BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**4264 of 2025**
Date of filing of complaint:	**26.08.2025**
Date of Order:	**23.04.2026**

Rajeshwar Sirohi
R/o: J-201, Behind 32nd Milestone, Vijay Rattan Vihar, Sector-15, Part-II, Gurugram-122001 **Complainant**

Versus

M/s Neo Developers Private Limited.
Regd. office: 32-B, Pusa Road, New Delhi-110005.
Corporate Office at: 1507, Tower-D, Global Business Park, Gurugram-122022. **Respondent**

CORAM:
Shri Phool Singh Saini **Member**

APPEARANCE:
Shri Vivek Kumar (Advocate) Complainant
Shri Dushyant (Advocate) 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. 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. No.	Particulars	Details
1.	Name of the project	"Neo Square"
2.	Location of the project	Sectors 109, Gurugram
3.	Nature of the project	Commercial
4.	Project Area	3.08 acres
5.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7.	Unit and Floor no.	07, 1st floor (As per page no. 67 of the complaint)
8.	Unit area admeasuring	100 sq. ft. (Super Area) (As per page no. 31 of the complaint)
9.	Date of execution of MOU	19.05.2015 (As per page no. 58 of the complaint)
10.	Date of execution of buyer's agreement	19.05.2015 (As per page no. 26 of the complaint)
11.	Possession Clause	**5.2** *That the construction completion date shall be deemed to be the date when the application for grant of completion/occupancy certificate is made.* (As per page no. 37 of the complaint)
12.	Assured return clause	*4.* *The company shall pay a monthly assured return of Rs.9,000/- on the total amount received with effect from 19.05.2015 before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule. The monthly assured return shall be paid to the*

		allottee(s) ***until the commencement of the first lease on the said unit. This shall be paid from the effective date.*** (As per page no. 60 of the complaint)
13.	Total Sale Consideration	Rs.5,79,003/- (As per payment schedule on page no. 52 of the complaint)
14.	Amount paid by the complainant	Rs.5,61,513/- (As per statement of account on page no. 69 of the complaint)
15.	Due date of possession	Not specified
16.	No dues certificate	19.05.2015 (As per page no. 53of the complaint)
17.	Occupation certificate /Completion certificate	14.08.2024 (As per page no. 42 of the reply)
18.	Demand notice and offer of possession	05.11.2024 (As per page no. 67 of the complaint)
19.	Reminder for demand notice and offer of possession	29.11.2024 (As per page no. 70 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

   I. That the respondent had always advertised itself as a very ethical business group that lives onto its commitments in delivering its projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new project always commits and promises to the targeted consumer that their unit will be completed and delivered to them within the time agreed initially in the agreement. They also assured to the consumers like the complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them.

II. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of projects in India, especially in NCR, the key factor to sell any unit is the delivery of the unit within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream retail space. The respondent, therefore used this tool, which is directly connected to the emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their unit will be delivered within the agreed timelines and consumer will not go through financial distress of paying any EMI's.

III. That in the year 2015, the respondent through its marketing executives and advertisement done through various medium and means approached the complainant, with an offer to invest and buy a retail space, in a assured return scheme in the aforementioned project of the respondent, which the respondent launched with the name "Neo Square" proposed to be developed on Sector-109, Dwarka Expressway, Gurgaon. The respondent had represented to the complainant that the respondent is very ethical business house, working in the field of construction of residential and commercial project and in case, the complainant would invest in the project of the respondent then, they would deliver the possession of proposed office space on the assured delivery date as per the best quality and standards. The respondent had further assured to the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the complainant shall pay a monthly assured return on the total amount that shall be received from the complainant.

IV. That the complainant while relying on the representations and warranties of the respondent and believing them to be true, the complainant agreed to purchase the commercial space and accordingly, was allotted a unit no.-07 at 1st floor, having a revised area of 100 sq. ft. at the rate of Rs.4,909/- per sq. ft. for a total sale consideration of Rs.4,90,900/- for which the complainant paid a total sum of Rs.5,09,598/- in favor of the respondent vide cheque dated 05.05.2015, towards advance consideration of the unit, the receipts whereof, company hereby admits and acknowledge.

V. That the respondent executed a Memorandum of Understanding dated 19.05.2015, acknowledging the total payment of Rs.5,09,598/- made by the complainant towards the total sale consideration of the unit and further, specifically clarifying the terms of the guaranteed assured returns payable to the complainant. The respondent undertook to pay a monthly assured return of Rs.9,000/- to the complainant, on the total amount received with effect from 19.05.2015 till the commencement of the first lease for the said unit.

VI. That the respondent has only paid the assured return of Rs.9,000/- to the complainant till 2019 and after that the respondent has illegally stopped paying the assured return. It is pertinent to mention here that the first lease of the said unit has till date not been commenced, therefore, the respondent is liable to pay the assured return amounting to Rs.9,000/- to the complainant from 2019 till the present day.

VII. That after the commencement of the first lease, the complainant shall continue to receive the benefits in the form of assured return which are fixed Rs.9,000/- with effect from 19.05.2015.

VIII. That on date 05.11.2024, the respondent issued a "Demand Notice and Offer of Possession" in which they stated that the occupation certificate for our commercial unit in the "Neo Square" project had been received, and the complainant was required to complete the balance payment of Rs.2,68,217/- and submit documents for taking possession.

IX. That the respondent has cleverly and maliciously not mentioned the due date of possession in the MOU dated 19.05.2015 as well as in the builder buyer's agreement dated 19.05.2015 which was registered on 04.03.2021, and has intentionally skipped the said clause just to cheat and dupe the complainant. It is pertinent to mention here that in the said project i.e., "Neo Square" the possession of the units was to be handed over within 36 months of the execution of the MOU dated 19.05.2015, as has been evident in various judgments passed by this Hon'ble Authority against the respondent for the project. The said judgments and builder buyer's agreement executed with other allottees for the same project the due date of possession in the present matter comes out to be 19.05.2018 and thus, there has been a delay of 7 years and 3 months in offering of possession. However, the project was launched and booked in 2015, and as per standard timelines and fair practices, possession was expected within 3 years. The issuance of the OC after nearly 9 years amounts to gross delay in possession without any justification or formal communication during the interim years.

X. That furthermore, the respondent failed to account for the promised monthly interest/assured returns as compensation for this delay in the demand notice. Instead, they made arbitrary demands towards VAT Amount, Development Charges, FTTH, and Labour Cess, and "Interest Amount", which the complainant contest and does not agree to pay being unreasonable and outside the agreed terms.

XI. That subsequently, on date 29.11.2024, the respondent sent a Reminder-1 reiterating the demand for payment of Rs.2,69,860/- and threatening cancellation of allotment if payment was not made. This notice further ignored the fact that the delay in possession was solely due to the respondent's failure to deliver the project in time. This action amounts to coercion, as they sought to enforce arbitrary charges, failed to acknowledge their own delays, and continued to pressure the complainant with threats of cancellation despite being the defaulting party.

XII. That as per complainant calculations, the actual amount payable is Rs.19,888/- only after removing unjustified charges and the complainant is ready to make that payment. The complainant categorically denied the balance Rs.2,48,329/- which includes non-payable/unjustified charges.

XIII. That on date 24.04.2025, the respondent issued a letter seeking Rs.9,942/- as maintenance charges. That demanding maintenance charges without actual, physical handover of the unit is wholly unjustified, especially when possession itself is under challenge and disputed due to non-fulfillment of the respondent's obligations. The demand for maintenance appears premature and illegal.

XIV. That in the letter dated 18.12.2019, the respondent explicitly admitted that due to construction delays, cheques towards Assured Monthly Returns could not be issued at that time and instead promised to adjust the amount "at the time of possession."

XV. That despite this written assurance, no such adjustment or compensation has been included in the final possession demands. Instead of paying the promised interest, the respondent has wrongly billed on complainant interest of Rs.1,04,043/- in the Statement of Account, which is not only unfair but fraudulent and misleading.

XVI. That being aggrieved from the situation, the complainant began following up with the respondent in respect to the construction of the subject unit and the payment of the assured returns however the respondent, deliberately failed to furnish any reply with respect to the delay in the construction of the subject project or for the non-payment of the assured returns to the complainant.

XVII. That the conduct on the part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that the respondent never ever had any intention to deliver the said retail space sold to the complainant on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondent at the time of sale of involved unit were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said retail space basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent, in its advertisements had represented falsely regarding the area, price, quality, delivery date of possession and the guaranteed assured returns and resorted to all kind of unfair trade practices while transacting with the complainant.

XVIII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.

XIX. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his home on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made the life of the complainant miserable socially as well financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no-fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured his to buy a unit in the aforesaid residential project of the respondent.

XX. That the cause of action accrued in favor of the complainant and against the respondent on 19.05.2015, when the complainant purchased the said unit from the respondent. It further arose when the respondent failed /neglected to deliver the said unit on the agreed date. It further arose when the respondent failed to disburse its outstanding liability towards the complainant in the form of assured returns. It further arose on 05.11.2024 when the respondent issued the "Demand Notice and Offer of Possession" and raised an arbitrary and unwarranted demand of Rs.2,69,860/- in this regard. The cause of action further arose on 29.11.2024 when the respondent issued Reminder-1 for "Demand Notice Payment and Offer of Possession" and further arose on 24-04-2025 when the respondent made a demand on account of maintenance charges. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of said flat to the complainant and also not paid the assured returns along with the delay possession charges as well as the interest thereupon for causing delay in delivery of possession of said flat as agreed.

XXI. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and/or any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

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

   i. Direct the respondent to withdraw the demand letter dated 05.11.2024 and 29.11.2024 seeking false outstanding dues from the complainant and consequently declare the demand of Rs. 2,69,860/- as arbitrary, null and void.

ii. Direct the respondent to pay the promised monthly assured return of Rs.9,000/- with effect from 01.01.2020 till commencement of the first lease on the said unit, as in mentioned in clause 4 of the MOU dated 19.05.2015.

iii. Direct the respondent to handover the actual peaceful vacant possession of the original unit of the complainant agreed within the BBA as well as MOU both dated 19.05.2015 and also execute the conveyance deed in respect of the unit allotted to the complainant.

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

D. Reply by the respondent:

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

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

II. That by way of filing the 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.

III. That the respondent after making the dues of the DTCP and other formalities of the department which also includes the completion of construction has obtained the completion certificate/occupancy certificate from the department of DTCP.

IV. That the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. The Act, 2016 was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between the builders and buyers and the reliefs sought by the complainant cannot be construed to fall within the ambit of Act, 2016. The complainant herein, has failed to provide the correct/complete facts that he is investor and not an allottee.

V. That the complainant 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 complainant decided to apply to the respondent by submitting a booking application form dated 05.05.2015, whereby seeking allotment of unit no. 07, admeasuring 100 sq. ft. (Super Area) on the 1st floor having a Basic Sale Price of Rs.4,909/- per sq. ft.

VI. That since the complainant had opted for the Investment Return Plan, a Memorandum of Understanding dated 19.05.2015 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 complainant in the project and leasing of the unit/space thereof. As per terms of MOU, the returns were to be paid from 19.05.2015 till commencement of first lease. As per terms of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

VII. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainant 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.

VIII. That the complainant voluntarily also executed the buyer's agreement dated 19.05.2015 for shop no. 07 on 1st floor admeasuring 100 sq. ft. Super Area in the project.

IX. That the complainant is seeking relief of assured return which is not maintainable before the Authority upon enactment of the BUDS Act. Any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. There is no provision under the Act, 2016 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.

X. 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. 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. On 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

XI. That the BUDS Act is a central Act came subsequent to the Companies Act and the 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.

XII. That as per clause 11 of the MOU, the respondent was obligated to complete the construction of the 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. 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. 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.

XIII. 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. The complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant 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.5,61,513/- against the total due amount of Rs.7,25,687/-. It is to be noted that there is still an outstanding due of Rs.2,68,217/- which is to be paid by the complainant against the unit booked as per the demand letter dated 05.11.2024.

XIV. That the complainant is trying to negotiate to the demand of respondent on fit-out, the respondent has raised the demand of Rs.3,500/- per sq. ft. to the complainant which is sum of Rs.4,13,000/- for getting the unit fit out which is essential for getting the said unit leased out. The respondent avoided making the payment for the demand for fitout and deliberately filed the present complaint.

XV. That the respondent is raising the VAT demands as per government regulations. 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.

XVI. That that as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such

'Force Majeure' conditions the respondent was entitled for extension of time period for completion.

XVII. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the project in all aspect and obtained the completion certificate from DTCP.

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

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

E.II Subject-matter Jurisdiction

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)(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.

8. 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 objection raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being the investor.

9. The respondent took a stand that the complainant is the investor and not the consumer and therefore, is not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

10. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the builder buyer's agreement dated 19.05.2015, it is crystal clear that the complainant is not the allottee as the subject unit

was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

11. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in ***CR/8001/2022*** titled as ***"Gaurav Kaushik and Anr. Vs. Vatika Ltd."*** has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to withdraw the demand letter dated 05.11.2024 and 29.11.2024 seeking false outstanding dues from the complainant and consequently declare the demand of Rs. 2,69,860/- as arbitrary, null and void.

12. The complainant was allotted a unit no. 07, first floor admeasuring 100 sq. ft. in the project of respondent "Neo Square" in Sector-109, Gurugram for a total sale consideration of Rs.5,79,003/-. A buyer's 19.05.2015 and the

complainant started paying the amount due against the allotted unit and paid a total sum of Rs.5,61,513/-.

13. The complainant has opted for a payment plan as per which 10% of the basic sale consideration has to be paid on application of booking, 90% of the basic sale consideration has to be paid within 45 days of booking and IFMS, registration charges, stamp duty charges, EDC, IDC and other charges as applicable was to be paid at the time of offer of possession.

14. As per the documents available on record, the Authority has observed that the respondent has obtained the occupation certificate on 14.08.2024 and offered the possession on 05.11.2024 along with the demand as per the agreed payment plan. Thereafter, on 29.11.2024 the respondent has issued a reminder to the demand notice and offer of possession dated 05.11.2024. On perusal of the demand letter dated 05.11.2024 and reminder dated 29.11.2024, the Authority has observed that the demands raised by the respondent is in accordance with the payment plan agreed between the complainant and the respondent. Therefore, the complainant has to pay the outstanding dues regarding which the demands has been raised by the respondent vide demand letter dated 05.11.2024. Further, the respondent shall not charge anything which is not the part of BBA. Thus, no direction to this effect.

G.II Direct the respondent to pay the promised monthly assured return of Rs.9,000/- with effect from 01.01.2020 till commencement of the first lease on the said unit, as in mentioned in clause 4 of the MOU dated 19.05.2015.

15. The complainant is seeking assured returns on monthly basis as per the MOU dated 19.05.2015 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. Though for some time, an amount of assured returns was paid but later on, the respondent refused to pay the same. In

Gaurav Kaushik and anr. Vs. Vatika Ltd. the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

16. A memorandum of understanding dated 19.05.2015 by which a specific unit bearing no. 07 has been allotted to the complainant for sale consideration of Rs.5,79,003/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 4 of the MOU, the respondent has promised an amount of Rs.9,000/- per month in the form of assured return from 19.05.2015 till the commencement of first lease of the said unit. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

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

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

17. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured return for a certain period. So, on his failure to fulfil that commitment, the

allottee has a right to approach the authority for redressal of her grievances by way of filing a complaint.

18. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

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

> 4. *The company shall pay a monthly assured return of Rs.9,000/- on the total amount received* ***with effect from 19.05.2015*** *before deduction of Tax at Source and GST, cess or any other levy which is due and payable by the allottee(s) to the company and the balance sale consideration shall be payable by the allottee(s) to the company in accordance with the payment schedule. The monthly assured return shall be paid to the allottee(s)* ***until the commencement of the first lease on the said unit. This shall be paid from the effective date.***

Thus, the assured return was payable @ Rs.9,000/- per month w.e.f. 19.05.2015, till commencement of first lease.

20. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 19.05.2015, it was obligation on the 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 19.05.2015. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MoU is still continuing. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 4 of MoU dated 19.05.2015 at the agreed rate i.e., @ Rs.9,000/-per month from 19.05.2015 till commencement of first lease.

G.III Direct the respondent to handover the actual peaceful vacant possession of the original unit of the complainant agreed within the

BBA as well as MOU both dated 19.05.2015 and also execute the conveyance deed in respect of the unit allotted to the complainant.

21. On perusal of the documents placed on record and submissions made by the parties as well as the information available on the website of DTCP, the Authority observed that the respondent has offer the possession of the unit on 05.11.2024 after obtaining the occupation certificate on 14.08.2024.

22. The Authority further observed that as per clause 8(e) of the MOU dated 19.05.2015, the unit has to be handed over directly to the lessee after completion. The relevant clause is reproduced below for the ready reference:

> *"That the unit will be constructed and completed by the company and will be handed over to the lessee directly. The company is duly authorized by the allottee(s) to enter into a lease deed with the lessee of their choice either before or after the execution of the sale deed in favour of the allottee(s). The allottee undertakes to not raise objection regarding the same at any stage."*

23. After considering the above stated facts, the Authority is of the view that there is no clause for physical handover of the unit in the MOU/agreement dated 19.05.2015. However, the offer of possession of the unit has already been made on 05.11.2024 after obtaining occupation certificate on 14.08.2024. Thus, no direction to this effect.

24. Further, 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 allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

25. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. Thus, the respondent shall execute the conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

H. Directions of the authority:

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

    i. The respondent is directed to pay the assured return/penalty at the rate i.e., Rs.9,000/- per month as per agreed terms of MoU from the date i.e., 19.05.2015 till commencement of lease.

    ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 19.05.2015 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 is directed to execute the conveyance deed of the allotted unit in terms of Section 17 of the Act, 2016 on payment of requisite stamp duty by the complainant.

    iv. The respondent shall not charge anything from the complainant which is not a part of buyer's agreement and MOU.

    v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2026