

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

**Complaint No:** 5272 of 2024  
**Date of Filing:** 25.10.2024  
**Date of Order:** 27.01.2026

**Vinit Kumar**

R/o: H.No. 168, A.P. Colony, Gaya,  
Bihar - 823001

**Complainant**

Versus

**M/s Neo Developers Pvt. Ltd.**

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

**Respondent**

**CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman**

**Member**

**APPEARANCE:**

Shri Alok K. Singh (Advocate)

Shri Venkatesh Dubey (Advocate)

**Counsel for Complainant**

**Counsel for Respondent**

**ORDER**

1. This order shall dispose of the aforesaid complaint titled as above filed before this Authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for

all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

**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	31.10.2016 (Pg no. 27 of the complaint)
7.	Unit no.	Unit - 15 on ground floor (As per pg no. 30 of the complaint)
8.	Unit area admeasuring	584 sq. ft. (Super Area) (As per pg. no.30 of the complaint)
9.	Date of MoU	31.10.2016 (Pg no. 51 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 12

		<p><i>"That the company shall complete the construction of the said Building / Complex, within which the said space is located within 48 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."</i></p>
12.	Due date of possession	<p>31.04.2020            [Due date to be calculated 4 years from the execution of buyer's agreement i.e., 31.10.2016, being later, plus grace period of 6 months]  <b>(Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)</b></p>
13.	Assured return Clause	<p>Clause 18  <i>"The Company shall pay a monthly return of Rs.74,168/- (Rupees Seventy-Four Thousand One Hundred Sixty Eight Only) on the total amount deposited till the signing of this MOU, with effect from 31 October-2018 before deduction of Tax at Source."</i></p> <p>Clause 21  <i>"The builder in terms of its commitment to pay the assured return till the Possession shall issue the post dated cheques for each financial year taking</i></p>

		<i>into consideration the expected period of possession. The postdated cheques shall not be dishonored for any of the reason"</i>  <i>(As per pg. no. 53-55 of the complaint)</i>
14.	Basic sale consideration	Rs. 65,88,244/- (As per pg. no. 30 of the complaint)
15.	Total Sale consideration	Rs. 94,24,982/- (As per 11.11.2024 letter attached with Section 36 application with the complaint)
16.	Amount paid by the complainant	Rs. 72,40,590/- (As per pg. no. 55 of the complaint)
17.	Final Notice of cancellation	07.06.2021 (As per pg. no. 62 of the complaint)
18.	Occupation certificate	14.08.2024 (As per DTCP site)
19.	Offer of possession	11.11.2024 (As per pg. no. 6 of the MA NO. 164/2025 u/s 36 of the RERA act)

**B. Facts of the complaint.**

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

- i. That the complainant Mr. Vinit Kumar, R/ H. No. 168, A.P. Colony, Gaya, Bihar-823001 is law-abiding Indian citizen, taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
- ii. That the respondent, M/s Neo Developers Private Limited is a company incorporated under the provisions of Companies Act, 2013 having its registered office 32-B, Pusa Road, New Delhi-110000 and is interalia engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.

- iii. That believing the representations of the respondent, the complainant on 23.08.2016 made booking in the said project of the respondent. The complainant made a payment to the tune of INR 6,00,000.00 as booking amount to the respondent.
- iv. Thereafter, the complainant on 31.10.2016 made several payments of total amounting to INR 63,63,774.00/- apart from INR 6,00,000.00/- paid on 28.08.2016.
- v. Subsequently, a builder buyer agreement dated 31.10.2016 was executed between the complainant and respondent. That the BBA include all the details of the project such as amenities promised, site plan, payment schedule etc. Under the said BBA, the respondent promised, assured, represented and committed to the complainant that this commercial project would be completed and will be handed over to the buyer within the above-mentioned stipulated period of time.
- vi. That the BBA include all the details of the project such as amenities promised, site plan, payment schedule etc. Under the said BBA, the respondent promised, assured, represented and committed to the complainant that this commercial project would be completed and will be handed over to the buyer within the above-mentioned stipulated period of time.
- vii. Furthermore, clause 4 of the said BBA reflected the total amount paid i.e., INR 69,63,774.00/- by the complainant to the respondent.
- viii. Furthermore, total sale consideration of the said unit is INR 78,99,049.00/- as mentioned in the Annexure-I of the BBA.
- ix. It is pertinent to mention here that further the complainant opted for investment return plan. Pursuant to the said plan, a memorandum of

understanding dated 31.10.2016 was executed between the parties herein determining the rights and liabilities of the parties.

- x. That as per the clause 18 of the said MOU, respondent admitted that complainant has already paid more than the total basic sale consideration of INR 69,63,774.00/- including BSP, Service Tax & GGST. It is submitted here that complainant herein opted for the investment return plan, whereby respondent was obliged to pay a fixed monthly sum to the complainant.
- xi. As per clause 3 of the MOU, respondent agreed to pay a return of INR 127.00/- per sq. ft. per month i.e., INR - 74,168.00/- (Indian Rupees Seventy-Four Thousand One Hundred Sixty-Eight Only). As per clause 8 of the MOU, respondent agreed to pay the assured return till the issuance of notice of possession. Furthermore, as per clause 9 of the MOU, respondent agreed to pay INR 115.00/- per sq. ft. per month from the date of notice of possession till first lease of the unit.
- xii. That the complainant further made a payment of INR 2,76,816.00/- on 20.06.2016 and 21.06.2017 toward the payment of External Development Charges (EDC) and Internal Development Charges (IDC).
- xiii. That the complainant has made total payment of INR 72,40,590.00/- (Indian Rupees Seventy-Two Lakhs Forty Thousand Five Hundred Ninety Only) till date out of the total consideration of INR 78,99,049.00/- (Indian Rupees Seventy-Eight Lakhs Ninety-Nine Thousand and Forty-Nine Only).
- xiv. That the remaining consideration includes stamp duty, registration charges, interest free maintenance security (IFMS) etc., which will be paid at the time of the registration of the unit. it is submitted that the respondent has collected more than 90% of sale consideration without execution of the buyer's agreement.

- xv. That as per clause 12 of the MOU, the respondent was supposed to offer the possession of the said unit within 48 months of signing of the mou or from the date of start of construction of the said building whichever is later.
- xvi. That the agreement was executed on 31.10.2016 hence, the due date comes out to be 30.10.2020. that the respondent has failed to offer the possession of the said unit as per the agreed terms. That the complainant was in regular follow-up with the respondent but to no avail. it is submitted that multiple emails correspondences were made with the respondent along with personal visits to the construction site and the office of the respondent but all in vain.
- xvii. That the respondent made a payment of INR 2,00,253.00/- on 06.06.2019 toward the assured monthly rent for three months after deducting TDC.
- xviii. The respondent issued a letter dated 18.12.2019 to the complainant acknowledging the delay in the construction of the project and their inability to pay the assured monthly rent. Additionally, the respondent confirmed that the outstanding payments including IFMS, Stamp duty and other charges, would be adjusted towards the monthly returns at the time of possession.
- xix. To the utter shock and surprise of the complainant, the respondent issued a notice dated 07.06.2021, demanding that the complainant clear the outstanding payment of INR 17,47,084.00/- on or before 21.06.2021. Furthermore, the notice stated that failure to make the payment would result in the cancellation of the allotted unit. It is respectfully submitted that, as per the payment schedule in the BBA, stamp duty, registration charges, IFMS, etc., are only payable at the time of the offer of registration, which had not yet occurred. Therefore, the notice sent by the respondent

was arbitrary, as it attempted to prematurely impose financial liabilities on the complainant in violation of the agreed payment schedule.

- xx. That it is evident from the facts and circumstances that the complainant has paid an amount of INR 72,40,590.00/- including BSP, Service Tax & GGST towards total sale to the respondent without any delay and as per the payment plan.
- xxi. That an amount of INR 72,40,590.00/- has been paid to the Respondent till date. The complainant anticipated and believed that the money collected by the respondent from the complainant would be utilized in a manner that was commensurate to the stage of construction and further that the complainant would be provided with timely updates regarding the construction work at site. Yet, the complainant herein had to constantly follow up and chase the respondent to inquire about the status of the project, but no satisfactory response or concrete update was provided.
- xxii. That the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other Authority.

**C. Relief sought by the complainant**

- 4. The complainant has sought the following relief(s):
  - I. Grant the possession of the Unit bearing number i.e., shop no. 15, Ground Floor admeasuring 584 sq. ft. in the project "Neo Square" situated in Sector-109, Village Pawala Khusrupur, Gurugram, Haryana to the Complainant at the earliest with all the amenities and services as agreed between the parties and in accordance with the terms and conditions of the MOU and BBA.

II. Direct the Respondent to make payment toward the assured monthly return from October, 2018 onward until now as agreed between the parties under the MOU and BBA along with the interest.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

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

- i. 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 dec 2020, requesting the Respondent to allot a Unit/Space, admeasuring 400 sq. ft. super area in the Project "NEO Square" (hereinafter referred to as the "Project).
- ii. That, considering the request of the complainant, the respondent allotted a unit bearing priority no.155, on 3<sup>rd</sup> floor, admeasuring 400 sq. ft. super area, (hereinafter referred to as the "Subject Unit/Unit).
- iii. That It is respectfully submitted that the respondent has already filed its detailed reply; however, due to inadvertent clerical and typographical errors, certain discrepancies have occurred in the said reply. In Para III(b), the Priority No. has been incorrectly mentioned as 155 instead of 15 and the floor has been wrongly stated as 3<sup>rd</sup> Floor instead of Ground Floor. Further, in Paras III(a) and III(b), the area of the unit has been incorrectly mentioned as 400 sq. feet instead of 584 sq. feet, and in Paras III(d) and III(e), the date of execution of the BBA and MoU has been wrongly typed as 31.10.2016 instead of 31.10.2016. The aforesaid corrections are

necessary to ensure that the reply accurately reflects the true and correct factual position.

- iv. That the proposed corrections are purely clerical in nature and do not in any manner alter the substance of the defence already taken by the Respondent. The same are being sought in the interest of justice to avoid any ambiguity or confusion during adjudication. It is further submitted that no prejudice shall be caused to the Complainant if the present corrections are permitted; however, if the same are not allowed, the Respondent shall suffer irreparable loss and grave prejudice.
- v. The occupation certificate of the project was granted by the competent authority on 14.08.2024.
- vi. Thereafter, the respondent sent an offer of possession letter dated 11.11.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- vii. Despite receiving the offer of possession, 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 05.11.2020, 03.01.2025, 27.01.2025 and 17.02.2025 requesting the complainant to do the needful.
- viii. That the respondent *vide* letter dated 24.04.2025 requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the mou.
- ix. 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.
- x. That the present complaint has been preferred by the complainant before the Id. authority on frivolous and unsustainable grounds and the

complainant has not approached the Id. 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*.

- xi. That is most humbly submitted that the complainant 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 complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an mou which records the terms and conditions pertaining to leasing rights and lease rental, etc. also, because the complainant themselves have entrusted the respondent with the leasing rights of the units.
- xii. That is important to bring it to the knowledge of the Ld. Authority that it is categorically agreed under the MOU that:
  - a) The unit is allotted to the complainant on the condition that the unit shall be leased through respondent;
  - b) The respondent shall be authorized to lease the unit;
  - c) The complainant has authorized the respondent to finalize the terms and conditions of the leasing with any prospective lessee;
  - d) If the complainant fails to execute the necessary documents/lease deed, then in those circumstances, the respondent shall execute the lease deed;

- e) The complainant shall not raise any objection with respect to terms and conditions of the lease, the lease amount or to whom the units are leased out;
- xiii. That from a bare perusal of the aforementioned terms and conditions of the mou, it is evident that the complainant has invested in the instant project with the sole motive of earning lease rental by getting the subject unit lease through the respondent. it was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself. that the whole idea behind the leasing of the subject unit through the respondent was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the project who, by themselves, could not get big brands to take their units on lease. it is further submitted herein that the complainant has invested in the instant project for earning lease rental can be verified from the fact that under clause 6 of the BBA, it is clearly mentioned that the terms and conditions pertaining to leasing of the unit are mentioned in the mou.
- xiv. That 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.

- xv. That from a mere perusal of the aforementioned submissions, it is evident that physical possession of the subject unit and leasing the unit by himself was never the intent of the complainant. therefore, the present complaint is liable to be dismissed and it is evident from the BBA and mou entered into, the complainant may be directed to accept constructive possession and be in adherence of terms of mou with respect lease obligation thereunder.
- xvi. That is pertinent to mention herein that the complainant, *vide* his complaint, is raising an issue that he has already paid the entire sale consideration and that the respondent is raising additional demands.
- xvii. That 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. 593 per sq. ft., the details of which are mentioned in para 15 herein below, equitably distributed amongst the unit. 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, CESSSES, 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."*

- xviii. 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.
- xix. 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. 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.
- xx. That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the mou, i.e., while he relies on claiming the assured returns basis the clauses of the mou, he completely wishes to deny

the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the mou which are beneficial to him and denies the other.

- xxi. 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 building 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 1<sup>st</sup> lease with the lessee.
- xxii. It is pertinent to mention herein that after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1<sup>st</sup> lease with the lessees. However, the complainant failed to come forward and to do the needful.
- xxiii. Without prejudice to submissions made herein above, it is noted herein that in the mou, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. It is noted herein that 1<sup>st</sup> lease was executed as the building was completed and the fit-out works as per the requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1<sup>st</sup> lease of the units, failed to do the needful.

- xxiv. It is reiterated herein that the complainant under clause 8 (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.
- xxv. It is noted herein that under clause 8 (b) of the mou, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.
- xxvi. That from a mere perusal of the aforementioned submissions, it is evident that the complainant himself has authorized the respondent to finalize the terms and conditions of the lease and categorically agreed to execute a separate lease deed, if required. Further, the complainant himself agreed that in case of his failure to execute a separate lease deed if required, the respondent shall be authorized to execute the lease deed on behalf of the complainant. Therefore, in view of the agreed terms and conditions of the mou, it is submitted herein that the lease deed executed by the respondent on behalf of the complainant are valid as the same are executed as per the terms and conditions of the mou.

- xxvii. Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand the complainant is seeking payment of assured return on the basis of mou, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the mou. It is pertinent to mention herein that the complainant cannot partly rely on the mou and claim their right and shrug off their responsibilities under the mou. That if the complainant are claiming his right under the mou, then he should also be ready to fulfil his responsibility under the mou. It is most humbly submitted that if the Id. authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to leasing of the unit, and payment of fit-out charges under the mou should also be allowed.
- xxviii. That the complainant, *vide* the present complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016.
- xxix. It is also pertinent to mention herein that 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.
- xxx. 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.
- xxxi. It is a matter of fact, that time was essence in respect to the complainant's obligation to make the respective payment. and, as per the agreement so

signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.

- xxxii. It is pertinent to mention herein that in the present complaint, the complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the respondent. It is noted herein that though the respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainant shall be liable to make timely payment of maintenance charges and other related dues.
- xxxiii. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent.
- xxxiv. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated herein below:

S. no.	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	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> 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 more than

		<p>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 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.</p>			<p>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.</p>
2.	19 <sup>th</sup> July 2016	<p>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.</p>	<p>Till date the order in force and no relaxation has been given to this effect.</p>	30 days	<p>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.</p>
3.	8 <sup>th</sup> Nov, 2016	<p>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</p>	<p>8<sup>th</sup> Nov, 2016 to 15<sup>th</sup> Nov, 2016</p>	7 days	<p>The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.</p>



		directed that no construction activity would be permitted for a period of one week from the date of order.			
4.	7 <sup>th</sup> 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 <sup>th</sup> Nov 2017 till further notice.	<b>Till date the order has not been vacated</b>	<b>90 days</b>	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 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.
5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> 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 <sup>th</sup> of Nov,		<b>9 days</b>	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.



		2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.			
6.	29 <sup>th</sup> October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 <sup>th</sup> Oct 2018. By virtue of order dated 29 <sup>th</sup> 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 <sup>st</sup> Nov to 10 <sup>th</sup> Nov 2018.	1 <sup>st</sup> Nov to 10 <sup>th</sup> 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 <sup>th</sup> 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,		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



		and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.			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 <sup>th</sup> October 2019.	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	<b>11<sup>th</sup> Oct 2019 to 31<sup>st</sup> Dec 2019</b>	<b>81 days</b>	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.
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.	<b>04.11.2019 - 14.02.2020</b>	<b>102 days</b>	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 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)	Since the 3rd 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	<b>103 days</b>	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.
			<b>Total days</b>	<b>582 days</b>	

xxxv. That from the facts indicated above, it is comprehensively established 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 stated hereinabove come within the meaning of *force majeure*, as stated above. 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 above and therefore the same is not to be taken into reckoning while computing the completion period 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.

- xxxvi. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. It is noted herein that the complainant has vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainant is entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.
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.1 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.

**F. Findings on the objections raised by the respondent.**

**F. I. Objection regarding the complainant being investor.**

12. The respondent has taken a stand that the complainant is investor 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 31.10.2016, it is revealed that the complainant is buyer, and he has paid a total price of Rs.72,40,590/- 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. 000600000010557 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.

**G. Findings on the relief sought by the complainant.**

- I. Grant the possession of the Unit bearing number i.e., shop no. 15, Ground Floor admeasuring 584 sq. ft. in the project "Neo Square" situated in Sector-109, Village Pawala Khusrupur, Gurugram, Haryana to the Complainant at the earliest with all the amenities and services as agreed between the parties and in accordance with the terms and conditions of the MOU and BBA.**
- II. Direct the Respondent to make payment toward the assured monthly return from October, 2018 onward until now as agreed between the parties under the MOU and BBA along with the interest.**

14. The complainant is seeking unpaid monthly assured returns on as per the terms of the MoU dated 31.10.2016 at the rates mentioned therein and possession of the unit in the project "Neo Square". It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.
15. 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 his grievance.
16. 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.*
17. 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;*

18. 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.
19. 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.
20. The money was taken by the promoter as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
21. The promoter is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines

the promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship.

22. 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 31.10.2016.
23. In the present complaint, the assured return was payable as per clauses 03 and 17 of the MoU dated 31.10.2016, which is reproduced below for the ready reference:

**Clause 18**

*"The Company shall pay a monthly return of Rs.74,168/- (Rupees Thirty-One Thousand Seven Hundred Fifty Only) on the total amount deposited till the signing of this MOU, with effect from 31 October-2018 before deduction of Tax at Source."*

**Clause 21**

*"The builder in terms of its commitment to pay the assured return shall hand over the postdated cheques for each financial year taking into consideration the expected period of completion/possession. These post dated cheques shall not be dishonored for any of the reasons."*

Thus, as per the abovementioned clause, the monthly assured returns were payable @Rs.74,168/- per month with effective date as per clauses 18 and 21 of the MoU

i.e., 31.10.2016 till the possession of the unit i.e., 11.11.2024, after deducting the amount already paid on account of assured returns to the complainant.

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

25. 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 complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

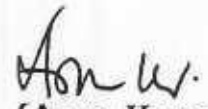
#### **H. Directions of the Authority**

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

- i. The respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.74,168/- per month from the effective date i.e. 31.10.2018 till the possession of the said unit i.e., 11.11.2024 as per the memorandum of understanding dated 31.10.2016, after deducting the amount already paid on account of assured returns to the complainant. *(Inadvertently, vide proceedings dated 27.01.2026, the date of possession letter mentioned as 28.11.2024).*

- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
  - iii. The respondent/promoter is directed to handover possession of the unit to the complainant/allottee in terms of the MoU as well as buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
  - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of Assured Returns within a period of 60 days from the date of receipt of updated statement of account.
27. The complaint stands disposed of.
28. Files be consigned to registry.

  
(Phool Singh Saini)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated : 27.01.2026**