BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No: 1904 of 2025
Date of Filing: 11.04.2025
Date of Order: 27.01.2026

Shilpi Tiwari
R/o: 579, Sanskriti apartment, Sector 19B,
Dwarka, South West Delhi, 110075.

Complainant

Versus

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

Respondent no.1

M/s Shrimaya Buildcon Private Limited
Regd. Office at: K-1, Green park Main, New Delhi, Delhi - 110016

Respondent no.2

CORAM:
Shri Arun Kumar — **Chairman**
Shri Phool Singh Saini — **Member**

APPEARANCE:
Shri Sukhbir Yadav (Advocate) — **Counsel for Complainant**
Shri Venkatesh Dubey (Advocate) — **Counsel for Respondent no. 1**
Shri K. P Singh (Advocate) — **Counsel for Respondent no. 2**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act,

2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid up to 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid up to 14.05.2025
6.	Unit no.	79, 3rd Floor (page no. 60 of complaint)
7.	Unit area admeasuring	400 sq. ft. (page no. 60 of complaint)
8.	Date of buyer's agreement	29.08.2016 (page no. 55 of complaint)
9.	Date of MoU	29.08.2016 (page no. 90 of complaint)
10.	Possession clause	*Clause 3.* *"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." *(As per MOU on page no. 92 of complaint)*
11.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
12.	Due date of possession	29.08.2019 (36 months - Calculated from date of agreement being later)
13.	Payment Plan	Assured return payment plan
14.	Assured return Clause	*Clause 4.* *"The Company shall pay a monthly assured return of* ***Rs.36,000/-*** *on the total amount received with effect from* ***29 August 2016*** *before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."* *(As per pg. no. 92 of the complaint)*
15.	Total sale consideration	Rs. 34,89,422/- (as per payment plan on page no. 81 of complaint)
16.	Amount paid by the complainant	Rs. 38,51,763/-

		(as per SOA attached in the complaint at pg. no. 108)
17.	Occupation certificate	14.08.2024 (As per the DTCP Site)
18.	Offer of possession for priority no. 79	04.02.2025 (page no. 106 of complaint)

B. Facts of the complaint.

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

i. That the complainant, Shilpi Tiwari, is a law-abiding and peace-loving citizen and resident of 579, Sanskriti apartment, Sector – 19b, Dwarka, South West Delhi-110075 (hereinafter called the complainant/ petitioner).

ii. That the respondents, i.e., M/s Neo Developers Private Limited and M/s Shrimaya Buildcon Private Limited, are companies incorporated under the Companies Act, 1956, having their Registered Office at 32B, Pusa Road, New Delhi, Delhi-110005 and K-1, Green Park Main, New Delhi-110016, respectively. respondent no. 1 has its corporate office at unit no g-02 and g-03, neo square sector 109, Palam Vihar Gurgaon, Palam Vihar, Haryana, India, 122017 (hereinafter called the developers/promoters/builders/respondents), and the project in question is known as "neo square", sector – 109, Gurugram (hereinafter called the project). it is pertinent to note that respondent no. 1 is in collaboration with m/s Shrimaya Buildcon private limited, as evidenced by multiple written understandings and agreements, as mentioned in the BBA dated 29.08.2016. notably, both respondents are co-developers, sharing responsibilities and interests in accordance with their mutually agreed terms and conditions. furthermore, it is crucial to emphasize that both respondents are jointly and severally liable towards the complainant.

iii. That in July 2016, the complainant received a marketing call from a real estate agent of respondent no. 1 for booking in the commercial project being

developed by the respondents in the name of "neo square", situated in sector – 109, Gurugram. The said real estate agent/broker showed a rosy picture of the said project and allured the complainant through lucrative advertisements. It is pertinent to mention here that the complainant, along with his family and the said agent/broker, visited the project site, and there they met the official staff of the respondent. The marketing staff of the opposite party painted a glittery picture of the project by stating that the 'Neo Square' project situated in Gurgaon is the distinguished residential nest of various spectacular options, located at Dwarka Expressway, Sector-109 of Gurgaon, beautifully designed and crafted spaces of commercial segments depicting world-class attributes. They further represented that this project targets the high-end market segments. This gigantic commercial development incorporated various commercial spaces such as – retail, a food court, Restaurants, serviced apartments, a hypermart, a cinema, and a key number of office spaces. The complainant was presented with a glossy, colorful brochure elaborately showcasing the "Neo Square" project's luxurious features, amenities, and services.

iv. That being relied on representation & assurances of the respondents and the said real estate agent/broker/ registered associate, the complainant decided to book a commercial unit in the said project of the respondents. Subsequently, the complainant applied for the booking of one commercial unit, priority no. 79, having an area of 400 sq. ft. on the 3rd floor i.e. food court in the respondents' project. Along with the booking application, the complainant made a payment of Rs.1,00,000/- (One Lakh) through a cheque bearing No. 000002 dated 05.08.2016 drawn on RBL Bank Limited.

v. That respondent no. 1 issued the welcome letter in the name of the complainant, and the respondent duly acknowledged the said payment, and a

receipt dated 05.08.2016 was issued by respondent no. 1 in respect to the said transaction made by the complainant. It is germane to highlight here that the complainant booked the unit under the "down payment plan cum assured return payment plan", which was a crucial factor in his decision-making process.

vi. That, after the initial booking, the complainant made four additional payments for the unit in the respondent's project, "Neo Square". The details of these payments are as follows: (i) A payment of Rs. 1,09,822/- (One Lakh Nine Thousand Eight Hundred Twenty-Two) was made via Neft No. SDC45240542 dated 20.08.2016, drawn on Dena Bank. (ii) The second payment of Rs. 10,00,000/- (Ten Lakhs) was made via RTGS No. 52016082400842608 dated 24.08.2016, also drawn on Dena Bank. (iii) The Third payment of Rs. 10,00,000/- (Ten Lakhs) was made via RTGS No. 52016082600872204 dated 26.08.2016, also drawn on Dena Bank. (iv) The Fourth payment of Rs. 10,00,000/- (Ten Lakhs) was made via RTGS No. 52016082900875357 dated 29.08.2016, also drawn on Dena Bank. Respondent no. 1 issued payment receipts for both transactions & acknowledged receipt of the funds.

vii. That on 29.08.2016, a unilateral, ex-facie, and arbitrary builder buyer agreement (hereinafter referred to as BBA in short) for the complainant's unit was executed between respondent no. 1 and the complainant & the same BBA was duly registered on 26.10.2023. It is pertinent to note here that in the BBA, the respondent did not mention the possession date. However, the respondents failed to deliver possession of the unit to the complainant. It is pertinent to mention here that the respondents assured the complainant to handover the physical possession of the unit within 3 years from the date of booking, therefore, the due date of possession was 08.08.2019.

viii. That, thereafter, on the same date, i.e., 29.08.2016, a memorandum of understanding (hereinafter referred to as "MOU") was also executed between the respondent and the complainant. as per clause 3 of the said MOU, the respondent allotted a commercial unit/food court space on the 3rd floor, with a super area of 400 sq. Ft. in the "Neo Square" project. The total consideration of the complainant's unit as per clause 4 of the said MOU is Rs. 30,71,600/- (Thirty Lakhs Seventy-One Thousand SIX Hundred) out of which the complainant had paid more than 100% of the consideration amounting to Rs. 32,09,822/- (Thirty-Two Lakhs Nine Thousand Eight Hundred and Twenty-Two) at the time of booking. Further, Clause 4 of the said MOU stipulates that *"The company shall pay a monthly assured return of Rs. 36,000/- (Thirty-Six Thousand) on the total amount received with effect from 29.08.2016 ... until the commencement of the first lease on the said unit".*

ix. That, consequently, the complainant is entitled to receive the investment return in the form of assured returns from 29.08.2016 onward.

x. After the signing of the BBA and MOU, respondent No. 1 made further claims for payment under various heads, including VAT, EDC, IDC, PLC, and car parking fees, all of which were complied with by the complainant.

xi. That, despite fulfilling over 100% of financial obligations, the complainant received assured returns only until march 31, 2019. Thereafter, the respondents unilaterally ceased payments without justification, disregarded regular updates and meetings, and failed to provide a satisfactory explanation or reinstate payments. This cessation of payments has caused significant financial hardship. As per the memorandum of understanding (mou) dated 29.08.2016, the respondents were obligated to pay Rs.36,000/- monthly assured returns/penalty until possession or lease commencement. Since neither condition has been met, the Respondents' actions constitute a clear

contractual breach. Furthermore, the respondents failed to provide formal communication or notice regarding non-payment, leaving the complainant without explanation or justification for this sudden action.

xii. That on 04.02.2025, respondent no. 1 issued a demand notice cum offer of possession for the complainant's commercial unit, despite the due date having expired. It is germane to highlight here that although the respondents had received more than 100% of the consideration, they unjustly demanded an additional Rs.3,89,690/- under different heads i.e. labour cess, FTTH and development charges. It is crucial to emphasize that the respondent failed to pay assured returns to the complainant since 01.04.2019 – a period spanning over 6 years. Consequently, the outstanding assured returns exceed the respondent's additional demand in the offer of possession. the respondent's actions are, in fact, preventing the complainant from taking possession. Consequently, as stipulated in the additional terms of the offer of possession, the respondent is not entitled to levy holding charges for the complainant's unit. the respondent's failure to fulfill their obligations, including payment of assured returns, cannot be used as a pretext to impose additional charges on the complainant. It is noteworthy that the respondents' offer of possession was sent without the occupancy certificate attached. although the respondents obtained the occupancy certificate dated 14.08.2024 from the competent authority, crucially, it was issued in the name of respondent no. 2, Shrimaya Buildcon Pvt Ltd.

xiii. That, the complainant has diligently fulfilled her obligations by paying almost 100% of the sale consideration. However, the respondent has failed to honour its commitments, leaving the complainant bereft of possession of his commercial unit/office space and assured returns. Despite the complainant's best efforts, including investing a large sum of money, the respondents have

not taken any action. This has caused the complainant significant financial and emotional harm.

xiv. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 100% of all the demands raised by the respondent against the office space/commercial unit in question and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has defaulted on their commitments, failing to pay assured returns, deliver physical possession of the office space, arrange a lease, and execute and register a conveyance deed in favor of the complainant.

xv. That the cause of action for the present complaint arose in 29.08.2016, when the complainant was forced to sign and execute a one-sided, unilateral and arbitrary space buyer agreement and memorandum of understanding. The cause of action further arose in April 2019, when the respondent party did not make the payment of monthly assured return. the cause of action again arose on September 2019, when the respondent party did not deliver the possession on the due date of possession. The cause of action again arose on various occasions when the protests were lodged with the respondent party about its failure to deliver the commercial unit on or before the due date of possession along with the payment of monthly assured returns. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the Respondent Party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant

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

i. To get possession of the fully developed/constructed food court/space/ commercial unit priority no.79 on 3rd floor admeasuring a super area of 400 Sq. Ft. in project "Neo Square", Sector-109, Gurugram.

ii. To get the assured return for every month as per the terms of the MOU, which amounts to a total of Rs.23,76,000/- (Twenty- Three Lakhs Seventy-Six Thousand) from October 2019 to March 2025 or physical handover of the unit or First lease.

iii. To get the assured return for every month as per the terms of the MOU till the actual unit handover.

iv. To get an order in his favor by restraining the respondent from charging Fit-out Charges.

v. To get an order in his favor by directing the respondent to get the conveyance deed executed and registered in favor of the complainant.

vi. To get an order in his favour by directing the respondent party to arrange the lease for the complainant's commercial unit.

vii. To get an order in his favor by restraining the respondent from charging Holding Charges as the demand of Holding Charges is against the principle of natural justice.

5. 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.

D. Reply by the respondent no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds:

I. It is humbly submitted that the complainant 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.

II. That after being fully satisfied with the project and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 01/08/2016, whereby seeking allotment of unit no. 79, admeasuring 400 sq. ft super area on the 3rd Floor of the project having a basic sale price of Rs.7679/- (hereinafter referred to as the *"Unit")*. The complainant, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

III. That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 29/08/2016 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 complainant 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 29/08/2016 till commencement of first lease. It is also submitted that as per terms of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

IV. That by no stretch of imagination it can be concluded that the complainant herein are "allottee/consumer." That the complainant 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.

V. 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."

VI. 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.

VII. That the complainant voluntarily also executed the buyer agreement dated 29.08.2016 for shop no. 79 on 3rd floor admeasuring 400 sq. ft super area in the project.

VIII. That the upon the satisfaction of the DTCP with respect to public health services (internal & external) with respect to the building and site area, which included services such as water supply, sewerage, SWD, Roads being operation and functional. Further upon the completion certificate issued by the architect with respect to supervision on workmanship, material used for the construction, the DTCP granted occupation certificate bearing memo no. ZP-484-Vol-A-1/JD(RD)/2024/26057 dated 14.08.2024 in favour of the respondent for tower -C (under joint development rights/marketing rights of Neo Developers Pvt Ltd) measuring 3.089 acres forming part of commercial colony over an area measuring 8.66964 acres (Licence No. 102 of 2008 dated 15.05.2008, 83 of 2014 dated 09.08.2014 & 25 of 2019 dated 26.02.2019) Sector – 109, Gurugram Manesar Urban Complex being developed by Shri. Maya Buildcon Pvt Ltd & others C/o Conscient Infrastructure Pvt Ltd.

IX. That by no stretch of imagination it can be concluded that the complainant herein is "allottee/consumer." The complainant are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income.

X. That the said above said demand letters were issued in consonance with the mutually agreed terms and conditions of the BBA dated 29.08.2016. That the complainant in clause 4.4 and 11 of the BBA has specifically agreed to pay the charges/demands raised as per the demand letters.

XI. It is pertinent to mention that the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons.

XII. It is to be noted that the complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant 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. 38,27,455/- against the total due amount of Rs. 42,17,145/-. It is to be noted that there is still an outstanding due of Rs. 3,89,690/- which is to be paid by the complainant against the unit booked as per the demand letter dated: 04.02.2025.

XIII. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

XIV. That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the

outstanding dues on time. it is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MoU. It is further pertinent to mention here that the Complainant failed to clear the outstanding dues of Rs.3,89,690/- payable against the unit.

XV. That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent authority.

XVI. That the respondent has not availed the amnesty scheme namely, Haryana alternative tax compliance scheme for contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

XVII. It is further submitted that the demand of VAT is done as per Clause 11 of the Buyer's Agreement. The aforesaid mentioned clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The said clause is reiterated below for ready reference:

> *"That the Allotee 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 Service Tax, VAT, Development charges, Stamp*

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

XVIII. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. it is also noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated.

XIX. The respondent attributes the delay in project completion to a cumulative 582 days of force majeure events and judicial interventions, primarily stemming from national green tribunal (NGT) and supreme court orders aimed at curbing pollution in the NCR. These disruptions include a 30-day ban on older diesel vehicles in 2015 that hampered raw material transport; multiple prolonged closures of stone crushers and brick kilns between 2016 and 2020 which crippled the supply of essential construction materials like gravel; and several absolute bans on construction activity due to severe air quality levels in 2017, 2018, and 2019. Furthermore, the respondent highlights significant setbacks caused by the covid-19 pandemic, noting a 103-day ban during the 2021 surge and a nationwide lockdown in 2020 that triggered large-scale labor migration and persistent shortages of raw materials. Collectively, the respondent argues these legal mandates and health crises created a situation where construction was either legally prohibited or logistically unfeasible, thus warranting an exclusion of this period from the delay calculation.

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

E. Reply/Application by the respondent no. 2.

i.Respondent no. 2, instead of filing its reply on merits to the present complaint, has moved an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 on 12.08.2025, seeking its deletion from the array of parties. In the said application, it is contended that the complaint is not maintainable against Respondent No. 2, as it is neither the promoter of the project namely "Neo Square", Sector 109, Gurugram, nor does it fall within the definition of "promoter", "allottee" or "real estate agent" as envisaged under the Real Estate (Regulation and Development) Act, 2016. It has been averred that the project stands registered exclusively in the name of respondent No. 1, who has been issued the registration certificate as the promoter, and that all contractual documents, including the buyer's agreement, memorandum of understanding, payment receipts, demand notices and correspondence, are solely between the complainant and respondent no. 1. It is further pleaded that respondent no. 2 is not a signatory to any agreement executed with the complainant, has no privity of contract, and has no role whatsoever in the development, marketing or execution of the said project. On these grounds, respondent no. 2 has asserted that no cause of action arises against it and has prayed for its deletion from the array of parties.

8. 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.

F. Jurisdiction of the Authority

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

F.I Territorial jurisdiction

10. 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.

F.II Subject matter jurisdiction

11. 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.*

12. 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.

G. Findings on the objections raised by the respondent:

G.I Objection regarding maintainability of complaint on account of complainant being the investor.

13. The respondent no. 1 took a stand that the complainant is investor and not the consumer and therefore, she is not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU, it is revealed that the complainant are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

ii. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MoU executed between the parties, it is crystal clear that the complainant is the allottee as the subject unit was allotted to them by the promoter vide said MoU dated 29.08.2016. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G.2 Objection regarding liability of respondent no. 2.

14. While filing the complaint the complainant sought relief against respondent no. 1 and respondent no. 2 both. A perusal of various documents placed on the record shows that BBA and MoU are executed between respondent no. 1 and the

complainant only. It is pertinent to note that there no contractual obligations of Respondent no. 2. In view of the same, the Authority is of that view that the respondent no.1 is solely liable to develop and complete the said unit.

H. Findings on the relief sought by the complainant.

I. To get possession of the fully developed/constructed food court/space/ commercial unit Priority No. 79 on 3rd Floor admeasuring a super area of 400 Sq. Ft. in project "Neo Square", Sector-109, Gurugram.

15. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Since the subject unit form part of a commercial project, individual physical possession cannot be granted to the allottee. However, the respondent no. 1 is directed to hand over virtual possession of the subject unit to the complainant and is further restrained from creating any third-party rights or interests in respect of the said unit. Therefore, the respondent no. 1 is directed to handover the possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days.

II. To get the assured return for every month as per the terms of the MOU, which amounts to a total of Rs. 23,76,000/- (Twenty- Three Lakhs Seventy-Six Thousand) from October 2019 to March 2025 or physical handover of the unit or First lease.

III. To get the assured return for every month as per the terms of the MOU till the actual unit handover.

16. The above two reliefs are interconnected hence taken up together. The complainant is seeking unpaid monthly assured return/penalty as per the terms of the MoU dated 29.08.2016 at the rates mentioned therein. It is pleaded that

the respondent no.1 has not complied with the terms and conditions of the said MoU.

17. The respondent no. 1 has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MoU, by virtue of which the complainant is raising her grievance.

18. It is pleaded on behalf of respondent no.1 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 properly as specified in terms of the agreement or arrangement.*

19. 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;*

20. 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 builder at the time of booking or immediately thereafter and as agreed upon between them.
21. 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.
22. The money was taken by the respondent no. 1 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.
23. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for

assured returns between the promoter and allotee arises out of the same relationship and is marked by the addendum agreement.

24. It is not disputed that the respondent no. 1 is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent no. 1 is liable to pay assured return to the complainant-allottees in terms of the MoU dated 29.08.2016.

25. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 29.08.2016, which is reproduced below for the ready reference:

> *Clause 4.*
> *"The Company shall pay a monthly assured return of Rs. 36,000/- on the total amount received with effect from 29.08.2016 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee (s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with Payment Schedule annexed as Annexure- I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."*

iii. Thus, as per the abovementioned clause the assured return was payable @Rs.36,000/-per month w.e.f. 29.08.2016, till the commencement of first lease.

iv. In the present complaint, as per clause 4 of the MOU dated 29.08.2016, the amount on account of assured returns was payable from 29.08.2016 up to the commencement of the first lease which was executed on 24.07.2020. The first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate on 24.07.2020. The Occupancy

Certificate of the project in question has been obtained by the respondent no.1 on 14.08.2024. Therefore, considering the facts of the present case, the respondent no. 1 is directed to pay the assured return to the complainant at the agreed rate i.e., @Rs.36,000/- per month from the effective date i.e., 29.08.2016 till obtaining the Occupancy Certificate after deducting the amount already paid on account of assured return to the complainant.

26. In light of the above, the Authority is of the view that as per the MoU dated 29.08.2016, it was obligation on part of the respondent no.1 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 no. 1 on 14.08.2024. Accordingly, the respondent no.1 is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.36,000/-from the date i.e., 29.08.2016 till obtaining of Occupancy Certificate of the concerned project i.e., 14.08.2024.

IV. To get an order in his favor by restraining the respondent from charging Fit-out Charges.

27. The complainant has raised objection towards the fit-out charges, development charges, and delay payment charges raised by the respondent no. 1 vide letter dated 28.02.2025, and has sought waiver of the same on the ground that such charges were not stipulated either under the Builder Buyer Agreement and the Memorandum of Understanding executed between the complainant and respondent no.1. However, in reply filed the respondent no. 1 has categorically submitted that as per Clause 8 and 9 of the MoU, the complainant was under an obligation to bear such expenses which may arise towards infrastructural or other modifications necessary for leasing the unit to a prospective lessee. The respondent no. 1 emphasized that these fit-out charges form a necessary and integral part of the leasing process, without which the unit cannot be made ready

for commercial use by any lessee. However, the authority observes that the memorandum of understanding dated 29.08.2016, signed between the complainant and the respondent no. 1 does not contains any clause which contains any of such fit-outs charges demand. Therefore, the plea taken by the respondent no. 1 with respect to clause 8 and 10 of the MoU is incorrect and is hereby denied.

28. It is also evident that no prior intimation letter or demand letter specifying the nature of such fit-outs charges has been shared with the complainant while signing the BBA and MoU with the respondent no. 1. In the absence of any documentary proof demonstrating transparency, disclosure or lease agreement at the time of leasing between the parties, such arbitrary imposition of fit-outs charges by the respondent no. 1 cannot be sustained in the eyes of law, hence the same is set-aside.

V. To get an order in his favor by directing the respondent to get the conveyance deed executed and registered in favor of the complainant.

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

VI. To get an order in his favour by directing the respondent party to arrange the lease for the complainant's commercial unit.

30. 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 7(a) of the MoU dated 29.08.2016, it was agreed that the respondent no. 1 would make

payment of lease rentals at Rs.54.55/- per sq. ft. per month to the complainant from commencement of first lease. Further, vide clause 8(a) of the MoU that the respondent no.1 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 no. 1 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 29.08.2016.

VII. To get an order in his favor by restraining the respondent from charging Holding Charges as the demand of Holding Charges is against the principle of natural justice.

- **Holding charges**

31. 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.

32. 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 no. 1 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-

> *"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."***

33. Therefore, in view of the above the respondent no. 1 is directed not to levy any holding charges upon the complainant.

I. Directions of the Authority

34. 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 no. 1 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.

II. The respondent no. 1 is directed to pay the assured return to the complainant at the agreed rate per month as per the MoU dated 29.08.2016 i.e., @Rs.36,000/- with effect from 29.08.2016 till obtaining of Occupancy Certificate of the concerned project i.e., 14.08.2024, after deducting the amount already paid on account of assured returns to the complainant.

III. The respondent no. 1 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.

IV. The respondent no. 1 shall not charge anything from the complainant which is not part of the MoU or buyers' agreement.

V. The respondent no. 1 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.

VI. 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.

VII. The respondent no.1 is directed to handover possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent no.1 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.

35. Complaint stands disposed of.

36. File be consigned to the registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.01.2026