

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

Complaint no.:	2412 of 2025
Date of filing:	12.05.2025
Date of Order:	20.01.2026

Vinod Saini and Mohak Saini

Both R/o: - 288, DDA Flats,
Sector-22, Dwarka Pkt-1, New Delhi -110075.

Complainants

Versus

M/s Neo Developers Pvt. Ltd.

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

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Shri Rajiv Vig (Advocate)

Counsel for Complainants

Shri E. Krishna Das and Dushyant Yadav
(Advocates)

Counsel for Respondent

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/MOU executed inter se between parties.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the 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 upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Buyer's agreement	08.05.2018 (As per pg no.30 of the reply)
7.	Unit no.	Unit no. unit no. 87 on floor no. 5 th Floor or similar Priority No.87, 12A Floor (page no. 73 of the complaint)
8.	Unit area measuring	300 sq. ft. (Super Area) (As per pg. no. 40 of the complaint)
9.	Date of MoU	08.05.2018 (As per pg. no. 57 of the reply)
10.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
11.	Possession clause	Clause 3 of MoU <i>"The company shall complete the construction of the said</i>

			<i>Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate"</i>
12.	Due date of possession		08.11.2021 [As per clause 3 of the MoU - 3 years plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
13.	Assured return Clause		<i>Clause 4. "The company shall pay a monthly return of Rs.19,500/- on the total amount received with effect from 08.05.2020 before deduction of Tax at Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottees to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee (s) until the commencement of the first lease on the said unit. This shall be paid from the effective date."</i> (As per pg. no. 18 of the complaint)
14.	Total basic Sale consideration		Rs. 12,31,500/- (including GST, IFMD, EDC, IDC and taxes) As per pg. no. 17 of the complaint)
15.	Amount paid by the complainants		Rs. 13,80,000/- (As per pg. no. 17 of the complaint)
16.	Occupation certificate		14.08.2024 (As per DTCP site)
17.	Offer of possession		03.10.2024 (As per pg. no. 49 of the complaint)

18.	Legal notice by the complainants	16.12.2024 (As per pg. n o. 54 of the complaint)
19.	Demand for fit-out charges	Rs.8,85,000/- in letter dated 19.12.2024.
20.	Reminder for the registration of conveyance deed letter	02.05.2025

B. Facts of the complaint.

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

- i. That the complainants, who are father-son, are law-abiding citizens of India and were looking for a commercial space / unit in some upcoming commercial project(s) in Delhi NCR area.
- ii. It is only on the representations and assurances of the respondent especially regarding payment of assured return after 2 years of booking that the complainants agreed to book and consequently allotted commercial space /Unit Priority Serial No.87 measuring 300 sq. ft. (27.87091 sq. mtr.) on 5th floor forming the part of the area designated for commercial space as food court /entertainment in the aforesaid project at the rate of Rs.4150/- per sq. ft. The complainants and the respondent therefore fall within the expressions "allottee" and "promoter" respectively as defined in Section 2 (d) and (zk) of the Real Estate (R & D) Act, 2016 respectively.
- iii. That thereafter a Memorandum of Understanding and Buyer's Agreement dt. 08.05.2018 (hereinafter referred to as MOU as BA) was executed between the respondent company and the complainants, which were got prepared by the respondent primarily keeping its own interests and benefits in mind.
- iv. That, the present dispute is regarding recovery of due amount under the Assured Return Plan, payment of legitimate balance cost of the commercial

unit booked by the complainants, handing over of possession and execution of sale deed by the respondent in favour of complainants in respect of the aforesaid commercial unit, the complainants reserve their rights to raise their grievance in respect of other unreasonable and unfair terms and conditions of the MOU and BA as and when the same is required in future.

- v. That, under clause 3 of MOU, the respondent allotted Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 5th floor forming the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project at the rate of Rs.4150/- per sq. ft. totaling to Rs.12,31,500/-, against which the complainants have already paid a total sum of Rs.13,80,000/- (Rupee Thirteen lakh and eighty thousand only) towards basic sale price, EDC/IDC, the receipt of which was clearly admitted by the respondent in clause 4 of the said MOU. The respondent company in clause 3 itself undertook to complete the construction within 36 months from the date of execution of the agreement or from the start of construction whichever was later and apply for grant of completion / occupation certificate.
- vi. That under clause 4 of the MOU, the respondent company undertook to pay a sum of Rs.19,500/- (Rupee Nineteen thousand and five hundred only) per month in respect of the aforesaid unit to the complainants from 08.05.2020 till the commencement of first lease of the said unit as per clause 4 of the MOU.
- vii. That under clause 8 to 10 of the MOU, the obligation was on the respondent company to find out the proposed lessee to whom the aforesaid unit was to be leased out and to finalize the terms and condition of the lease deed in respect of the aforesaid unit and as stated above, the liability of the respondent to pay monthly assured amount to the complainants is till the commencement of first lease of the said unit.

- viii. However, the respondent company neither completed the construction of the commercial units/space within the stipulated period nor paid any assured amount to the complainants as promised in MOU dt.08.05.2018 w.e.f. 08.05.2020 and thus violated the provision of Section 11 (4) (a) of the Real Estate (R & D) Act, 2016.
- ix. That the respondent vide letter dt.11.09.2020 informed the other allottees that due to certain restrictions the respondent shall pay due assured return amount, as promised under the terms and conditions of the MOU dt.08.05.2018, to the allottees at the time of handing over the possession of their units.
- x. That the complainants thereafter made number of visits, besides calling the officials of the respondent, during 2022 to 2024 to know the status of the project and her aforesaid commercial unit. However, the officials of the respondent kept on making one after another excuse and miserably failed to discharge their obligations under the MOU dt.08.05.2018.
- xi. That the respondent instead of paying the aforesaid assured amount raised an illegal demand of Rs.2,93,456/- vide letter dt.03.10.2024, which was followed by 16.10.2024. The complainants vide email dt.03.10.2024 asked the respondent to first discharge its obligation under the MOU dt.08.05.2018 by paying the overdue assured return amount which had accumulated to more than Rs.14.00 lakh by then to the complainants. It is pertinent to mention here that the respondent illegally changed the number and location of the commercial unit of the complainants from priority unit Unit No.87 on 5th floor to 13th level to 12A without disclosing any valid reason and or consent of the complainants.
- xii. That the respondent instead of taking any action on the aforesaid emails of the complainants again sent illegal demand reminder dt.20.11.2024. The

complainants along with few other allottees thereafter got a legal notice dt.16.12.2024 served upon the respondent calling upon him to discharge his liabilities under the MOUs. The respondent however instead of giving any reply to the said legal notice or paying any amount to the complainant towards overdue assured return amount illegally raised another illegal demand of Rs.8,85,000/- towards alleged fit-out charges.

xiii. That the respondent in order to avoid payment of legitimate overdue assured return amount to the complainants has been raising totally illegal and malafide demands to illegally frustrate the legitimate claim of the complainants against the respondent towards assured return amount, which the respondent was liable to pay w.e.f. 08.05.2020 but which the respondent was postponing on one or other excuse. The respondent is now illegally threatening to cancel/terminate the allotment of aforesaid unit in favour of the complainants.

xiv. That a total sum of Rs.16,60,873/- (Rupee Sixteen lakh sixty thousand eight hundred and seventy-three only) including interest thereon @ 18% p.a. has become due and payable by the respondent to the complainants under the monthly assured return scheme from 08.05.2020 to 31.03.2025. The respondent has misappropriated and mis-utilizing the funds of the innocent allottees including complainants for its own benefits and therefore, failed to complete the construction in time and pay assured monthly return to complainants and others. The respondent is charging compound interest on the defaults of the allottees and is therefore liable to pay interest @18% p.a. on outstanding assured return amount to complainants.

xv. That the respondent against the total basic cost of the unit of Rs.12,31,500/- is demanding Rs.8,85,000/- as fit out charges which are otherwise the liability of the tenant / lessee clearly proves the malafide intention and motives of the

respondent that it does want to pay assured return amount and now wants to illegally and indirectly set-off with its illegal demand which has no legal basis. The respondent can charge / adjust only the legitimate unpaid amounts as per Annexures annexed with the MOU and BA from the unpaid assured return amount of Rs.16,60,873/- and nothing else and further, the respondent has no right to terminate/cancel the allotment of the aforesaid commercial unit in favour of the complainants as the complainants have already paid entire basic price of the aforesaid unit at the time of booking. Therefore, the aforesaid demand letters of the respondent against the complainants containing illegal demand of dues and threat of cancellation of aforesaid commercial unit of the complainants are illegal and are liable to be set-aside and quashed.

C. Relief sought by the complainants.

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

- I. The respondent company may kindly be directed to pay Rs.16,60,873/- (Rupee Sixteen lakh sixty thousand eight hundred and seventy-three only) including interest thereon @ 18% p.a., as has become due and payable by the respondent to the complainants under assured return scheme as per clause 4 of the MOU dt.08.05.2018, from 08.05.2020 till 31.03.2025.
- II. The respondent company may further be directed to keep paying the aforesaid monthly assured amount pendente lite i.e. even after 31.03.2025 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainants as per clause 4 of the MOU dt.08.05.2018.
- III. The illegal demand letters dt.03.10.2024, 16.10.2024, 20.11.2024 and 19.12.2024 including any other similar demand letter, issued prior to or subsequent to the aforesaid demand letters, as issued by the respondent to the complainants, may kindly be set-aside and the respondent may

- kindly be directed to adjust the legitimate due balance cost of the aforesaid unit of the complainants from the due amount of assured return, as mentioned in relief clause (1) & (2) above, to be paid by the respondent to the complainants and respondent be directed to pay the balance assured return amount to the complainants immediately within a fixed time frame.
- IV. The respondent may kindly be directed to hand over the possession and execute the sale deed of the aforesaid Commercial Space / Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 13th floor forming the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project "Neo Square" in favour of the complainants within a fixed time frame.
- V. The respondent may further be permanently restrained from cancelling and terminating the allotment of aforesaid Commercial Space / Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 13th floor forming the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project "Neo Square" in favour of the complainants as the complainants have already paid 100% of the sale price of the unit to the respondent and is entitled to recover Rs.16,60,873/- from the respondent on account of non-payment of assured return amount till 31.03.2025.

D. Reply by the respondent.

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

- i. At the outset, the Complainants have erred gravely in filing the present Complaint and misconstrued the Provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA Act"). It is imperative to bring the attention of this Ld. Authority that the RERA Act was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between Builders and Buyers and the reliefs sought

by the Complainants cannot be construed to fall within the ambit of RERA Act. That the Complainants herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.

- ii. It is submitted that the Complainants with the intent to invest in the Real Estate sector as an investor, approached the Respondent and inquired about the project i.e., "NEO SQUARE", (*hereinafter referred to as the "Project"*) situated at Sector-109, Gurugram, Haryana being developed by the Respondent. That after being fully satisfied with the Project and the approvals thereof, the Complainants decided to apply to the Respondent by submitting a booking application form dated 04/04/2018, whereby seeking allotment of Unit No. 87, admeasuring 300 Sq. Ft Super Area on the 12thA Floor of the Project having a Basic Sale Price of Rs. 4105/- (*hereinafter referred to as the "Unit"*) The Complainants, considering the future speculative gains, also opted for the Investment Return Plan being floated by the Respondent for the instant Project.
- iii. That since the Complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated:- 08/05/2018 (*hereinafter referred to as "MOU"*) was executed between the Parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the Complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 08/05/2020 till commencement of first lease. It is also submitted that as per terms of the MOU, the Complainants herein had duly authorised the Respondent to put the said unit on lease.

- iv. That by no stretch of imagination it can be concluded that the Complainants herein are "*Allottee/Consumer.*"
- v. That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. that the same was duly agreed between the parties in the documents executed therein.
- vi. That at this stage, it is categorical to highlight that the Complainants is trying to mislead this Hon'ble Authority by concealing facts which are detrimental to this complaint at hand.
- vii. That the MOU executed between the parties was in the form of an "Investment Agreement." That the complainants 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 complainants 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.
- viii. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this hon'ble authority. Without prejudice to the rights of the Respondent, at the utmost *bonafide*, the Hon'ble Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.
- ix. It is also pertinent to mention that the complainants voluntarily also executed the buyer agreement dated 08.05.2018 for Shop No. 87 on 12thA Floor admeasuring 300 Sq. Ft Super Area in the Project.

- x. That the complainants, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- xi. That the complainants is an 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.
- xii. That the complainants has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainants at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainants have executed an mou which records the terms and conditions pertaining to leasing rights and lease rental, etc. Also, because the complainants themselves has entrusted the respondent with the leasing rights of the units.
- xiii. That the issues on which a complaint can be filed under the provisions of RERA 2016, are also clearly demarcated under section 31 of the Act. Further, the provisions of section 34 (f) indicate the intent of the legislature, in relation to the obligations upon the various parties. A perusal of the same provisions would show that the RERA 2016 only envisages the enforcement of the act and rules/regulations made there under.
- xiv. That assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of section 11 highlight the scope of the functions of the promoter, as envisaged under the act. The same also, so do not impose any obligations in relation to returns of investment.

- xv. That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The rules in rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. the rules also keep "assured return" out of their scope. rule 8 provides a clear indication as to the matters which are to be covered under the agreement of sale. The Authority has no jurisdiction to enlarge a matter which is duly provided for by statute.
- xvi. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That even this agreement does not contain any condition governing assured returns. Thus, any order of payment of assured return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.
- xvii. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the Act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate

developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

- xviii. On the basis of the above, it may be considered that there is no provision under the scheme of act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.
- xix. Also, a perusal of the Section 2(d) defining allottee as well as section 2 (zk) which defines "promoter" does not include any transaction regarding "assured return". Therefore, the assured return scheme is beyond the scope of the act, 2016 and jurisdiction of the authority.
- xx. That as per the provisions of the Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale (buyer's agreement). However, in the present matter the complainants is relying upon the terms of MOU which is a distinct agreement than the Buyer's agreement and thus, the MOU is not covered under the provisions of the Act, 2016. The said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainants is raising their grievance.
- xxi. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the

judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:

"11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement.

- xxii. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.
- xxiii. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.
- xxiv. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the Respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees/Complainants due above said prevailing confusion/anomaly. The preamble of the act reads as under:

"An Act to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto."

- xxv. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.
- xxvi. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- xxvii. That the BUDS Act is a central Act came subsequent to the companies act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act.
- xxviii. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- xxix. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- xxx. That the respondent has offered assured returns to the complainants in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

- xxxi. That recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. Vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.
- xxxii. That as the complainant in the present complaint is seeking the relief of assured return/penalty, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.
- xxxiii. A bare reading of Section 13(2) demonstrates that Assured Return/Penalty is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.
- xxxiv. That Moreover, the present complaint is based on the terms of an mou entered into between the parties, which is distinct from the builder-buyer agreement. The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not

maintainable. Reliance is placed on M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.

- xxxv. That as per the terms of the MOU the complainants explicitly agreed to the complainants that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainants then in that event the complainants shall bear the same from its own pocket.
- xxxvi. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. N o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles



		registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly Used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of

				crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.	
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.



6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relating to the cost of restoration.		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the



		mentioned in the aforesaid order that construction activity would be completely stopped during this period.			Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum.

					large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

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

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

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

10. 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.

11. 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 objections raised by the respondent.

F. I. Objection regarding the complainants being investors.

12. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 08.05.2018, it is revealed that the complainants are buyers, and they have paid a total price of Rs.13,80,000/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

F. II Objection regarding the project being delayed because of force majeure circumstances.

14. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 08.05.2021. Further, an extension of 6 months on account is granted to the respondent in view of the HARERA notification no. 9/3-2020 dated 26.05.2020. Hence, the due date of possession would be 08.11.2021. It is observed that orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

- I. **The respondent company may kindly be directed to pay Rs.16,60,873/- (Rupee Sixteen lakh sixty thousand eight hundred and seventy-three only) including interest thereon @ 18% p.a., as has become due and payable by the respondent to the complainants under assured return scheme as per clause 4 of the MOU dt.08.05.2018, from 08.05.2020 till 31.03.2025.**
- II. **The respondent company may further be directed to keep paying the aforesaid monthly assured amount pendente lite i.e. even after 31.03.2025 and during the pendency of the present complaint and even thereafter till the commencement of first lease in respect of the aforesaid unit of the complainants as per clause 4 of the MOU dt.08.05.2018.**
- III. **The respondent may kindly be directed to hand over the possession and execute the sale deed of the aforesaid Commercial Space / Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 13th floor forming**

the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project "Neo Square" in favour of the complainants within a fixed time frame.

G.I Assured Returns

15. The complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 08.05.2018 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
16. 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 complainants are raising their grievance.
17. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:
- (i) *an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
 - (ii) *advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance*

is adjusted against such immovable property as specified in terms of the agreement or arrangement.

18. 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;*
19. 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.
20. 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.
21. 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.

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

23. 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 builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.

24. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 08.05.2018, which is reproduced below for the ready reference:

Clause 4

"The Company shall pay a monthly assured return of Rs.19,500/- on the total amount received with effect from 08.05.2020 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- 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."

Thus, as per the abovementioned clause the assured return was payable @Rs.19,500/- per month w.e.f. 08.05.2020, till the commencement of first lease.

25. Furthermore, the respondent promoter states that first lease with regard to the subject unit has already been executed on 10.07.2020. However, the respondent-promoter can lease out the subject unit only after obtaining the Occupation Certificate. The building cannot be considered complete or in a habitable condition until the Occupation Certificate is granted by the competent authority. In view of the above, the letter regarding the agreement for lease appears to be a mere ploy by the respondent to evade the liability of paying the assured return. The occupation certificate for the unit was obtained only on 14.08.2024. Therefore, the respondent's contention regarding the non-payment of Assured Return after the execution of first lease is hereby rejected. The validity of the said lease can be considered only after obtaining the Occupation Certificate, i.e., on 14.08.2024.

26. In the present complaint, as per clause 4 of the MOU dated 08.05.2018, the amount on account of assured returns was payable from 08.05.2020 up to the commencement of the first lease which was executed on 10.07.2020 but the first lease of the concerned unit is not valid in the eyes of law as the same is been executed before the occupancy certificate. The Occupancy Certificate of the project in question has been obtained by the respondent on 14.08.2024. Possession of the unit has been offered by the respondent on 03.10.2024. Therefore, considering the facts of the present case, the respondent is directed to pay the assured return to the complainants at the agreed rate i.e., @Rs.19,500/- per month from the effective date i.e., 08.05.2020 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants.

II. Delay Possession Charges:

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

“Section 18: - Return of amount and compensation

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

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

28. Clause 3 of the MoU dated 08.05.2018 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”

29. **Due date of possession:** As per clause 3 of the MoU, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction or whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later. Thus, the due date of possession come out to be 08.05.2021. Further, the grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 08.11.2021.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing

over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

31. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% per annum.

32. 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;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is liable to be paid to the complainants in case of delay possession charges.
34. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 08.11.2021. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and the possession of the unit was offered to the complainants on 03.10.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 08.05.2018. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainants allottee(s) pay a monthly assured return of Rs.19,500/- on the total amount received with effect from 08.05.2018 till the commencement of first lease. If we compare this assured return with delay possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that they will be entitled for this specific amount from 08.05.2020 up to the commencement of first lease which shall in any case, commence only after the obtaining of

occupation/completion certificate from the competent authority. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delay possession charges whichever is higher.

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 delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

36. In the present main complaint, as per clause 4 of the MoU dated 08.05.2018, the amount on account of assured return was payable from 08.05.2020 up to the commencement of first lease. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024. However, the subject unit has not been put on valid lease by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.19,500/- per month from the date i.e. 08.05.2020 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants, after deducting the amount already paid on account of assured returns to the complainants.

IV. The illegal demand letters dt.03.10.2024, 16.10.2024, 20.11.2024 and 19.12.2024 including any other similar demand letter, issued prior to or subsequent to the aforesaid demand letters, as issued by

the respondent to the complainants, may kindly be set-aside and the respondent may kindly be directed to adjust the legitimate due balance cost of the aforesaid unit of the complainants from the due amount of assured return, as mentioned in relief clause (1) & (2) above, to be paid by the respondent to the complainants and respondent be directed to pay the balance assured return amount to the complainants immediately within a fixed time frame.

37. The complainants have further sought relief regarding the waiver of various charges, penalties, rates, and other demands which, according to them, do not form part of either the Buyers' Agreement dated 08.05.2018 or the MoU executed on the same date. The impugned demand notice and offer of possession dated 03.10.2024 reflects components such as IFMS, development charges, FTTH charges and labour cess, which have been objected to by the complainants. The Authority of the view that:

- **Labour cess**

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

arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **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: -

Clause 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 builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges**

The Authority further observes that clause 11, as discussed hereinabove, does not contain any stipulation regarding levy or recovery of FTTH charges from the complainants. In the absence of any specific contractual consent or agreed term between the parties, such charges cannot be imposed by the respondent. Accordingly, the respondent is directed to raise demands strictly in accordance with the terms mutually agreed under the executed agreement and MoU.

38. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement dated 08.05.2018.
39. It is pertinent to note that prior to the filing of the present complaint, demand towards fit-out charges had been raised by the respondent on 19.12.2024 via letter for the demand of fit-out charges for leasing out of the unit, wherein the demand for fit-out charges of Rs.8,85,000/-, which is on record. Vide proceedings dated 20.01.2026 the counsel for the respondent submitted that as per the clause 7(d) of the MoU executed between the parties, the complainants have agreed to pay such charges. The said clause is reiterated below for ready reference:

Clause 7(d)

"That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee, strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received."

40. Upon understanding of the said clause, it is clear that Clause 7(d) of the MoU do mention about the allottee(s) being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline,

or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainants should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes, which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner.

41. Therefore, if the respondent seeks to levy fit out charges, it must first provide a proper justification of demands by showing that the work was required for making the unit fit for lease. The fit out charges should be supported with proper details, including a break-up of expenditure and certification or report from an authorized architect, engineer or other competent professional confirming both the necessity and reasonableness of the work carried out. Only after such justification is provided respondent can charge from the complainants under the MoU.

- V. **The respondent may kindly be directed to hand over the possession and execute the sale deed of the aforesaid Commercial Space / Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 13th floor forming the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project "Neo Square" in favour of the complainants within a fixed time frame.**
- VI. **The respondent may further be permanently restrained from cancelling and terminating the allotment of aforesaid Commercial Space / Unit No.87 measuring 300 sq. ft. (27.87091 sq. mtr) on 13th floor forming the part of the area designated for commercial space as Food Court / Entertainment in the aforesaid project "Neo Square"**

in favour of the complainants as the complainants have already paid 100% of the sale price of the unit to the respondent and is entitled to recover Rs.16,60,873/- from the respondent on account of non-payment of assured return amount till 31.03.2025.

42. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

43. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days.

H.Directions of the Authority

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

I. The respondent/promoter is directed to pay the assured return to the complainants at the agreed rate of @Rs.19,500/- per month from the effective date in clause 4 of the MoU i.e., 08.05.2020 till obtaining the Occupancy Certificate i.e., 14.08.2024 after deducting the amount already paid on account of assured return to the complainants.

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

- III. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement dated 08.05.2018.
- IV. The respondent is directed to recover development charges as per clause 11 of the BBA only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- V. 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 complainants.
- VI. The complainants are 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/promoter is directed to handover the possession of the unit to the complainants/allottee(s) in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is 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.
45. The complaint stands disposed of.
46. File be consigned to registry.


Phool Singh Saini
(Member)


Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 20.01.2026