

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Order pronounced on: 20.01.2026**

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2295/2025	Gurmeet Thukral and Namit Thukral V/S NEO Developers Private Limited	Rajinder Singh (Complainant) Venkat Rao (Respondent)
2.	CR/2296/2025	Gurmeet Thukral and Namit Thukral V/S NEO Developers Private Limited	Rajinder Singh (Complainant) Venkat Rao (Respondent)

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this Authority in form CRA 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 executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Neo Square" being developed by the same respondent/promoter i.e., NEO Developers Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to assured returns, VAT, delay possession charges and conveyance deed.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram								
1. Completion certificate- 14.08.2024								
2. DTCP License no. 102 of 2008 dated 15.05.2008 valid upto 14.05.2025 - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.								
3. Nature of Project- Commercial Colony								
4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024								
Sr. No.	Complaint no./title/ date of filing complaint	Assured return clause 04 In MoU	Unit No. and area admeasuring	Date of execution of agreement for sale	Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought	
1.	CR/2295/2025 Gurmeet Thukral and Namit Thukral V/s M/s Neo Developers Pvt. Ltd DOF- 12.05.2025 RR- NA	<i>"The Company shall pay a monthly assured return of Rs. 22,500 on the total amount received with effect from 20-Jan-2015..... The monthly assured return shall be paid to Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date"</i>	Priority No. Unit- 28 1st Floor 421 sq. ft. (Page no. 27 of complaint)	20.01.2015 (page no. 24 of complaint) And 20.01.2015 (page no.50 of complaint)	Offer of Possession- 27.02.2025 (As per pg. no. 43 of the reply)	TSP: Rs.26,97,350 /- (as per payment plan at page 42 of complaint) AP: Rs.30,86,961 /- (as per page no. 56 and 57 of complaint)	Assured returns, DPC, Possession, CD, Illegal demand of VAT	

2.	CR/2296/2025 Gurmeet Thukral and Namit Thukral V/s M/s Neo Developers Pvt. Ltd DOF- 12.05.2025 RR- NA	<i>"The Company shall pay a monthly assured return of Rs.22,500/- on the total amount received with effect from 20-Jan-2015..... The monthly assured return shall be paid to Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date"</i>	Priority No. Unit-04 3 rd Floor 250 sq. ft. (Page no. 27 of complaint)	20.01.2015 (page no. 28 of complaint) And 20.01.2015 (page no.18 of complaint)	Offer of Possession- 27.02.2025 (As per pg. no. 73 of the reply)	TSP: Rs.17,30,370 /- (as per payment plan at page 56 of complaint) AP: Rs.17,55,045 /- (as per page no. 76 of complaint)	Assured returns, DPC, Possession, CD, illegal demand of VAT
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

RR- Reply Received on

DOF- Date of filing complaint

TSP- Total Sale Price

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2295/2025 titled as Gurmeet Thukral and Namit Thukral V/s Neo Developers Pvt. Ltd.** are being taken into consideration for determining the

reliefs of the allottee(s) qua setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.

A. Project and unit related details.

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

***CR/2295/2024 titled as Gurmeet Thukral and Namit Thukral
V/s Neo Developers Pvt. Ltd***

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	20.01.2015 (As per pg no.18 of the reply)
7.	Unit no.	Unit no. unit no. 03 on floor no. 3rd Floor or similar (page no. 73 of the complaint)
8.	Unit area admeasuring	250 sq. ft. (Super Area) (As per pg. no. 40 of the complaint)
9.	Date of MoU	20.01.2015 (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	<p>Clause 5.1 of BBA</p> <p><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></p>
12.	Due date of possession	<p>15.12.2018</p> <p>[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].</p>
13.	Assured return Clause	<p>Clause 4.</p> <p><i>"The company shall pay a monthly return of Rs. 22,500/- on the total amount received with effect from 20.01.2015 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."</i></p> <p><i>(As per pg. no. 23 of the complaint)</i></p>
14.	Total basic Sale consideration	<p>Rs. 15,00,000/-</p> <p>(including GST, IFMD, EDC, IDC and taxes)</p> <p><i>As per pg. no. 20 of the complaint)</i></p>

15.	Amount paid by the complainant	Rs. 15,55,620/- (As per pg. no. 20 of the complaint)
16.	Demand for Fit-outs	Rs. 10,32,000/- (As per pg. no. 77 of the complaint)
17.	Occupation certificate	14.08.2024 (As per DTCP site)
18.	Offer of possession	27.02.2025 (As per pg. no. 73 of the complaint)

B. Facts of the complaint.

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

- i. That the complainants Mrs. Gurmeet thukral w/o Mr. Sunil Kumar Thukral And Mr. Namit Thukral S/O Mr. Sunil Kumar Thukral both r/o. c-55, 2nd floor, Kirti Nagar, New Delhi - 110015, India, are law-abiding citizens, taxpayers to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
- ii. That the respondent i.e., M/S Neo Developers Private Limited and its directors are having its registered office at 32-B, Pusa Road, New Delhi and branch office at Unit #G 02 & 03, Neo Square, Sector 109, Palam Vihar, Gurugram - 122017. 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. Thereafter in or around December, 2014, the complainants were looking for a property wherein they could get some returns on their investment. the complainants came across the project of M/s Neo Developers Private Limited namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram. The complainants met with representatives of the respondent company who explained the project to the complainants. later, the complainants were introduced to Mr. Ashish Anand, Director, when they

visited the office of respondent situated at Gurgaon. Mr. Ashish Anand, the Director and employees of the company explained the project to complainants wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.

- iv. That it was assured that the assured return would be paid till the property is not leased out. Mr. Ashish Anand, Director, and its employees assured the complainants that the project would be state-of-the-art and that the company had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. Based on the above inducement and assurance of Mr. Ashish Anand, Director and the employees of the company, the complainants purchased a space for restaurant on the third floor and executed the memorandum of understanding and builder buyer's agreement dated 20.01.2015, having area admeasuring 250 sq. ft. super built-up area at the rate of Rs. 6000/- per sq. ft. wherein commercial priority unit (restaurant) no. 05 was assigned on 3rd floor.
- v. That complainant paid a sum of Rs. 15,55,620/- (rupees fifteen lakh fifty-five thousand six hundred twenty only) towards consideration of commercial priority unit (restaurant) no. 05, vide cheque no. 786895 & 786896 dated 16.01.2015 drawn on state bank of India which was duly accepted by the respondent company.

"Clause 4. The Company shall pay a monthly assured return of Rs. 22,500/- (Rupees twenty-two thousand five hundred only) on the total amount received with effect from 20-Jan-2015 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

Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."

- vi. That the respondent on 29.01.2018 raised the demand of EDC and IDC for commercial priority unit (restaurant) no. 05 on 3rd floor of the project of an amount of Rs.1,32,720/- (Rupees One Lakh Thirty-Two Thousand Seven Hundred Twenty Only). The said demand was duly fulfilled by the complainants by making the payments wherein the respondent company has issued two invoice cum receipt of payments dated 28.08.2018 & 29.08.2018.
- vii. That 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. 80,925/- (Rupees Eighty Thousand Nine Hundred Twenty-Five Only) on 30.03.2017 for Commercial Priority Unit (Restaurant) No. 05. The Complainant has paid a sum of Rs. 80,925/- (Rupees Eighty Thousand Nine Hundred Twenty-Five Only) for Commercial Priority Unit (Restaurant) No. 05 for which Income Cum Receipt dated 21.05.2017 was issued by the Respondent Company.
- viii. That the truth of the assurances made by the Directors and employees of the Company surfaced when the Company started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped and are due since January, 2019. That the mala fide intentions of the Company also became conspicuous when the Company sent a Letter dated 18.12.2019 communicating its 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.

- ix. 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. The Respondent issued a letter dated 30.10.202 to deposit the VAT amounting to Rs. 1,36,821/- (Rupees One Lakh Thirty-Six Thousand Eight Hundred Twenty-One Only) for the unit. Neither any explanation was given as to why the said amount was not included earlier in March, 2017 when the payment was made towards the VAT nor any explanation was provided. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside.
- x. That on 01.10.2020 the Respondent sent an Email Registration of BBA and MOU. That the Respondent also sent an email for Invitation for starting the proceeding for Assignment of Lease dated 01.10.2020 and further sent an email which was a Reminder for Signing Lease Assignment Form dated 10.12.2020. It is submitted that no lease assignment could have been entered into, as the Project was incomplete at the relevant time, and the Unit could not have been leased out prior to obtaining the Completion Certificate and Occupation Certificate, which the Respondent had not received at the time of sending the email dated 01.10.2020 and 10.12.2020. Furthermore, the Respondent's claim that the Unit has been leased to a third party who is now responsible for making Assured Return payments is highly unbelievable. It is inconceivable that a third party, who had not received possession of the Unit, would have entered into an

agreement with the Respondent for a Project lacking a Completion Certificate and would begin making payments to the buyer without first generating rental income from the Unit.

- xi. That That despite assurance of completion of construction of Project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of more than 7 years. The building wherein Food Court and Restaurants as were explained at the time of entering MOU has not been constructed as per the Brochure. The Company has further cheated by selling Food Court and Restaurant units to other buyers on 2nd and 5th floor of the building/tower as well. Further the Company has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and compete the Project.
- xii. That That the Complainants received an email dated 18.11.2024 from the Respondent concerning Unit Priority No. 05 on the 3rd Floor, Area 250 Sq. Ft., at Project "NEO SQUARE,". The email conveyed that the Occupation Certificate for the project has been obtained, and possession is now being initiated for customers. However, it was stated that certain legal cases and/or complaints are pending in RERA, other courts, or with police authorities regarding units booked in the project. The Respondent requested responses on future plans concerning these legal matters to enable them to decide on the course of action regarding possession, as the unit is subject to a legal case/police complaint.
- xiii. That Respondent Company also sent a final notice email dated 07.06.2021 to the Complainants for Priority No. 5, stating that an outstanding amount of Rs. 2,24,327/- is due, and if the payment is not received by the Respondent Company on or before 21.06.2021, the unit will be cancelled.

- xiv. That Respondent company has issued a Demand Notice and Offer of Possession via email dated 27.02.2025 stating that the Occupation Certificate (OC) has been received and possession is now being offered, subject to clearance of outstanding dues and required documentation. Despite previously committing to assured returns, the company unilaterally stopped monthly payments and is now demanding full payment for possession, warning that delays will incur holding charges, CAM charges, and interest per the Builder Buyer Agreement. The notice mandates execution of a Common Area Maintenance Agreement before possession and lists required documents, including identity proof, PAN card, NOC (if financed), and Power of Attorney (if applicable). Possession will only be granted after payment of stamp duty, registration charges, and other applicable fees, raising concerns over the company's adherence to its financial commitments.
- xv. That the Respondent sent an email dated 27.02.2025 titled "Demand Notice and Offer of Possession," wherein it is stated that the Occupation Certificate has been received by the Judgment Debtor, and the Respondent is willing to offer possession of the unit, subject to the payment of Rs. 8,10,113 as contemplated in Annexure-I of the letter. Additionally, the Judgment Debtor has sought fit-out charges for leasing, demanding an amount of Rs 1,032,500 from the Decree Holder for the Super Area of 250 sq. ft. at the rate of Rs. 3500/- per sq. ft., as detailed in Annexure-II of the letter. The email also includes a breakup of Stamp Duty and Registration Charges in Annexure-III of the letter. It is respectfully submitted that the charges mentioned in Annexure-I are not in consonance with the Builder Buyer Agreement (BBA) and the Memorandum of Understanding (MOU) entered into by the parties and are, therefore, bad in law. Moreover, the

fit-out charges in Annexure-II are nowhere mentioned in the BBA and MOU, rendering them contrary to the agreed terms between the parties and, therefore, bad in law. Under these circumstances, it is prayed before this Tribunal that the letter dated 27.02.2025 be set aside, and peaceful possession of the Unit be given to the Complainants.

- xvi. That is submitted that the Email dated 27.02.2025 contains Annexure -1 which is the Statement of Account Cum Demand wherein the Respondent demanded Development Charges, FTTH and Labour Cess under the heading Other Charges. The said Development Charges, FTTH and Labour Cess are not part of the MoU and Buyers Agreement and therefore are not payable by the Complainant.
- xvii. receiving the OC, the Respondent failed to handover the possession as well as convey the title of the property in favour of the Complainants. Further, without paying the assured return pending since January, 2019, the Respondent is illegally demanding the money such as Development charges, FTTH charges by way of Annexure- I of the demand letter dated 27.02.2025. Illegal Demand of fitout charges of Rs. 10,32,500/- has been raised in Annexure - II of the email dated 27.02.2025 in order to set off the assured return due and payable by the Respondent. Thus, it is apparent that builder is exploiting its dominant position and without fulfilling its promises directing the Complainant to obey by the reciprocal promises so made, which can be avoided by the complainant. Hence, the illegal demand raised and the fitout charges demanded by the Respondent are liable to be set aside being illegal and beyond the terms and conditions of the agreement entered by the parties.

- xviii. The complainants have filed the complaint before Economics Offences Wings Delhi on 25.03.2021 wherein FIR No- 0046/2022 has been filed under sections 406/420/120B against the Respondent.
- xix. 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. 22,500 (Rupees Twenty-Two Thousand Five Hundred Rupees Only) for unit Priority no. 04 admeasuring 250 sq feet, since January, 2019 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 favour of the complainants with respect to the restaurant space purchased by him. To set aside the illegal demand of VAT by the Respondent and compensation towards the delay in completing the project. Further, to set aside Illegal Demands which include Development Charges, FTTH, Labour Cess, Fit-out charges etc., raised in contravention of Annexure -1 of the MOU dated 20.01.2015 signed by the parties. 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.

C. Relief sought by the complainants

9. The complainants have sought the following relief(s):
- I. Direct the Respondent to pay Assured Returns @Rs. 90 per sq feet per month amounting to Rs. 22,500/- (Rupees Twenty-Two Thousand Five Hundred Only) for Unit Priority No. 05 on the 3rd Floor, since January, 2019 till handing over the possession.
 - II. To direct the respondent to pay the interest/delayed possession compensation as per RERA Act.

- III. To execute the sale deed in favour of the complainant for the unit immediately.
 - IV. Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant and therefore set aside the letter dated 27.02.2025.
 - V. Set aside the illegal demand of VAT made by the Respondent vide letter dated 30.10.2020.
 - VI. To direct the Respondent to not charge what is not part of the MOU and BBA which includes the demand of Development Charges, FTTH, Labour Cess, Fit-out charges etc. which was raised via demand letter dated 27.02.2025.
10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
 11. The respondent-promoter were given various opportunity for filing of reply, the respondent has failed to comply with the orders of the authority. Despite the order dated 30.10.2025, the respondent failed to file their reply within the stipulated three-week period. The matter remains unresolved regarding the respondent's participation, and no advance copy of a reply has been served to the complainant. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 20.01.2026, the respondent proceeded ex-parte. Despite due service of notice through speed post as well as through email, none has put in appearance on behalf of respondent nor reply has been filed on its behalf before the Authority till 20.01.2026. In view of the above, the respondent is hereby proceeded ex-parte.

D. Jurisdiction of the Authority

12. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

13. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

15. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

E. Findings on the relief sought by the complainants.

- I. Direct the Respondent to pay Assured Returns @Rs. 90 per sq feet per month amounting to Rs. 22,500/- (Rupees Twenty-Two Thousand Five Hundred Only) for Unit Priority No. 05 on the 3rd Floor, since January, 2019 till handing over the possession.**
- II. To direct the Respondent to pay the interest/delayed possession compensation as per RERA Act.**

16. The complainants are seeking unpaid monthly assured returns on as per the terms of the MoU dated 20.01.2015 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MoU.
17. The money was taken by the promoter 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 promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
18. The 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.
19. 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 20.01.2015.

20. In the present complaint, the assured return was payable as per clause 04 of the MoU dated 20.01.2015, which is reproduced below for the ready reference:

Clause 4

"The Company shall pay a monthly assured return of Rs.22,500/- (Rupees twenty-two thousand five hundred only) on the total amount received with effect from 20-Jan-2015 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 Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."

21. Thus, as per the above-mentioned clause, the monthly assured returns were payable @Rs.22,500/- per month with effective date as per clause 04 the MoU i.e., 20.01.2015 until the commencement of the first lease on the said unit, after deducting the amount already paid on account of assured returns to the complainants.
22. Furthermore, the respondent promoter issued a letter on 01.10.2020 stating that the assignment of lease will be prepared and submitted to the

complainant 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

23. The Authority is of the view that as per the MoU dated 20.01.2015, 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 complainant at the agreed rate i.e., @Rs.22,500/- from the date i.e., 20.01.2015 till obtaining of Occupancy Certificate of the project after deducting the amount already paid on account of assured return to the complainants as the lease is not valid in the eyes of law if it commenced before the Occupancy of the concerned project.

E.II Delay Possession Charges:

24. 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"

25. Clause 5.1 of the BBA dated 20.01.2015 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 5.1 of the BBA dated 20.01.2015, 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 start of date of construction of the project being later. Thus, the due date of possession come out to be 15.12.2018.

27. **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"

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(z) 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:
- "(z) "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 complainants shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is liable to be paid to the complainants in case of delay possession charges.
31. 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 by 15.12.2018. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainants on 27.02.2025. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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?

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 20.01.2015. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants/allottees pay a monthly assured return of Rs.22,500/- on the total amount received with effect from 20.01.2015 till the obtaining of Occupancy Certificate of the project. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 20.01.2015 till obtaining of Occupancy Certificate of the project which shall in any case, commence only after the obtaining of occupation/completion certificate from the competent authority. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay 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 delay possession charges whichever is higher.

32. 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 delay possession charges, whichever is higher without prejudice to any other remedy including compensation.
33. In light of the above, the Authority is of the view that as per the MoU dated 20.01.2015, it was obligation on part of the respondent to pay the assured return till the till obtaining of Occupancy Certificate of the project. 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 complainant at the agreed rate i.e., @Rs.22,500/- from the date i.e., 20.01.2015 till the till obtaining of Occupancy Certificate of the project after deducting the amount already paid on account of assured return to the complainant.

III. To execute the Sale Deed in favour of the Complainant for the Unit immediately.

34. Further the complainants are seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

35. 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.

IV. Restrain the Respondent from entering the lease deed with 3rd party without seeking the consent of the Complainant and therefore set aside the letter dated 27.02.2025.

36. The complainants are 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 7(a) and 7(b) of the MoU dated 20.01.2015, it was agreed that the respondent would make payment of lease rentals per month to the complainant from commencement of first lease. Further, vide clause 8(a) of the MoU that the respondent was to finalize the terms for leasing the premises with a perspective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 20.01.2015.

V. Set aside the illegal demand of VAT made by the Respondent vide letter dated 30.10.2020.

VI. To direct the Respondent to not charge what is not part of the MOU and BBA which includes the demand of Development

Charges, FTTH, Labour Cess, Fit-out charges etc. which was raised via demand letter dated 27.02.2025.

37. The complainant has further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated 20.01.2015 or the MoU executed on the same date. The impugned demand letter dated 27.02.2025 reflects components such as IFMS, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainant. The Authority of the view that:

- **Labour cess**

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

39. 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"

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

- **FTTH**

41. The respondent during proceedings dated 20.01.2026 apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that clause 11 as

already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Holding Charges**

42. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.
43. In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under-

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

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

- **Maintenance Charges**

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

- VAT

45. The complainant has contended that the respondent has illegally charged amount from him towards VAT submitting that in March 2017, a demand notice of Rs.80,925/- towards 'VAT outstanding' was sent by the developer to the complainant. It is pertinent to mention herein that even before this illegal demand, the developer had made such demands in the year 2017 and the complainant had readily cleared all the VAT payments, after which the developer had sent an email stating that no dues are payable. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

- **Fit-out charges**

46. The letter dated 27.02.2025, demands Fit-out charges which amounting Rs.10,32,500/-. In the said leasing letter, the respondent has raised a demand towards fit-out charges amounting to Rs.10,32,500/- and has directed the complainant to make the said payment in favor 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.
47. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 27.02.2025 towards fit-out charges amounting to Rs.10,32,500/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.
48. Further, it is observed that on the proceeding date of hearing, i.e., 20.01.2026, the counsel for the respondent contended that the demand of Fit-outs has been raised strictly in terms of clause 7(d) of the Memorandum of Understanding and clause 11 of the Buyer's Agreement dated 20.01.2015. It was further argued that under Clause 9 of the MOU, the complainant had authorized the respondent to finalize the terms and conditions of the lease. Upon perusal of the MOU dated 20.01.2015, this Authority finds that the said MoU does not contain any clause 7(d) authorizing the respondent to levy fit-

out charges. In the absence of any contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law.

49. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment/MoU.

F. Directions of the Authority

50. 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 is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.22,500/- per month from the effective date i.e. 20.01.2015 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/promoter is directed to handover 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.

- IV. The respondent is directed to put the unit allotted to the complainants on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 20.01.2015.
 - V. The respondent is directed to recover development charges and maintenance charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
 - VI. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.**
 - VII. 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.
51. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 52. The complaints stand disposed of.
 53. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026