BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4636 of 2024**
Date of filing	**:**	**20.09.2024**
Date of decision	**:**	**27.01.2026**

Rama Kapoor
R/o: - S-240 FF Panchsheel Park New Delhi

Complainant

Versus

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

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

APPEARANCE:
Shri Rajinder Singh (Advocate) **Counsel for Complainant**
Shri Venkatesh Dubey (Advocate) **Counsel for Respondent**

ORDER

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

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	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	30.01.2015 (Pg no. 48 of the complaint)
7.	Unit no.	Unit - 12 on 3rd floor (As per pg no. 31 of the complaint)
8.	Unit area admeasuring	250 sq. ft. (Super Area) (As per pg. no.31 of the complaint)
9.	Date of MoU	30.01.2015 (Pg no. 55 of the complaint)
10.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
11.	Possession clause	Clause 3 of MoU

		"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. The Company on grant of Occupancy, Completion Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues."
12.	Due date of possession	15.12.2018 [36 months from the start of construction being later as per clause 3 of the MOU mentioned above]
13.	Assured return Clause in MoU	Clause 04 *"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 30-01-2015 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 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. 58 of the MoU)*

14.	Total basic Sale consideration	Rs. 23,52,618/- As per pg. no. 48 of the complaint)
15.	Amount paid by the complainant	Rs. 22,88,793/- (As per the pg. no. 59 of the REPLY)
16.	Payment requests letter and final reminder letter	28.09.2019 and 05.11.2020 (Pg. no. 65-66 of the complaint)
17.	Payment request for VAT	30.03.2017, 22.01.2020 and 30.10.2020 (Pg. no. 67, 70 and 71 of the complaint)
18.	Reminder letter for signing the lease assignment form	10.12.2020 (Pg. no. 76 of the complaint)
19.	Occupation certificate	14.08.2024 (As per DTCP site)
20.	Offer of possession	27.02.2025 (As per pg. no. 56 of the reply)

B. Facts of the complaint

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

a. That the Complainant is Mrs. Rama Kapoor W/o Late Shri Kuldip Kapoor R/o S-240, F/F, Panchsheel Colony, New Delhi purchased the said unit on 30.01.2015, and is a law-abiding citizen, taxpayer to the public exchequer and entitled to the Constitutional Right to Property as envisaged in the Constitution of India.

b. That the Respondent i.e., M/S Neo Developers Private Limited (hereinafter referred to as "the Company") and its directors are having its registered office at 32-B, Pusa Road, New Delhi and branch office at 1205-B, 12th Floor, Tower-B, Signature Towers, South City-I, NH-8, Gurugram, Haryana-122001. The Respondent is engaged in the business activities relating to construction, development, marketing & sales of

various types of residential & commercial properties to its various customers/ clients and works for gain.

c. That in or around December, 2014, one of the relative of the Complainant informed about the project of "M/s Neo Developers Private Limited namely "Neo Square" (hereinafter referred to as "the Project") situated in Sector 109, Dwarka Expressway, Gurugram, the Complainant, met representative of the Company who explained the Project to the Complainant. Later, the Complainant was introduced to Mr. Ashish Anand, Director, when the complainant visited the office of Respondents situated at Gurgaon. Mr. Ashish Anand, the Directors and employees of the Company explained the Project to Complainant 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.

d. That the Director and employees of the Company finally induced the Complaint to purchase the unit in their Assured Return Plan wherein the Company would make the payment at the rate of Rs. 90 per sq. ft. per month for the area purchased if full payments towards the unit are made by the Complainant at the time of booking or at the time of execution of Memorandum of Understanding (MOU). Mr. Ashish Anand, Director of the Company, assured the Complainant that there will be no delay in making payment towards the Assured Return under any circumstances whatsoever.

e. That Complainant entered Memorandum of Understanding with the Company on 30.01.2015 and Builder Buyer Agreement executed on 30.01.2015. Mr. Ashish Anand Director of the company explained the site plan wherein it was provided that the Third floor of the building consists

of Restaurant and Food Court, which is above the floors consisting of retail stores. It was explained that the 3rd floor would be solely dedicated to modern restaurants, lounge and food court. Mr. Ashish Anand, Director of the Company again assured that there will be no delay in making payment towards the Assured Return under any circumstances and the property would be constructed and delivered within 36 months period from entering of the MoU since Company has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC, Nike, Inox Cinema etc. Further, it was assured that the Assured Return would be paid till the property is not leased out. Mr. Ashish Anand, Director, assured the Complainant 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. In view of the above assurance an impression was given to Complainant that since the Project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the restaurant in future. Based on the above inducement and assurance of Mr. Ashish Anand and the employees of the Company, the Complainant purchased a Commercial Unit (restaurant) on the Third floor and executed the Memorandum of Understanding dated 30.01.2015 having area admeasuring 250 sq. ft. super built up area at the rate of Rs. 8400/- per sq. ft. wherein Commercial Unit No. 12 (Restaurant) was assigned on 3nd floor.

f. Complainant paid a sum of Rs. 21,77,868/- (Rupees Twenty-One Lakhs Seventy-Seven Thousand Eight Hundred Sixty-Eight Only) towards consideration of the Commercial Unit no. 12, through, firstly vide cheques

no. 095751 for Rs. 7,77,868/- (Rupees Seven Lakh Seventy-Seven Thousand Eight Hundred Sixty-Eight Only) dated 22.01.2015 drawn on HDFC Bank, secondly vide cheque no. 075551 for Rs. 6,00,000/- (Rupees Six Lakhs Only) dated 22.01.2015 & drawn on Bank of Maharashtra, and Thirdly vide DD No. 124640 for Rs. 8,00,000/- (Rupees Eight Lakh Only) dated 28.01.2015 which were duly accepted by the Company (Annexure-1). It was agreed under the MOU that a monthly return of Rs. 22,500/- (Rupees twenty-two thousand five hundred only) shall be payable as Assured Return from 30.012015.

g. The Respondent sent a Letter dated 28.09.2019 demanding a total amount of Rs. 2,27,611/- (Rupees Two Lakh Twenty-Seven Thousand Six Hundred Eleven Only) for BSP along with GST and interest. The Company sent a final letter dated 05.11.2020 for payment of Overdue Installments and Outstanding Amount for Rs. 1,32,720/- (Rupees One Lakh Thirty-Two Thousand Seven Hundred Twenty Only).

h. 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 July, 2019. That the mala fide intentions of the Company also became conspicuous when the Company vide letter dated 18.12.2019, communicated 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.

i. 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. Despite making the payment towards the VAT as demanded by the Company vide its letter dated 30.03.2017, another demand was raised on 22.01.2020 wherein a sum of Rs. 150419/- was demanded as VAT outstanding. Surprisingly another demand was raised on 30.10.2020 by the Company to deposit the VAT amounting to Rs. 194346/- for the same 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.

j. That on 22.09.2020 the Respondent sent an Email for Signing of Lease Agreement & Registration of BBA and MOU. That the Respondent again sent an email for Invitation for starting the proceeding for Assignment of Lease dated 01.10.2020 and another email for Notice for BBA/MOU Registration dated 01.10.2020. Further one more email for Reminder for Signing the Lease Assignment was sent by the Respondents on 10.10.2020. It is submitted that no lease assignment can be entered since the Project is not complete and the Unit can be leased out only after receiving the Completion Certificate and Occupation Certificate of the project. It is an absurd argument that the Respondent has leased the Unit to the third party who is responsible to make the payment towards the Assured Return. It is highly unbelievable that a third party who has not received the possession of the Unit has involved into Agreement with the

Respondent for a Project in which Occupancy Certificate and Completion Certificate has not been received and would start making the payments to the buyer without first generating the rent from the Unit.

k. The Respondent under the garb of Force-majeure is delaying the completion of the project. It is submitted that no fresh construction has been carried out in the project since 2019. The Completion certificate of the Respondent has been denied on several occasion, and on 15.12.2021 the representative of the Respondent has admitted before the Senior Town Planner, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.

l. That the complainant 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 admeasuring 250 sq feet, since July, 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 Complainant and execute the Sale deed in favour of the Complainant with respect to the restaurant space purchased by him, Further, to set aside the illegal demand of VAT by the Respondent and compensation towards the delay in completing the project. The complainant 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 complainant:

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

I. Direct the Respondent to pay Assured Returns (i) @ Rs. 90 per sq feet per month amounting to Rs. 22,500/- (Rupees Twenty-Two Thousand Five Hundred Only) for Unit No. 12, on the third floor since July, 2019 till handing over the possession/leasing out the property after completion.

II. To execute the Sale Deed after the competition of the project and after receiving the Completion Certificate and Occupation Certificate, in favour of the Complainant.

III. set aside the illegal demands of VAT made by the Respondent vide letter dated 22.01.2020 and 30.10.2020.

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

V. To direct the Respondent to pay the interest as per RERA Act.

D. Reply by the respondent

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

a) That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form in march 2019, requesting the respondent to allot a unit/space, admeasuring 250 sq. ft. super area in the project *"neo square"* (hereinafter referred to as the *"project.*

b) That Considering the request of the Complainant, the Respondent allotted a Unit bearing Priority No. 12, on 3rd Floor, admeasuring 250 sq. ft. super area, (hereinafter referred to as the *"Subject Unit/Unit.*

c) Thereafter, the Respondent made multiple requests to the Complainant to visit the office of the Respondent for executing the Builder Buyer's Agreement and other Agreements/documents with respect to lease

rental, assured return etc. However, the Complainant failed to come forward to do the needful.

d) That after much persuasion by the Respondent, the Complainant came forward and executed the Builder Buyer's Agreement on 30.01.2015 (hereinafter referred to as the *"BBA*.

e) Since, the Complainant has invested in the Project to earn assured returns and lease rental by getting the unit leased out through Respondent, therefore a Memorandum of Understanding dated 30.01.2015 (hereinafter referred to as the *"MOU"*) was executed between the Parties, recording the lease grant rights in favor of Respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.

f) It is noted herein that since the building was completed way before the grant of the Occupation Certificate, therefore, prospective lessees were approaching the Respondent for taking the units in the Project. That the Respondent was anticipating that the Occupation Certificate would be granted by the Competent Authority shortly, and leased out the subject Unit and *vide* letter dated 01.10.2020, requested the Complainant to forward to complete the formalities with respect to leasing of the unit.

g) The Occupation Certificate of the Project was granted by the Competent Authority on 14.08.2024.

h) The Complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the Respondent was constrained to issue reminders dated 27.04.2018, 30.10.2020, 05.11.2020 and 07.06.2021 requesting the Complainant to do the needful.

i) Thereafter, the Respondent sent an Offer of Possession cum intimation regarding Occupation Certificate vide Letter dated 18.11.2024, wherein the Respondent requested the Complainant to clear the outstanding amounts payable against the unit and take the possession of the Unit.

j) That the Respondent *vide* Letter dated 27.02.2025, requested the Complainant to make payment of the lawful charges as per the agreed terms and conditions of the MOU and take over the Possession of the Unit but the Complainant ignored the said letter completely.

k) It is pertinent to note herein that the Complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

l) That the present Complaint has been preferred by the Complainant before the Ld. Authority on frivolous and unsustainable grounds and the Complainant has not approached the Ld. Authority with clean hands and is trying to suppress the material facts relevant to this matter. The Complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the Respondent with malicious intent and with the sole purpose of extracting unlawful gains from the Respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merit and is fit to be dismissed *in limine*.

m) It is reiterated herein that from the very beginning, the understanding between the parties was to lease out the unit through the Respondent. That it was never agreed between the parties that physical possession of the Unit shall be handed over to the Complainant. That a MOU recording the terms and conditions of the Leasing and lease rental is executed between the Parties. It is pertinent to mention herein that no

protest in this regard has ever been raised by the Complainant and the same was willingly and voluntarily agreed upon between the Parties.

n) It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the Complainant is of the same price. That the demand of the development charges as have been sought in the demand letter from the Complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably distributed amongst the unit.

o) That under Clause 11 of the BBA, the Complainant has agreed to pay all applicable charges, including Development Charges, as may be levied at the time of execution of the BBA or at any future date. Clause 11 of the BBA is reproduced herein below:

> *"11. DEVELOPMENT CHARGES, TAXES, CESSES, LEVIES, ETC.*
>
> *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 said the 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, 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."*

p) It is pertinent to mention herein that as per the agreed terms and conditions of the MOU the Complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the Unit, Fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the Unit. That the Sale Consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the Unit and as agreed to under the BBA. That the demand for fitout

charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the Unit in terms of the MOU.

q) It is reiterated herein that the Complainant has invested in the Project with the sole intent of earning an assured return and lease rental by leasing the unit through the Respondent. Since, the understanding between the Parties was very clear that the unit was to be leased out to a prospective lessee and the Parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the Complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the Complainant, under Clause 9(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the Unit, then the Complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. It is further agreed that in case the Complainant fails to pay the same, then the Respondent shall pay the expenses on behalf of the Complainant and deduct the same from the lease rental payable to the Complainant, along with a monthly interest of 2 per cent.

r) That the obligation of the payment of Fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the Complainant as per Clause 9 (d) of

the MOU. It is further clarified herein that the expenses on account of such fit-outs are agreed to be paid by the Complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental itself. Thus, as per Clause 9 (d) of the MOU, the Respondent has the right to recover the expenses incurred for getting the Unit ready for leasing.

s) That the Respondent after completing the construction and meeting the requirements of the grant of the Occupation Certificate, has applied for the same before the Competent Authority on 24.02.2020 and reapplied on 29.06.2021. It is noted herein that the buidling was completed and all the requirement for the grant of the Occupation Certificates were fulfilled and the Respondent anticipated the grant of the Occupation Certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the Units in the Project on lease, therefore, the Respondent anticipating that the Occupation Certificate will be granted by the Competent Authority, entered into a 1st lease with the Lessee.

t) Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to Assured Return was not clear and accordingly, a Writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.

u) It is reiterated herein that the complainant under clause 10 (a) of the mou has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the lease, the amount of lease, usage or to who the unit is leased out.

v) That in Clause 9 (b) of the MOU it is categorically agreed by the Complainant that in case of any increase in monthly lease rental in excess of the Assured Return, the sale consideration shall be enhanced by Rs. 66.66/- per sq. ft. for each rupee increase in the monthly lease rental and likewise, in case the monthly lease rental is reduced from the Assured Return, then for each decreased rupee per sq. ft. per month, the sale consideration shall stand decreased by Rs. 133.33/- per sq. ft.

w) That in view of the aforementioned clauses of the MOU, it is evident that the Complainant have categorically agreed to pay increased sale consideration in circumstances where the unit is leased out at a higher rate in comparison to the assured return which was paid to the Complainant. Similarly, the sale consideration shall be reduced in circumstances where the lease rentals are less in comparison to the assured return which was paid to the Complainant. In fact, it is necessary to point out herein that when the sale consideration of the unit is increasing on account of higher lease rental, the increment occurs at the rate of Rs. 66.66/- per sq. ft. Conversely, when the sale consideration is decreasing on account of lower lease rental, then the same is decreasing at the rate of Rs. 133.33/- per sq. ft. Accordingly, it is evident that the rights of the Complainant is not being compromised under any circumstances. Therefore, the Complainant is bound to fulfil the terms and conditions with respect to the increase in sale consideration as agreed under Clause 9 (b) of the MOU. It is noted herein that the sale consideration of the subject Unit was negotiated on the basis of the guaranteed returns to be received by the Complainant and any change in payments of guaranteed return will result in change in the

sale consideration of the unit in terms with the mutually agreed terms and conditions of the MOU.

x) It is pertinent to mention herein that the Complainant is a investor who had approached the Respondent for investing in the Project of the Respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.

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

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

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

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the relief sought by the complainant.

I. Direct the Respondent to pay Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 22,500/- (Rupees Twenty-Two

Thousand Five Hundred Only) for Unit No. 12, on the third floor since July, 2019 till handing over the possession/leasing out the property after completion.

II. **To direct the Respondent to pay the interest as per RERA Act.**

III. **To execute the Sale Deed after the competition of the project and after receiving the Completion Certificate and Occupation Certificate, in favour of the Complainant.**

IV. **Set aside the illegal demands of VAT made by the Respondent vide letter dated 22.01.2020 and 30.10.2020.**

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

F.1) Assured Returns

11. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 30.01.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

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

13. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified*

period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement.*

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

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

> (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
>
> *(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

16. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to

assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the promoter at the time of booking or immediately thereafter and as agreed upon between them.

17. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

18. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

19. The promoter is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship.

20. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the

amount paid by the complainant 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 complainant-allottee in terms of the MoU dated 30.01.2015.

21. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 30.01.2015, 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 30.01.2015,*** *after deduction of Tax at Source and any other levy which is due and payable by the Allottee(s) to the Company. The balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s)* ***until the commencement of the first lease on the said unit. This shall be paid from the effective date."***

22. Thus, as per the abovementioned clause the assured return was payable @Rs.22,500/- per month w.e.f. 30.01.2015 until the commencement of the first lease on the said unit.

23. 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.

24. The Authority is of the view that as per the MoU dated 30.01.2015, 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., 30.01.2015 till obtaining of Occupancy Certificate of the project after deducting the amount already paid on account of assured return to the complainant as the lease dated is not valid in the eyes of law if it commenced before the Occupancy of the concerned project.

F.2) Delay Possession Charges:

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

> ***"Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

26. Clause 3 of the MoU dated 30.01.2015 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"

27. **Due date of possession:** As per clause 5.1 of the BBA dated 30.01.2015, 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.

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

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

29. 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., 27.01.2026 is 8.80%.

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

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

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

32. On consideration of documents available on record and submissions made by the complainant, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 02.05.2023.

33. 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?

34. 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 30.01.2015. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of @Rs.22,500/- on the total amount received with effect from 30.01.2015 till the commencement of the first lease. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as @Rs.22,500/- per month whereas the delayed possession charges are payable approximately Rs.19,600/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

35. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

36. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 30.01.2015, the promoter had agreed to pay to the complainant allottee @Rs.22,500/- with effect from 30.01.2015 till the Occupancy certificate i.e., 14.08.2024.

37. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ @Rs.22,500/- with effect from 30.01.2015 till the Occupancy certificate i.e., 14.08.2024 of the concerned project.

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

39. Further, in the complaint, complainant is seeking relief with regard to the waiver of the Development charges, Labour Cess, FTTH charges

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

> ***"11.***
>
> ***That the Allottee agrees to pay all taxes, charges.*** *Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST.* ***Development charges,*** *Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like.* ***These shall be paid on demand*** *and in case of delay. these shall be payable with interest by the Allottee"*

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

- **Labour Cess:** Labour cess is levied @1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the

allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent who is solely responsible for the disbursement of said amount.

- **Interest on delayed payment:** The Authority has perused the offer of possession letter dated 04.10.2024, wherein an amount of Rs.4,30,081/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs.22,88,793/-, which includes basic sale price (BSP), external development charges(EDC), internal development charges(IDC), The Authority further observes that the total sale consideration of the said unit is Rs.23,52,618/-, as expressly mentioned in the possession linked payment plan executed between the parties. Hence, in terms of the MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 27.02.2025. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU. Accordingly, the complainant is liable to pay the remaining applicable charges, as agreed between the parties, along with interest, if any, on delayed payment attributable to the allottees.
- **Holding Charges**

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

In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021,*** the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos.* 3864-*3899/2020 decided on 14.12.2020*. The relevant part of order is reiterated as under-

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

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

- **Maintenance Charges**

40. In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021,*** the Hon'ble Authority had already

decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

- **VAT**

41. 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.1,10,925/- 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 complainant 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**

42. The complainant has filed reminder letter for demand notice payment and offer of possession, and the other pertaining to the leasing-out communication issued by the respondent on 27.02.2025. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. However, on perusal of the MoU executed between the allottee and the promoter.

43. 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.

44. Further, it is observed that on the proceeding date of hearing, i.e., 27.01.2026, 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 30.01.2015. 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 30.01.2015, 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.

G. Directions of the Authority

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

I. The respondent/promoter is directed to pay the assured returns to the complainant at the agreed rate i.e., @Rs.22,500/- from the effective date as per clause 4 of the MoU i.e., 30.01.2015 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 complainant.

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

III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges, FTTH and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.***

IV. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

V. The respondent shall charge interest on delayed payment from the complainant, if any.

VI. The respondent is directed to restrict its demand towards advance maintenance charges strictly to a maximum period of one year only, and any demand raised in excess thereof shall be deemed unsustainable and liable to be withdrawn/adjusted in accordance with law.

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

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

46. Complaint stands disposed of.

47. File be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.01.2026