

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

Complaint no.: 6637 of 2025
Date of complaint: 15.01.2026
Date of Decision: 22.05.2026

Jinny Sohal

R/o: M3M Woodshire Apartment, B-4, 401, Sector-107, Near Dharampur Village Main Road, Gurugram, Haryana- 122006

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Office at: - Neo Square, village pawla Khusrupur, Sector-109, Gurgaon

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Hemant Phogat (Advocate)

None

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made

thereunder or to the allottee as per the agreement for sale executed *inter se*.

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	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.	Unit no.	3 rd Floor (page no. 35 of complaint)
7.	Unit area admeasuring	300 sq. ft. (page no. 35 of complaint)
8.	Buyer's agreement	30.08.2022 (page no. 28 of complaint)
9.	MOU	23.12.2021 (page no. 51 of complaint)
10.	Possession clause	3. the company shall complete the construction of the said Building/Complex within which the said space is located within 36 months from the date of execution of agreement or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.
11.	Due date of possession	30.08.2025 (calculated from the date of agreement)

12. Assured return clause	4. The Company shall pay a penalty of Rs. 37,125/- per month on the said unit. On the total amount received with effect from 21.01.2022 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 the end of effective date II until the offer of possession letter date , on prorata basis. (page no. 54 of complaint)
13. Basic sale consideration	Rs. 41,69,280/- (as per payment plan at page 50 of complaint)
14. Amount paid by the complainant	Rs. 32,49,012/-
15. Occupation certificate	14.08.2024
16. Offer of possession	25.10.2024 (page no. 91 of complaint)
17. Cancellation letter	24.11.2025 (page no. 131 of complaint)

B. Facts of the complaint

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

- I. That after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainant booked a commercial space in the area designated for shop/restaurant space bearing priority no. 156 on 3rd floor, measuring super area of 300 sq. feet in the upcoming project of the respondent named "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 35,20,104/- and

- total sale price of Rs. 41,69,250/- and the complainant has paid a sum of Rs. 32,49,012/- in respect of her space/unit.
- II. That the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
 - III. That the buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 20.01.2021 & 23.12.2021.
 - IV. That the complainant has abided by all the terms of MOU and builder buyer agreement dated 20.01.2021 and MOU dated 23.12.2021 and has made all the payments/ installments in a timely manner as and when demanded by the respondent as per the payment schedule of the builder buyer agreement.
 - V. That as per clause-4 of the MOU dated 13.04.2018, the respondent was/is under legal obligation and was bound to pay the monthly assured return of Rs. 37,125/- on the total amount receipt w.e.f. 21.01.2022 until the commencement of first lease on the said unit.
 - VI. That the respondent/ developer has failed to honour its own commitment of paying the monthly assured returns and has not paid a single installment towards the monthly assured return. The complainant has been communicating with the respondent/ developer and have made several requests in respect of the payment of the assured returns by visiting the respondent/ developer personally but the respondent/ developer has not paid any heed to the just and

- genuine demands of the complainant and has been lingering on the demands of the complainant on one pretext or the other.
- VII. That upon regular and constant communications made by the complainant in regard to payment of due monthly assured returns, the respondent promised and conveyed to the complainant that the monthly assured returns accumulated shall be adjusted towards payment and final installments due in respect of the unit/space at the time of offer of possession.
- VIII. That the respondent after receiving of occupation certificate issued demand notice and officer of possession letter dated 24.12.2024 wherein contravention to the terms of builder buyer agreement and MOU dated 20.01.2021 & 23.12.2021 have raised unlawful demands on account of development charges to the tune of Rs. 2,12,400/-, FTTH Charges to the tune of Rs. 6490/-, Labour Cess to the tune of Rs. 7500/ which are not as per the payment schedule (Annexure-1) of the buyers agreement.
- IX. That the respondent further in contravention of the buyers agreement dated 20.01.2021 and MOU dated 23.12.2021 raise demand towards the fitout charges vide letter dated 28.02.2025 wherein demanded and amount of Rs. 12,39,000/- on account of fitout charges from the complainant.
- X. That the complainant after receiving of offer of possession letter dated 24.12.2024 and fitout demand letter dated 28.02.2025 confronted and visited the office of respondent and requested the respondent to withdraw the demands raised on account of fitout charges as the said charges were never disclosed to the complainant at the time of the

booking of the unit and neither such charges are defined under the terms of the existing MOU and buyers agreement executed with the respondent and further requested the respondent to adjust the pending monthly assured returns towards the payment due towards the unit as per Annexure-1 payment plan of the buyers agreement as per the commitment of the respondent and also to waive of the demands pertaining to development charges, FTTH Charges, Labour cess.

- XI. That the complainant made several follow ups with the respondent by visiting at their office and also communicated with the respondent through e-mails to provide a revised ledger / statement of account in respect of the unit after the adjustment of pending monthly assured returns and to pay the pending assured returns, but the respondent completely denied to adjust the pending assured returns toward the final installment to be paid by the complainant and failed to provide any revised statement of account to the complainant.
- XII. That the respondent shared a lease deed dated 30.06.2025 with the lessee namely M/s Vexto Commercials Pvt. Ltd. along with BOQ mentioning the workmanship and cost of work to be carried upon the unit of the complainant and demanded fitout charges on account of leasing made with the lessee namely M/s Vexto Commercials Pvt. Ltd.
- XIII. That the respondent vide letter dated 28.02.2025 demanded fitout charges for the lessee namely World of Shalom Restaurants (P) Ltd. and as per the lease deed dated 30.06.2025 the respondent has leased out the unit to a different lessee namely M/s Vexto Commercials Pvt. Ltd.

- XIV. That it is evident that the respondent has raised fitout expenses from the complainant on account of lease made with different lessees and neither the complainant has received any lease rentals from the respondent and the demand raised by the respondent on account of fitout charges is nothing but a tactic to illegally extort money from the complainant.
- XV. That several allottees has filed the complaint before the Hon'ble Authority HRERA Gurugram in pretext of the above said demands pertaining to development charges, FTTH Charges, Labour cess and FITOUT Charges and the Hon'ble Authority has already passed order in the said complaints whereby it held labour cess and FTTH Charges as not maintainable and further made specific directions to the respondent pertaining to demands related to the FITOUT Charges and Development charges and in the absence of complying with such directions the demands raised in the current format where held not maintainable.
- XVI. That the respondent further by acting in arbitrary manner cancelled the unit of the complainant vide letter dated 24.11.2025 on the account of reminder notice dated 25.10.2025 raised by the respondent on account of fitout charges even though the said fitout charges are not part of sale consideration of the unit and neither such charges are part of payment schedule of the buyers agreement dated 20.01.2021.
- XVII. That the complainant never received any reminder letters dated 24.12.2024, 14.02.2025, & 22.03.2025 from the respondent as mentioned in allotment cancellation letter dated 22.11.2025.

- XVIII. That it is pertinent to mention that the complainant were always ready and willing to pay the pending installment at the time of offer of possession, subjected to that the respondent adjusted the pending assured returns in the final installment at the time of possession as per their own commitment, but the respondent completely denied to fulfill the commitment on their part to adjust the pending assured returns at the time of final installment during offer of possession.
- XIX. That till today the complainant have not received any satisfactory reply from the respondent regarding the restoration of their unit and payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter dated 24.12.2024 & letter of fit out charges dated 25.10.2025 and therefore, the complainant is suffering from harassment and is going through a lot of mental and financial agony.
- XX. That the respondent has committed grave deficiency in services by not paying the assured returns, by unlawfully cancelling the unit of the complainant and further by not paying the committed assured returns and by demanding charges in contravention to the terms of the buyers agreement, which is immoral, illegal and amounts to unfair trade practice.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- (i) Direct the respondent to set-aside the cancellation letter dated 24.11.2025 and direct the respondent to restore the unit of the complainant.

- (ii) Direct the respondent to make pay the due monthly assured returns as per the terms of the MOU dated 23.12.2021.
 - (iii) Direct the respondent to withdraw and waive off the demands in respect of Development Charges, FTTH Charges, labour cess charges raised in letter dated 24.12.2024.
 - (iv) Direct the respondent to withdraw and waive off the demands towards fit out charges of Rs. 12,39,000/- vide letter dated 28.02.2025 & 25.10.2025 since there is no tenant on respective unit.
 - (v) Direct the respondent to get the conveyance deed/sale deed executed in favour of complainant.
 - (vi) Direct the respondent not to charge anything which is not part of payment schedule of buyer's agreement dated 20.01.2021.
5. The respondent has not filed reply till date. The authority sent notice which is duly served to the respondent-builder to appear and argue in the matter but on hearing dated 30.01.2026, 27.02.2026, 20.03.2026, 17.04.2026 it failed to appear and argue the matter. Even today also none appeared on behalf of respondent. It shows that the respondent was intentionally delaying the procedure of the Authority by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds the case exparte against the respondent.
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.

D. Jurisdiction of the authority

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

D.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.

D.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. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking assured return.

E. Findings on the relief sought by the complainant.

- i. Direct the respondent to set-aside the cancellation letter dated 24.11.2025 and direct the respondent to restore the unit of the complainant.**

11. The complainant has pleaded that the respondent has cancelled the allotted unit of the complainant. The Authority is of the view that the cancellation of the unit is invalid as the complainant has already paid a substantial amount of Rs. 32,49,012/- out of sale consideration of Rs. 41,69,280/-.

- ii. Direct the respondent to make pay the due monthly assured returns as per the terms of the MOU dated 23.12.2021.**

Assured Return

12. In the instant complaint, the complainant duly booked a unit located on the 3rd Floor admeasuring 300 sq. ft. in the respondent's project namely, Neo Square situated at Sector-109, Gurugram. The Memorandum of Understanding (MOU) was executed between the parties dated 23.12.2021 and the builder buyer agreement was executed on 30.08.2022 between the parties.

13. The complainant in the present complaint is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 23.12.2021. The complainant has submitted that as per clause 4 of the said MoU, it was agreed that the respondent would pay monthly penalty charges of Rs.37,125/- with effect from 21.01.2022 until the offer of possession letter date. The complainant is seeking unpaid assured return on monthly basis as per the MoU dated 23.12.2021 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.

14. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 23.12.2021, which is reproduced below for the ready reference:

4. The Company shall pay a penalty of Rs. 37,125/- per month on the said unit. On the total amount received with effect from 21.01.2022 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 the end of effective date II until the offer of possession letter date, on prorata basis.

15. Thus, the assured return was payable @Rs.37,125/- per month w.e.f. 21.01.2022, till the offer of possession letter i.e., dated 25.10.2024.

16. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 23.12.2021, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 23.12.2021. Further, it is to be noted that on 14.08.2024 the occupation certificate for the unit was received and thereafter the possession of the unit was offered on 25.10.2024. Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.37,125/- per month from the date i.e., 21.01.2022 till the offer of possession letter i.e., dated 25.10.2024.

iii. Direct the respondent to withdraw and waive off the demands in respect of Development Charges, FTTH Charges, labour cess charges raised in letter dated 24.12.2024.

iv. Direct the respondent to withdraw and waive off the demands towards fit out charges of Rs. 12,39,000/- vide letter dated

28.02.2025 & 25.10.2025 since there is no tenant on respective unit.

17. The complainant has raised objection towards the fit out charges raised by the respondent vide offer of possession and are seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The Authority observes 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:

*(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.*

18. 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.

19. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainant.

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

- **Labour cess**

21. 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 builder who is solely responsible for the disbursement of said amount.

• **Development charges**

22. 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"

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

the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the 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.

- **FTTH Charges**

24. The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. 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.

- **Holding charges**

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

26. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-
- "134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*
27. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.
- v. **Direct the respondent to get the conveyance deed/sale deed executed in favour of complainant.**
28. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
29. Since the respondent promoter has obtained occupation certificate on 14.08.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

vi. **Direct the respondent not to charge anything which is not part of payment schedule of buyer's agreement dated 20.01.2021.**

30. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU.

F. Directions of the authority

31. 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):

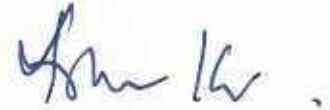
- i. The respondent/promoter is directed to pay assured return/penalty charges to the complainant at the agreed rate i.e., @ Rs. 37,125/- per month from the date i.e., 21.01.2022 till the offer of possession letter dated 25.10.2024 after deducting the amount, if any already paid on account of assured return to the complainant.
- 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, from the complainant and 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 get the conveyance deed of the allotted apartment executed in favour of the complainant 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 respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU.

v. The complainant is directed to pay outstanding dues, if any, after adjustment of payable assured return.

32. Complaint stands disposed of.

33. File be consigned to registry.

Dated: 22.05.2026



(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM