mention herein that the respondent has specifically mentioned in clause 4 of the buyer's agreement that the complainant has paid a sum of Rs. 13,08,384/-.

- e. That on the said date, a memorandum of understanding (mou) was also executed between the respondent and the complainant. it was reiterated in clause 4 of the mou that the complainant has made a payment of Rs. 13,08,384/- to the Respondent towards part consideration of the unit. Furthermore, as per the terms of the MOU, it was agreed that the respondent will make payment to the complainant under the nomenclature of 'penalty' of Rs. 21,723/- per month from 07.09.2020 (Effective date-II as per Clause 4 of MOU) onwards till offer of possession which shall be adjusted in the total sale consideration and after adjustment, the balance sale consideration shall be payable by the complainant to the respondent in accordance with the payment plan. The respondent had categorically assured at the time of the execution of the

said mou that it would be diligent in making payment towards the penalty amount and in adhering to its contractual obligations. it is submitted that as per clause 4 of the said mou, it was agreed that the respondent would pay a penalty of Rs. 21,723/- per month. The relevant portion of Clause 4 of the MOU is reproduced hereunder:

"4. ...The Company shall pay a Penalty of Rs.21,723/- (Rupees Twenty One Thousand Seven Hundred Twenty Three only) per month on the said Unit, On the total amount received with effect from 07-09-2020 (Effective Date-II) Subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total sale consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure- 1. The penalty shall be paid to the Allottee(s) from end of effective date II until the offer of possession letter date, on prorata basis".

- f. Furthermore, it was agreed vide clause 8(a) of the said mou that the respondent would make payment of lease rentals at assured lease @ rs.59.25 per sq. ft. per month rent to the complainant from commencement of first lease. furthermore, it was decided as per clause 9(a) of the mou that the respondent was to finalize the terms for leasing the premises with a perspective lessee. clauses 8 and 9 of the said mou are reproduced herewith:-

"8(a). That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs.59.25 per Sq Ft. per month."

(b) In case of any increase in the monthly rental in excess of the Assured Return, the allotment consideration shall be enhanced by Rs.66.66/-per sq. ft for each rupee increase in the monthly rental of per sq. ft. per month. Similarly, in case the monthly rental is reduced from the Assured Return, then

for each decreased rupee of per sq. ft. per month, the allotment consideration shall stand decreased by Rs.133.33/- per sq. ft.

- g. That as per clause 3 of the MOU, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of the MOU or the date of start of construction.
- h. Since the MOU was executed between the parties on 07.09.2019, the due date to offer the possession as per the terms of the MOU was 07.09.2022. It is pertinent to mention herein that the respondent was under an obligation as per the mou executed between both the parties to make payment towards the 'penalty' per month from 07.09.2020 till the offer of possession. However, the respondent failed to perform its said obligation and never made any payment towards the monthly penalty to the complainant.
- i. That the respondent finally, after a considerable delay vide its demand notice and offer of possession dated 04.10.2024, intimated the complainant that the unit allotted to him was ready for possession as the respondent had obtained the occupation certificate. On-going through the terms of the offer of possession, the complainant realized that respondent had failed to adjust the amount of the monthly penalty as assured by the respondent. It is pertinent to mention herein that the respondent vide the said letter has demanded additional amounts against labour cess, FTTH, EDC, IDC, development charges and interest on delayed payment. The complainant was in complete shock and was surprised to note that the respondent vide the said demand notice and offer of possession illegally demanded the amount of Rs. 9,23,002/-.
- j. The respondent has illegally demanded Rs. 7,500/- towards labour cess and Rs. 6,490/- towards FTTH. The respondent has demanded fthh

- without even disclosing what the said component is and how the said can unilaterally become part of the sale consideration of the unit.
- k. Furthermore, as per the judgment titled '*Varun Gupta vs Emaar MGF Land Limited*', it has already been decided that the payment against labour cess cannot be demanded by the promoter. Hence, there are no grounds for the Respondent to claim and demand labour cess and FTTH charges from the Complainant and the same are liable to be revoked.
- l. The respondent has illegally and in a completely malafide manner demanded Rs. 2,12,400/- as development charges. It is submitted that the Respondent had already demanded charges against the External Development Charges (EDC) of Rs. 1,26,300/- and against the Internal Development Charges (IDC) of Rs. 15,900/-. and the said fact is evident from a perusal of Annexure-I of the buyer's agreement. When charges towards EDC and IDC have already been demanded and forms part of the pre-decided total sale consideration amount, there is no question to demand payment against the development charges.
- m. The respondent in the said letter charged interest of Rs. 98,232/- from the complainant. The said interest is charged on baseless grounds as there has been no delay on part of the complainant in making the payment towards the sale consideration of the said unit. it is also pertinent to mention herein that the respondent has not even provided any explanation or justification of charging such additional amount from the complainant. Hence, the respondent cannot demand unlawful interest from the complainant.
- n. It is pertinent to mention herein that the respondent has unilaterally increased the charges towards EDC/IDC from Rs. 1,42,200/- to Rs.1,59,264/-. As per Annexure-I of the Buyer's Agreement, it was

mutually agreed that the EDC would be Rs. 1,26,300/- and IDC would be Rs. 15,900/-. However, a bare perusal of the said offer of possession makes it evident that the EDC/IDC (now demanded of Rs. 1,59,264/-) has been increased without any justification, consent or logic and Thus, there has been a unilateral increase in the EDC/IDC to the extent of Rs. 17,064/-. Furthermore, when the respondent had already demanded such amount towards EDC and IDC there is no occasion for it to further demand an additional amount from the complainant under the same head without any justification.

- o. Hence, the said offer of possession was in complete contrast to the terms of the MOU. The Respondent in a completely illegal manner had demanded Rs. 9,23,002/- vide the said offer of possession. As per Clause 4 of the MOU, it was agreed that the amount of penalty would be adjusted in the Total sale consideration. The respondent completely sidelined its own obligations and failed to adjust any such amount in the remaining sale consideration.
- p. That the complainant visited the office of the respondent on receipt of the demand notice and offer of possession letter dated 04.10.2024 and challenged the imposition of illegal charges that were demanded by respondent under the garb of a so called 'legal' offer of possession. The complainant made vocal his objections and sought clarifications from respondent. However, the representative of the respondent failed to pay heed to any of the genuine queries raised by the complainant.
- q. That the respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and is unconcerned about the possession of the unit despite repeated

assurances. Rather, the respondent served a reminder letter dated 27.11.2024 to the complainant asking the complainant to remit the outstanding payment at the earliest to avoid any further accrual of interest. Furthermore, the respondent vide the said letter also threatened the complainant that in case of default of the complainant to pay the said outstanding amount the respondent shall be constrained to cancel and terminate the allotment of the said unit.

- r. That, the complainant was in complete shock and was surprised to note that the respondent vide letter dated 19.12.2024 illegally demanded an additional amount of Rs.8,85,000/- towards fitout charges. The complainant was never informed that the respondent had any right to demand any such fitout charges from the complainant. The parameter of fitout charges never found mentioned in buyer's agreement or in the mou and the complainant was informed about the same for the first time at the time of receipt of the letter dated 19.12.2024 only.
- s. The respondent cannot be allowed to charge any additional amount only because it deems fit to do so. The demand against the said charges is against the terms of the contract and even as per the provisions laid down by law. The respondent cannot demand such charges and the complainant is not legally liable to make any payment against the same.
- t. Importantly, vide letter dated 19.12.2024, the respondent has admitted that the respondent would offer the possession of the unit to the complainant only after the complainant makes the payment towards the said illegal charges.
- u. The complainant raised objections to the said illegal demands of the respondent. However, the respondent paid no heed to the genuine concerns of the complainant. Rather, the respondent sent another

reminder letter dated 24.12.2024 to the complainant to remit the outstanding amount at the earliest to avoid any further accrual of interest. Furthermore, the respondent vide the said letter yet again threatened the complainant that in case of default of the complainant to pay the said outstanding amount the respondent shall be constrained to cancel and terminate the allotment of the said unit.

- v. That the complainant was shocked to see another reminder letter for fit-out charges dated 03.03.2025 sent by the respondent asking the complainant to remit the due amount to avoid any further accrual of interest. Furthermore, the respondent vide the said letter yet again threatened the complainant that in case of default of the complainant to pay the said outstanding amount the respondent shall be constrained to cancel and terminate the allotment of the said unit.
- w. That it is pertinent to mention herein that the complainant has already made the payment of Rs. 13,08,384/- against the sale consideration of the unit. The complainant has been duped of his hard-earned money paid to the respondent regarding the unit in question. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.
- x. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to offer the possession of the unit, failed to make payment towards the penalty and delayed possession charges and revoke the illegal cancellation letter and issue a revised and valid offer of possession and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest

amount and compensation. The complainant reserves his right to approach the appropriate forum to seek compensation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Respondent be directed to make payment towards the penalty from 07.06.2020 till the date of issuance of valid offer of possession along with interest as per law.
- II. Respondent is directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date of offer of possession i.e 07.09.2022 till the date of issuance of the valid offer of possession.
- III. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental at the rate of Rs. 59.25 per sq.ft. per month.
- IV. In case the Respondent does not lease out the unit to any prospective allottee from 3 months from the date of filing of the present complaint, then the Respondent would be liable to make payment towards lease rental from the date of lapse of 3 months from the date of filing of the present complaint or to demarcate the unit and handover the physical possession of the unit to the Complainant
- V. Direct the Respondent to revoke the offer of possession dated 04.10.2024 and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.
- VI. Respondent be directed not to charge the labour cess of Rs. 7500/-, FTTH Charges of Rs. 6490. Further, the Respondent be directed not to

- charge Development charges of Rs. 2,12,400/- from the Complainant or any amount towards development charges from the Complainant.
- VII. Respondent be directed not to increase the amount of EDC/IDC charges to be paid by the Complainant from Rs. 1,42,200/- to Rs. 1,59,264.
- VIII. Direct the Respondent to not levy any maintenance charges from the Complainant till date of actual handover.
- IX. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. Rs.8,85,000/- towards the same from the Complainant.
- X. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:
- a) At the outset, the Complainants have erred gravely in filing the present Complaint and misconstrued the Provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "*RERA Act*"). It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between Builders and Buyers and the reliefs sought by the Complainants cannot be construed to fall within the ambit of RERA Act. That the Complainants herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.
- b) It is submitted that the Complainants with the intent to invest in the Real Estate sector as an investor, approached the Respondent and inquired about the project i.e., "*NEO SQUARE*", (*hereinafter referred to as the*

"Project") situated at Sector-109, Gurugram, Haryana being developed by the Respondent. That after being fully satisfied with the Project and the approvals thereof, the Complainants decided to apply to the Respondent by submitting a booking application form dated 31/08/2019, whereby seeking allotment of Unit No. 105, admeasuring 300 Sq. Ft Super Area on the 12Ath Floor of the Project having a Basic Sale Price of Rs. 5000/- (Rupees Five Thousand Only) (hereinafter referred to as the "Unit") The Complainants, considering the future speculative gains, also opted for the Investment Return Plan being floated by the Respondent for the instant Project.

- c) That since the Complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated:- 19/10/2019 (*hereinafter referred to as "MOU"*) was executed between the Parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the Complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 20/10/2020 till Offer of Possession. It is also submitted that as per terms of the MOU, the Complainants herein had duly authorised the Respondent to put the said unit on lease.
- d) That by no stretch of imagination it can be concluded that the Complainants herein are "*Allottee/Consumer.*" That the Complainants are simply investors who approached the Respondent for investment Opportunities and for a steady Assured Returns and Rental Income. That the same was duly agreed between the parties in the documents executed therein.

- e) That at this stage, it is categorical to highlight that the Complainant is trying to mislead this Hon'ble Authority by concealing facts which are detrimental to this Complaint at hand. That the MOU executed between the parties was in the form of an "Investment Agreement." That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have Possession Clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.
- f) It is also pertinent to mention that the Complainant voluntarily also executed the Buyer Agreement dated 07.09.2019 for Shop No. 105 on 12Ath Floor admeasuring 300 Sq. Ft Super Area in the Project.
- g) That as the Complainant in the present complaint is seeking the relief of Assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.
- h) That the Complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the Parties. It is submitted that the Ld. Authority is exercising its power and jurisdiction as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA Act, 2016, the Ld. 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 RERA Act, 2016. That 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.

- i) It is also pertinent to mention herein 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.
- j) That vide Judgment dated 29.09.2020 passed by **The Uttar Pradesh Real Estate Appellate Tribunal at Lucknow**, in appeal bearing no. 211/2022, titled as *"Meena Gupta vs One Place Infrastructure Pvt Ltd"*, the Appellate Tribunal held that Assured Returns are independent Commercial arrangements between the parties which sometimes 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. Further the Ld. Appellate Tribunal held that there is no provision under the Scheme of the Act 2016 for examining and deciding the issue relating to the provisions of assured return.

- k) That the various contentions and claims as raised by the Complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled this Ld. Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the Complainant are sustainable before this Ld. Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
- l) It is submitted that the as per Clause 11 of the 'MOU', the Respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of Construction, whichever is later and apply for grant of Completion/Occupancy Certificate.
- m) Accordingly, as per Clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.
- n) It is to be noted that the Complainants miserably failed to comply the Payment Plan under which the unit was allotted to the Complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the Respondent. The Complainant as per the records of the Respondent had only paid Rs.

13,08,384/- against the Total due Amount of Rs. 21,33,154/-. It is to be noted that there is still an outstanding due of Rs. 9,23,002/- which is to be paid by the Complainant against the unit booked as per the Demand Letter Dated: 04.10.2024.

o) 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.

p) All other averments made in the complaint were denied in toto.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

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

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the relief sought by the complainant.

- I. Respondent be directed to make payment towards the penalty from 07.06.2020 till the date of issuance of valid offer of possession along with interest as per law.**

II. Respondent is directed to make payment of delayed interest charges as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the Complainant from the due date of offer of possession i.e 07.09.2022 till the date of issuance of the valid offer of possession.

F.1) Assured Returns

11. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 07.09.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
12. The respondent has submitted that the complainants in the present complaint are 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.
13. 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.

14. It is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
15. 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;*
16. 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.
17. 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.

18. 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.
19. 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 promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship.
20. 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 promoter is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 17.08.2018.

21. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 07.09.2019, which is reproduced below for the ready reference:

Clause 4.

The Company shall pay a Penalty of Rs. 21,723/- (Rupees Twenty-Nine Thousand Nine Hundred Seventy-Three Only) per month on the said Unit, on the Total amount received with effect from 07th September 2020 (Effective Date II) subject to TDS, Taxes, any other levy which is due and payable by the Allottee(s) and which shall be adjusted in total sales consideration; the balance total sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule annexed as Annexure I. The penalty shall be paid to the Allottee(s) from end of effective date till the date of offer of possession letter date, on pro-rata basis.

22. Thus, as per the abovementioned clause the assured return was payable @Rs.21,723/- per month w.e.f. 07.09.2020, till the offer of possession letter.
23. In light of the above, the Authority is of the view that as per the MoU dated 07.09.2019, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and subsequently unit was offered the possession of the unit on 04.10.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @₹21,723/- from the effective date as per clause 4 of the MoU i.e., 07.09.2020 till 04.10.2024.

F.2) Delay Possession Charges:

24. In the present complaint, the complainant intends 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"

25. Clause 3 of the MoU dated 07.09.2019 provides for handing over of possession and is reproduced below:

"The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate"

26. **Due date of possession:** As per clause 3 of the MoU, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later. Further, a grace period of 6 months is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Thus, the due date of possession come out to be 07.03.2023.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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"

28. 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% per annum.
29. 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;"***
30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is being liable to be paid to the complainant in case of delay possession charges.

31. On consideration of documents available on record and submissions made by the complainant, 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 02.05.2023.
32. 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?
33. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 07.09.2019. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of @₹21,723/- on the total amount received with effect from 07.09.2020 till the offer of possession letter i.e., 04.10.2024. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as Rs. 21,723/- per month whereas the delayed possession charges are payable approximately Rs.11,775/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due

date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

34. 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.
35. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 07.09.2019, the promoter had agreed to pay to the complainant allottee Rs.21,723/- with effect from 07.09.2020 till the offer of possession letter date.
36. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.21,723/- with effect from 07.09.2020 till the offer of possession letter date i.e., 04.10.2024.
37. 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 complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

III. Respondent be directed to lease the unit in question after the offer of possession on behalf of the Complainant as per the terms of the allotment and make payment towards the guaranteed lease rental at the rate of Rs. 59.25 per sq.ft. per month.

IV. In case the Respondent does not lease out the unit to any prospective allottee from 3 months from the date of filing of the present complaint, then the Respondent would be liable to make payment towards lease rental from the date of lapse of 3 months from the date of filing of the present complaint or to demarcate the unit and handover the physical possession of the unit to the complainant.

38. The complainant is seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clause 8(a) of the MoU dated 17.08.2018, it was agreed that the respondent would make payment of lease rentals at Rs.59.25/- per sq. ft. per month to the complainant from commencement of first lease. Further, vide clause 9(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a perspective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 07.09.2019.

V. Direct the Respondent to revoke the offer of possession dated 04.10.2024 and issue a valid offer of possession of the unit in a habitable condition, as per the specifications provided in the Buyer's Agreement.

VI. Respondent be directed not to charge the labour cess of Rs. 7500/-, FTTH Charges of Rs. 6490. Further, the Respondent be directed not to charge Development charges of Rs.2,12,400/- from the Complainant or any amount towards development charges from the Complainant.

VII. Respondent be directed not to increase the amount of EDC/IDC charges to be paid by the Complainant from Rs. 1,42,200/- to Rs. 1,59,264/-.

39. All three of the above reliefs are taken up together as the same are inter connected with each other. Further, in the complaint, complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges

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

"11.

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

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

to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **Labour Cess:** Labour cess is levied @1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "*Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent who is solely responsible for the disbursement of said amount.
- **Interest on delayed payment:** The Authority has perused the offer of possession letter dated 04.10.2024, wherein an amount of Rs.98,232/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs.13,08,384/-, which includes basic sale price (BSP), external development charges (EDC), internal development charges (IDC), The Authority further observes that the total basic sale



consideration of the said unit is Rs.18,96,764/-, as expressly mentioned in the possession linked payment plan executed between the parties. Hence, in terms of the MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 04.10.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU. Accordingly, the complainant is liable to pay the remaining applicable charges, as agreed between the parties, along with interest, if any, on delayed payment attributable to the allottees.

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

In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement as per law settled by

the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020. The relevant part of order is reiterated as under-

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

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

VIII. Direct the Respondent to not levy any maintenance charges from the Complainant till date of actual handover.

40. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

IX. Respondent be directed to revoke the demand towards the fitout charges and the Respondent be directed not to demand Rs. Rs.8,85,000/- towards the same from the Complainant.

41. The complainant has filed reminder letter for demand notice payment and offer of possession, and the other pertaining to the leasing-out communication issued by the respondent on 19.12.2024. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.8,85,000/- and has directed the complainant to make the said payment in

favour of a third party, namely *H5 Hospitality LLP*, by providing bank details that do not pertain to the respondent company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. However, on perusal of the MoU executed between the allottee and the promoter, the Authority finds that Clause 8(d) exists in the present MoU and is reproduced herein below:

"That the Allottee(s) further agrees and understand that in case the tenant desires any infrastructural changes in the form of separate sewage arrangement or the gas pipeline or any other change which involves expenses on the part of allottee(s) then in that event the same shall be paid by the Allottee, strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rent payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above-mentioned arrangement defined at clause 8(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received."

42. The Authority observes that clause 8(d) of the MoU clearly mandates that any expenditure incurred on account of infrastructural or any changes, if demanded by the tenant, can be recovered from the allottee only after issuance of a written notification by the promoter on the registered e-mail address of the allottee. The said clause does not confer any unfettered or unilateral right upon the promoter to incur expenses on its own accord and thereafter recover the same from the allottee without prior intimation. Such conduct is contrary to the express terms of clause 8(d) as well as the statutory obligations cast upon the promoter under Section 11(4)(d) of the Act, which require the promoter to act in a reasonable and responsible manner. The view of the Authority in this regard is that if the respondent seeks to levy fit out charges, it must first intimate the allottee about the request of the tenant or

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

X. Respondent be directed not to terminate the allotment or create third party rights on the allotted unit/space.

43. The Authority hereby directs the respondent not to cancel the unit and shall hand over symbolic and constructive possession of the unit in question to the complainant within a period of 30 days from the date of this order.
44. 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.

G. Directions of the Authority

45. 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 penalty/assured returns to the complainant at the agreed rate i.e., @Rs.21,723/- from the effective date as per clause 4 of the MoU i.e., 07.09.2020 till offer of possession letter date i.e., 04.10.2024, after deducting the amount already paid on account of assured returns to the complainant.
- II. The respondent/promoter 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, 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 complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges, FTTH and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.**
- IV. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- V. The respondent shall charge interest on delayed payment from the complainant, if any.

- VI. The respondent is directed to restrict its demand towards advance maintenance charges strictly to a maximum period of one year only, and any demand raised in excess thereof shall be deemed unsustainable and liable to be withdrawn/adjusted in accordance with law.
- VII. The respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 07.09.2019.
- VIII. 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 complainant.
- IX. The complainant is 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.
- X. 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.
46. Complaint stands disposed of.
47. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026