

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

Complaint no. : 1841 of 2025
Date of filing : 30.04.2025
Date of decision : 19.05.2026

Kusum Lata And Arun Kumar
R/o: - L 5 Rama Park Road Opp Aapka Bazaar
Mohan Garden Uttam Nagar West Delhi

Complainants

Versus

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

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Hemant Phogat (Advocate)
Shri Venket Rao (Advocate)

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.
 - A. **Unit and project related details**
2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 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	12.06.2019 (As per pg no.31 of the complaint)
7.	Unit no.	Unit no. priority no. 104 on floor no. 5 th Floor (page no. 34 of the complaint)
8.	Unit area admeasuring	500 sq. ft. (Super Area) (As per pg. no. 34 of the complaint)
9.	Date of MoU	12.06.2019 (As per pg. no. 19 of the complaint)
10.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
11.	Possession clause	Clause 3 of MoU <i>The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate</i> (As per pg. no. 21 of the complaint)
12.	Due date of possession	12.06.2022

		[36 months from signing of the MOU as per the possession clause]
13.	Penalty Clause	<p><i>Clause 4.</i></p> <p><i>"The Company shall pay a Penalty of Rs.36,205/- (Rupees Thirty Six Thousand Two Hundred Five Only) per month on the said Unit, On the total amount received with effect from 13th Dec. 2020 (Effective Date-II) Subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total Sale Consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The penalty shall be paid to the Allottee(s) from end of effective date-II until the offer of possession letter date, on prorata basis."</i></p> <p><i>(As per pg. no. 22 of the complaint)</i></p>
14.	Total basic Sale consideration	Rs. 25,00,000/- <i>(As per pg. no. 21 of the complaint)</i>
15.	Amount paid by the complainant	Rs. 28,00,000/- <i>(As per pg. no. 21 of the complaint)</i>
16.	Occupation certificate	14.08.2024 <i>(As per DTCP site)</i>
17.	Offer of possession	20.09.2024 <i>(As per pg. no. 63 of the REPLY)</i>
18.	Reminders for payment	Letters dated 20.11.2024, 26.10.2024, 11.10.2024, (demand of Rs. 16,95,089/-) [on page 67,68,69 respectively reply]
19.	Reminder for fit out charges	17.12.2024 for Rs. 14,75,000/- [on page 66 of reply]

B. Facts of the complaint

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



- a. That the respondent is a company, working in field of construction and development of residential as well as commercial projects across the country in the name of M/s. Neo Developers Private Limited.
- b. That the complainant Mr. Jaiveer Singh S/o Sh. Dhanpat Singh, R/O H. No - 52, Main Gurgaon Road, Near Radhaswami Satsang Gate, Najafgarh, Dindarpur, Southwest Delhi, New Delhi, Delhi - 110043, is law-abiding citizen, taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
- c. That the respondent i.e., M/S Neo Developers Private Limited and its directors are having its registered office at 32-B, Pusa Road, New Delhi and branch office at 1205-B, 12th Floor, Tower-B, Signature Towers, South City-I, NH-8, Gurugram, Haryana-122001. The respondent is engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
- d. That in or around May, 2019, the complainant came across the project of "M/s Neo Developers Private Limited namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram. The complainant met with representatives of the company who explained the Project to the complainant. Later, the complainant were introduced to Mr. Ashish Anand Director, when they visited the office of respondents situated at Gurgaon. Mr. Ashish Anand, Director and employees of the company explained the project to complainant wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.
- e. It was explained that the brands like Pizza Hut, McDonald's, KFC, Nike, INOX etc have already entered into agreements with the company for opening of an outlet in the project. They further explained the site plan of

- the project in the brochure and explained that the project is situated on Dwarka Expressway and is a front facing development in a corner plot which is 4 side open. Mr. Ashish Anand Director, of the company again assured the complainant that they have already obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan and further assured that the construction of the project will be completed within 36 months of purchasing the unit. It is submitted that the project has been constructed at a distance from expressway, hence, the unit has been sold to the complainant by misrepresenting the facts, wherein a bloomy picture was shown to the complainant. The abovementioned brands with logo were printed on the brochure of the project.
- f. That the director and employees of the company finally induced the complainant to purchase the unit in their down payment plan wherein the company would make the penalty payment/assured return at the rate of Rs. 72.41 per sq. ft. per month for the area purchased if full payment towards the unit is made by the complainant at the time of booking or at the time of execution of memorandum of understanding. Mr. Ashish Anand Director, of the company assured the complainant that there would be no delay in making payment towards the Penalty Payment/ Assured Return under any circumstances whatsoever.
- g. That complainant entered into memorandum of understanding and buyer's agreement on 12.06.2019. Mr. Ashish Anand Director, of the company explained the site plan wherein it was provided that the "Fifth floor or similar" of the building consists of commercial space. The commercial space could be used as a food court/entertainment. Mr. Ashish Anand Director, of the company again assured that there will be no delay in making payment towards the Penalty Payment/Assured Return under any circumstances and the property would be constructed

- and delivered within 36 months period from entering of the MoU since company has already entered into agreements with big brands such as Pizza Hut, McDonald's, KFC, Nike, Inox Cinema etc.
- h. Further, it was assured that the Penalty Payment/Assured Return would be paid till the property is not leased out. Mr. Ashish Anand Director, and its employees assured the complainant that the project would be state-of-the-art and that the company had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. In view of the above assurance an impression was given to complainant that since the project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place which would increase the value of the commercial space in future. based on the above inducement and assurance of Mr. Ashish Anand Director, and the employees of the company, the complainant purchased a commercial space on the fifth floor or similar and executed the memorandum of understanding and builder buyers agreement dated 12.06.2019, having area admeasuring 500 sq. ft. super built-up area at the rate of Rs. 5000/- per sq. ft. wherein commercial unit priority No. 104 was assigned. It is submitted that the respondent agreed to allot space in commercial area on the "5th Floor or Similar". The price of the unit @ Rs. 5000/- per sq ft was arrived after adjusting the one year six months penalty payment in advance. Because of the said reason only the penalty payment w.r.t the unit of the complainant commenced on 13.12.2020 i.e., after one year six months after entering into BBA and MOU.
- i. The complainant paid a sum of Rs. 28,00,000/- towards consideration of the commercial unit priority no. 104, through cheques vide cheques no. 000006 dated 22.04.2019 drawn on HDFC Bank, CR-SBIN0001419 dated 25.04.2019, 831711 dated 20.05.2019 drawn on State Bank of India,

- 000005 dated 25.05.2019 drawn on Punjab National Bank and 000007 dated 25.05.2019 drawn on HDFC Bank which were duly accepted by the Company. It was agreed under the MOU that a monthly Penalty Payment/Assured Return of Rs. 36,205/- shall be payable as Penalty Payment from 13.12.2020.
- j. It is submitted that the respondent company is forcing complainants to sign lease assignment form by which the company intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliterated from its responsibility to pay the monthly penalty payment/assured return and threatens that if the complainants do not sign the lease assignment form, then the company will forfeit the unit in accordance with MOU. This shows that the company from the inception had no intention to pay the penalty payment/assured return to the buyers and had prepared biased MOU to suit its whims and wishes.
- k. That the respondent sent a reminder email for signing lease assignment form dated 10.12.2020. It is submitted that no lease assignment could have been entered into, as the project was incomplete at the relevant time, and the unit could not have been leased out prior to obtaining the completion certificate and occupation certificate, which the respondent had not received at the time of sending the email dated 10.12.2020. Furthermore, the respondent's claim that the unit has been leased to a third party responsible for making penalty payment/assured returns is highly unbelievable. It is inconceivable that a third party, who had not received possession of the unit, would have entered into an agreement with the respondent for a project lacking a completion certificate and would begin making payments to the buyer without first generating rental income from the unit.

- l. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of almost 3 years in terms of Mou and buyers agreement. There is no sign of construction of the tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment Zone were shown in the brochure. It has also come into complainant's, knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the penalty payment and compete the project.
- m. The respondent at the time of entering the Mou made misrepresentation with respect to the project and it is tower/buildings. The builder has not completed the construction of other building/tower having inox cinema, food court, entertainment zone and service apartment etc. in accordance to the brochure of the site plan as given by the respondent.
- n. The Respondent's claim of having an agreement with INOX is not credible. The building lacks essential features like "stadium seating" or "tiered seating" which are necessary for a cinema to provide clear views of the screen for all viewers. Without these features, it is highly improbable that INOX would occupy the space. Furthermore, even if an initial agreement with INOX existed at the commencement of or before the start of the project, it may no longer be valid due to the Respondent's failure to meet their obligations to build features like "stadium seating" or "tiered seating". Therefore, it is hereby contended that the respondents' claim regarding a valid and subsisting agreement with INOX is without merit and should be disregarded in the present proceedings.

- o. The respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. Further, by refusing to give Penalty Payment/Assured Return and delayed possession compensation in terms of clause 5.6 of the buyers agreement dated 12.06.2019, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement entered by the parties.
- p. The company has issued a reminder-1 for demand notice and offer of possession via email dated 11.10.2024 stating that the occupation certificate has been received and possession is now being offered, subject to clearance of outstanding dues which is to the tune of Rs. 16,95,089/- which is not in accordance to the MOU and BBA. Despite previously committing to penalty payment/assured return, the company never paid any penalty payment/assured return and is now demanding full payment for possession, warning that delays will incur holding charges, CAM charges, and interest per the builder buyer agreement.
- q. It is submitted that the original payment plan, annexed with the MoU dated 12.06.2019, explicitly stated that at the time of offer of registration, the company would charge IFMS, Stamp Duty, Other Charges as applicable, and EDC+IDC. However, the new demand raised via email dated 11.10.2024 is not in consonance with the original Annexure-1 of the payment plan and is therefore illegal, null and void as the company respondent cannot charge as to what is not included in the MOU and BBA.
- r. It is also submitted that the email dated 11.10.2024, clearly provides that the unit is allotted on 14th Floor and whereas email dated 10.12.2024 points out that the unit type allotted to the complainant is office area which is allotted on the 14th Floor.
- s. It is submitted that the complainant went to the project site in february, 2025 wherein on physical inspection, it came to the knowledge of the

complainant that the which was initially sold and allotted to the complainant on the "5th or Similar" floor converted into office unit situated on 14th floor without any prior intimation and whereas the food court and entertainment area is actually situated on the 3rd floor of the project. under these circumstances, the respondent is liable to allot the complainant a unit on the 3rd floor, where the food court is actually situated, in accordance with the agreed terms.

- t. That the respondent is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, misguiding the complainant, keeping them in dark and putting their future at risk by rendering them income less.
- u. That in accordance with Clause 5.6 of the buyer's agreement, it is incumbent upon the respondent to compensate for the delay in possession. as per the said clause, the respondent is liable to pay delayed possession compensation at the rate of Rs.10 per sq. ft. per month from June 2022 onwards. Therefore, it is just and necessary that the Respondent be directed to comply with this contractual obligation and make the due payments accordingly.
- v. That the complainants are constrained to file the present complaint seeking the payment of penalty payments at the rate of Rs. 72.41 per sq feet amounting to Rs. 36,205/- for unit priority no. 104 on 14th Floor which is liable to be allotted on the 3rd Floor of the Project, admeasuring 500 sq feet, since December, 2020 till the handing over the possession/ Lease out of the property after the completion of the construction. The respondent may be directed to execute the sale deed in favour of the complainants with respect to the commercial space purchased by the complainant. Further, to set aside Illegal Demands raised in contravention of Annexure -1 of the MOU dated 12.06.2019 signed by the parties. Also, to set aside the email dated 10.12.2024 wherein the

- respondent has unilaterally leased out the space and also demanded illegal demand in the name of Fit-Out charges to the tune of Rs. 14,75,000/-. The complainants reserves the right to amend the submission made herein, to produce documents and alter the prayer as and when deem necessary or on the direction of this Hon'ble tribunal.
- w. It is submitted that the respondent-company without first conveying the property in the name of the complainant proposed to lease out the unit to a third party without the permission of the complainant and without even seeking the consent on terms of the conditions for such lease deed. Illegal Demand of fitout charges of Rs. 14,75,000/- has been raised in order to set off the Penalty Payment/Assured return due and payable by the respondent. Neither date of commencement of the lease has been provided in order to enable the complainant to take the lease amount from the prospective lessee. Thus, it is apparent that builder is exploiting its dominant position and without fulfilling its promises directing the complainant to obey by the reciprocal promises so made, which can be avoided by the complainant. Hence, the lease deed as well as the fitout charges demanded by the respondent are liable to be set aside being illegal and beyond the terms and conditions of the agreement.
- x. That it is a well-settled principle of law that a party that fails to perform its part of the contractual obligations cannot compel the other party to perform its obligations under the contract. The respondent, despite being in continuous default, is attempting to coerce the complainant into performing his obligations under the BBA and MOU, including the signing of the lease assignment form and making further payments. This demand is wholly unsustainable and unlawful, as the respondent has neither fulfilled its commitment to the Penalty Payment/Assured Return nor completed the project within the stipulated timeline. The respondent

cannot take advantage of its own wrong and force the complainant to comply with its unjustified demands.

- y. That in view of the above, the respondent is not entitled to demand any further compliance from the complainant unless and until it fulfils its own obligations under the MOU and BBA, including but not limited to, the payment of all outstanding Penalty Payments/Assured Return along with interest and ensuring the completion of the project as per the agreed specifications.
- z. The complainants declares that he has not filed any other complainant, petition etc. before any other Court or Tribunal seeking same or similar relief.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay assured returns (i)@ Rs. 72.41 per sq feet per month amounting to Rs. 36,205/- for unit priority no. 104, since december, 2020 till handing over the possession.
- II. To execute the sale deed in favour of the complainant for the unit immediately.
- III. The respondent be directed to pay delayed possession compensation @ Rs. 10 per sq. ft. per month from june,2022 in terms of clause 5.6 of the buyers agreement.
- IV. The respondent be directed to allot the complainant a unit on the 3rd floor, where the food court is actually situated.
- V. To set aside the illegal demand in the letter dated 11.10.2024.
- VI. Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant and therefore set aside the letter dated 10.12.2024.
- VII. To direct the Respondent to not charge what is not part of the MOU and BBA which was raised via demand letter dated 11.10.2024.
- VIII. To direct the respondent to pay the interest/delayed possession compensation as per RERA Act.

D. Reply by the respondent

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

- a) That the complainant have filed this present complaint by concealing the material fact about the demand being raised by the respondent company with respect to the fit out of the unit allotted to the complainant. That by way of filing the present complaint the complainant is trying to negotiate on the Fit out demand being raised by the respondent and also to gain some more time to make the payment.
- b) That it is pertinent to mention here that, the respondent after making the dues of the DTCP and other formalities of the department which also includes the completion of construction have obtained the completion certificate/ occupancy certificate from the department of DTCP.
- c) The respondent seeks to raise the following objections/submissions, each of which have been taken in the alternative and are without prejudice to the other. Nothing contained in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainant in the complaint.
- d) At the outset, the complainants have erred gravely in filing the present complaint and misconstrued. It is imperative to bring the attention of this 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.
- e) 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", 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 22/04/2019, whereby seeking allotment of Unit No. 104, admeasuring 500 Sq. Ft Super Area on the 14th Floor of the Project having a Basic Sale Price of Rs. 5000/-. The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

- f) That since the complainant had opted for the investment return plan, a memorandum of understanding dated 12.06.2019 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 10.07.2020 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.
- g) That by no stretch of imagination it can be concluded that the complainants herein are "allottee/consumer." 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.
- h) That at this stage, it is categorical to highlight that the complainant is trying to mislead this Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "investment agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said

unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

- i) That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. Without prejudice to the rights of the respondent, at the utmost bonafide, the 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.
- j) It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 12.06.2019 for shop no. 104 on 14th floor admeasuring 500 sq. ft super area in the project.
- k) It is humbly submitted that under the scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property. To elaborate this ground, it is necessary to reproduce certain provisions of the RERA Act, 2016
- l) That a perusal of section 13 (2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.
- m) It is submitted that the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance where the project was an ongoing project and provisions of the act were

being made applicable, in such a situation, a strict interpretation of the statutory provisions are being mandated

- n) That it is submitted that the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under Section 13. It is submitted that section 13 nowhere mentions the agreements pertaining to assured return are covered under the RERA Act, 2016, it is imperative that a strict interpretation is given to its provisions while deciding the matters pertaining to assured return.
- o) A perusal of the above provisions would show that the RERA 2016 only envisages the enforcement of the Act and rules /regulations made there under. It is submitted 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.
- p) It is submitted that even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. It is submitted that the above 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. It is submitted 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.
- q) In this regard the aims and object and the obligations and compliances required to be made by a Promoter as enshrined in the RERA Act, 2016 may be examined. It is submitted that 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 Real Estate (Regulation and Development) 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.

- r) That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the mou between the parties. it is submitted that the Authority is exercising its power and jurisdiction as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA 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. However, in the present matter the complainant 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 RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the mou, by virtue of which the complainant is raising their grievance.

- s) It is pertinent to note herein 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. It is most humbly submitted herein that 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.
- t) That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the respondent had no other alternative but to stop the payment of any return etc.
- u) Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" 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/complainant due above said prevailing confusion/anomaly. 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.
- v) Therefore, if depositor accepts any deposit, it immediately required to take prior approval from the regulator as mentioned under Schedule I

of the BUDS Act. And therefore, for the present matter, the regulator shall be ministry of corporate affairs as provided under last entry of Schedule I.

- w) It is pertinent to mention herein 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. It is also pertinent to note herein 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.
- x) 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.
- y) In catena of the above discussion, it is submitted that in the present complaint the respondent has offered assured returns to the complainant 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.
- z) It is also pertinent to mention herein 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.
- aa) That vide judgment dated 29.09.2020 passed by The Uttar Pradesh Real Estate Appellate Tribunal at Lucknow in appeal bearing no. 211/2022, titled as "Meena Gupta vs One Place Infrastructure Pvt Ltd", the Appellate Tribunal held that Assured Returns are independent Commercial arrangements between the parties which sometimes 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. Further the Appellate Tribunal held that there is no provision under the Scheme of the Act 2016 for examining and deciding the issue relating to the provisions of assured return.
- bb) It is pertinent to mention that the Ld. Court of Anil Kaushik, Additional Civil Judge (Sr. Division), Gurugram vide its order dated 19.04.2022 in the complaint bearing No. CS 338 of 2022 titled as Naresh Prasad Vs. M/s Vatika Ltd & Anr. has held that it is unsafe for a company to continue with such unregulated assured return schemes after coming into the force of the BUDS Act.
- cc) That the Hon'ble Real Estate Regulatory Authority, Punjab in its judgment dated 30.06.2020 in the matter titled as "Daldeej Kaur Gill vs M/s Sushma Buildtech Limited (CC No. 1417 of 2019)" held that the payment of assured return does not fall within the ambit of the RERA

Act, 2016. Thus, any relief pertaining to assured return claimed thereof, is not covered under the provisions of the RERA Act, 2016.

- dd) It is also noteworthy that the grievances of the Complainant are all arising from the MOU which is not within the jurisdiction of the Authority, therefore, there arise no grounds that can be adjudicated by this forum and thus, present complaint deserves to be dismissed at the very outset for want of jurisdiction.
- ee) That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
- ff) It is submitted that the as per clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the mou or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.
- gg) It is submitted that as per clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made.
- hh) Accordingly, as per clause 11 of the mou the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.

- ii) It is pertinent to mention that the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons.
- jj) It is to be noted that the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs. 24,00,000/- against the Total due Amount of Rs. 35,50,932/-. It is to be noted that there is still an outstanding due of Rs. 16,95,089/- which is to be paid by the complainant against the unit booked as per the demand letter dated: 20.09.2024.
- kk) That without prejudice to the right of the respondents and without admitting to any of the averments of the complainant, since this hon'ble court has stated in other cases of respondent that this Hon'ble Tribunal has the jurisdiction to entertain the MOU entered into the parties.
- ll) That it is pertinent to mention here that the complainant failed to abide to the terms of the builder buyer agreement and memorandum of understanding executed by and between the parties.
- mm) That the respondents had substantially failed to discharge its obligations imposed upon them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.
- nn) That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the

- complainant and the respondents, the returns were to be paid from 10/07/2020 till the commencement of first lease. It is also submitted that as per clause 8 (a) of the MOU, the respondent herein had duly authorised the complainant to put the said unit on lease. That is because it contained a "lease clause" which empowers the complainant/developer to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.
- oo) That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the 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 complainant then in that event the complainant shall bear the same from its own pocket.
- pp) That apart from the above it is worth mentioning here that the allottee is not entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease. The decision taken and terms negotiated by the company shall be final and binding on the allottee(s).
- qq) That it is pertinent to mention here that the respondent after the various request made by the buyers and considering the same have revised the Fit-Out charges to Rs. 2500/- per Sq. Ft. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.
- rr) It is a matter of fact, that time was essence in respect to the complainant obligation for making 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.

- ss) That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. It is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as vat, interest, registration charges, security deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and mou.
- tt) It is further pertinent to mention here that the complainant failed to clear the outstanding dues of Rs. 16,95,089/- payable against the unit.
- uu) That in the present case, the complainant has not obliged its duties as per the mou & buyer's agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault. It is relevant to mention that the complainant herein has clearly violated the duties of an allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the allottee and the builder/promoter.
- vv) It is humbly submitted that the respondent is raising the vat demands as per government regulations. That the rate at which the respondent is charging the vat amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been

demanded from the complainant, as the same has been assessed and demanded by the competent authority.

ww) It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the respondent is not appearing in the list of builders, as circulated by the excise & taxation department haryana, who have opted for the lumpsum scheme/amnesty scheme under Rule 49A of HVAT Rules, 2003.

xx) It is further submitted that the demand of VAT is done as per Clause 11 of the buyer's agreement. The aforesaid mentioned clause clearly states that the allottee is liable to pay interest on all delayed payment of taxes, charges etc. it is noted herein that the complainants are liable to pay the vat demands as the respondent has not availed any amnesty scheme.

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

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainant.

- I. Direct the respondent to pay assured returns (i) @ Rs. 72.41 per sq feet per month amounting to Rs. 36,205/- for unit priority no. 104, since December, 2020 till handing over the possession.
- II. To execute the sale deed in favour of the complainant for the unit immediately.
- III. The respondent be directed to pay delayed possession compensation @ Rs. 10 per sq. ft. per month from June, 2022 in terms of clause 5.6 of the buyers agreement.
- IV. The respondent be directed to allot the complainant a unit on the 3rd floor, where the food court is actually situated.
- V. To set aside the illegal demand in the letter dated 11.10.2024.
- VI. Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant and therefore set aside the letter dated 10.12.2024.
- VII. To direct the Respondent to not charge what is not part of the MOU and BBA which was raised via demand letter dated 11.10.2024.

VIII. To direct the respondent to pay the interest/delayed possession compensation as per RERA Act.

11. All the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
12. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 12.06.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
13. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.
14. 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.

15. It is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
16. 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;*
17. 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.
18. 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.

19. 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.
20. 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.
21. 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 12.06.2019.
22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 12.06.2019, which is reproduced below for the ready reference:

Clause 4.

"The Company shall pay a Penalty of Rs.36,205/- (Rupees Thirty Six Thousand Two Hundred Five Only) per month on the said Unit, On the total amount received with effect from 13th Dec. 2020 (Effective Date-II) Subject to

*TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total Sale Consideration; the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The penalty shall be paid to the Allottee(s) **from end of effective date-II until the offer of possession letter date, on prorata basis.**"*

23. Thus, as per the abovementioned clause the assured return was payable @Rs.36,205/- per month w.e.f. 13.12.2020 until the offer of possession.
24. The Authority is of the view that as per the MoU dated 12.06.2019, it was obligation on part of the respondent to pay the assured return till the offer of possession. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024. Accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.36,205/- from the date i.e., 13.12.2020 till valid offer of possession after obtaining occupation certificate or completion certificate from the competent authority.

Delay Possession Charges:

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

"Section 18: - Return of amount and compensation

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

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

26. Clause 3 of the MoU dated 12.06.2019 provides for handing over of possession and is reproduced below:

"The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate"

27. **Due date of possession:** As per clause 3 of the MoU dated 12.06.2019, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of execution of agreement being later. Thus, the due date of possession come out to be 12.06.2022.

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

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

29. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.05.2026 is 8.80%.

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

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

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is being liable to be paid to the complainant in case of delay possession charges.
32. On consideration of documents available on record and submissions made by the complainant, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 12.06.2022.
33. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
34. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU

dated 12.06.2019. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainant allottee pay a monthly assured return of @Rs.36,205/- on the total amount received with effect from 13.12.2020 till the offer of possession. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as @Rs.36,205/- per month whereas the delayed possession charges are payable approximately Rs. 25,200/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

35. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
36. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 12.06.2019, the promoter had agreed to pay to the complainant allottee @Rs.36,205/- with effect from 13.12.2019 till valid offer of possession after obtaining occupation certificate from competent authority.

37. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ @Rs.36,205/- with effect from 13.12.2019 till valid offer of possession after obtaining occupation certificate from competent authority.
38. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
39. Further, complainant is seeking relief with regard to the waiver of charges demanded by the respondent in demand letter dated 11.10.2024 which was in reference to the demand notice and offer of possession dated 20.09.2024. Since each component of the demand stands on a different factual and contractual footing, the same is being examined under separate heads as under :-

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

"11.

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

In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of

the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case, instead of paying individually for the unit if the promoter has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainant viz- à-viz the total area of the particular project. The complainant will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

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



- **FTTH :** The Authority takes a note that clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.
- **Interest demanded:** The Authority has perused the demand letter and offer of possession letter dated 20.09.2024, wherein an amount of Rs.5,44,157/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs.28,00,000/- out of the total basic sale consideration of Rs. 25,00,000/- as delineated under clause 3 of MoU. In terms of the payment plan delineated under MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 20.09.2024 and the OC was received only on 14.08.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU.
- The Authority has perused the demand letter-cum-offer of possession dated 20.09.2024 wherein an amount of Rs.5,44,157/- has been levied towards interest on delayed payment. A careful examination of the record reveals that the complainant has already paid a sum of Rs.28,00,000/- against the total basic sale consideration of Rs.25,00,000/- as stipulated under the MoU dated 12.06.2019. As per the payment plan annexed to the MoU, the complainant was required to pay only such balance amounts as were payable towards IFMS, EDC/IDC, registration charges, stamp duty and other applicable charges at the stage of offer of possession.

- It is an admitted position on record that the occupation certificate for the project was obtained by the respondent only on 14.08.2024 and the offer of possession was thereafter issued on 20.09.2024. Therefore, the liability of the complainant to clear the charges payable at the time of possession could arise only upon issuance of a valid offer of possession after obtaining the occupation certificate from the competent authority. Prior thereto, the respondent could not have fastened any liability upon the complainant for alleged delayed payments relating to possession-linked charges.
- The Authority further observes that although the respondent has sought to levy interest on delayed payment, no documentary material has been placed on record demonstrating the basis of such computation, the date from which the alleged default commenced, the specific demand notices against which such interest has been calculated, or the contractual provision authorising the recovery of the amount claimed. Mere reflection of an amount in the statement of account cannot, by itself, establish the legality or enforceability of such demand. The burden lies upon the respondent to substantiate the levy by producing cogent material showing that the complainant had defaulted in payment of a valid and payable demand in terms of the agreement executed between the parties.
- In the present case, the respondent itself failed to offer possession within the stipulated period and obtained the occupation certificate much after the contractual due date of possession. In such circumstances, and in the absence of any convincing evidence establishing a default attributable to the complainant, the levy of interest on delayed payment appears arbitrary, unsupported by the record and contrary to the contractual arrangement between the parties. Consequently, the respondent is not entitled to recover the

aforesaid amount towards interest on delayed payment from the complainant.

40. 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 dated 10.12.2024, wherein the demand for fit-out charges of Rs.14,75,000/-, which is on record. It is a matter of fact after observing the material placed on record that the allottee has authorized the developer to finalize the terms of leasing the said unit, which is evident from clause 9 (a). the same has been reiterated hereunder.

Clause 9(a)

That the Allottee(s) herein authorizes the Company to finalize the terms for leasing the said unit with any prospective lessee. The Allottee(s) undertakes not to object to the terms of the lease and further undertakes not to object as to whom the Lessee shall be or what shall be the lease amount or usage. The choice of the tenant, usage duration of lease and quantum of rent shall be in exclusive domain of company and allottee(s) shall at no point of time object to or interfere in the same at any level.

Vide proceedings dated 19.05.2026 the counsel for the respondent states that as per the clause 8 of the MoU executed between the parties the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

Clause 8(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."

41. Upon understanding of the said clause, it is clear that Clause 8(d) of the MoU do mention about the allottee 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 complainant 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.
42. 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 complainant under the MoU.
43. The complainant has sought a direction to allot a unit on the 3rd floor of the project on the ground that the food court and entertainment area are presently located on that floor. However, the material available on record, including the MoU and Buyer's Agreement dated 12.06.2019, reflects that the allotment made in favour of the complainant was described as "5th Floor or Similar" and not as a specifically identified unit on the 3rd floor. The contractual relationship between the parties is governed by the terms and conditions mutually agreed upon in the executed documents, and no provision has been pointed out which confers upon the complainant a unilateral right to seek allotment of a different unit on a floor of his choice.

44. The Authority is of the considered view that once the allotment terms stand crystallized through the executed contractual documents, a direction for substitution of the allotted unit with another unit situated on a different floor cannot be granted merely on the basis of subsequent commercial preferences or perceived locational advantages. In the absence of any contractual or statutory right establishing entitlement to a unit on the 3rd floor, the said relief is devoid of merit and is liable to be declined.
45. Further the complainant is seeking relief w.r.t execution of conveyance deed of the unit in question in his 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.

G. Directions of the Authority

46. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent/promoter is directed to pay the assured returns to the complainant at the agreed rate i.e., @Rs.36,205/- from the effective date as per clause 4 of the MoU i.e., 13.12.2020 till offer of possession, after deducting the amount already paid on account of assured return to the complainant, if any.
 - II. The respondent/promoter is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

- III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge FTTH and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020*.
- IV. The respondent is directed to recover development charges 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 shall not charge anything from the complainant which is not part of the MoU or buyers' agreement dated 12.06.2019.
- VI. The respondent is directed to supply a copy of the updated statement of account after adjusting Assured Returns within a period of 30 days to the complainant.
- VII. 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.
47. Complaint stands disposed of.
48. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.05.2026