BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1856 of 2025**
Date of filing	:	**11.04.2025**
Date of decision	:	**19.05.2026**

Suman Lata
R/o: - B - 203, Durga Pooja Sector - 13, Plot -8 Dwarka Delhi - 110078 — **Complainant**

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: -
32 B,Pusa, Road,Delhi-110005 — **Respondent**

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:
Shri Rajinder Singh (Advocate) — **Counsel for Complainant**
Shri Venket Rao (Advocate) — **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	10.04.2019 (As per pg no.32 of the complaint)
7.	Unit no.	Floor fifth or similar (As per pg no. 35 of the complaint) Unit no. priority no. 102 on floor no. 5^{th} Floor (page no. 35 of the complaint)
8.	Unit area admeasuring	1500 sq. ft. (Super Area) (As per pg. no. 35 of the complaint)
9.	Date of MoU	10.04.2019 (As per pg. no. 21 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 *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* (As per pg. no. 21 of the complaint)
12.	Due date of possession	10.04.2022 [36 months from signing of the MOU as per the possession clause]
13.	Penalty Clause	*Clause 4.* *"The Company shall* ***pay a Penalty of Rs.1,08,615/-*** *(Rupees One Lac Eight Thousand Six Hundred Fifteen Only) per month on the said Unit, On the total amount received with effect* ***from 10-October-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 Allotted(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1.* ***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." *(As per pg. no. 22 of the complaint)*
14.	Status of monthly interest cheques	Considering the above development, and bearing our commitment in mind, we are left with no other option but to adjust your payments towards monthly interest at the time of possession. (dated 01.02.2022) [on page 60 of complaint]
15.	Total basic Sale consideration	Rs. 75,00,000/- (As per pg. no. *21 of the complaint*)
16.	Amount paid by the complainant	Rs. 84,00,000/- (As per pg. no. *21 of the complaint*)
17.	Occupation certificate	14.08.2024 (As per DTCP site)
18.	Offer of possession	04.10.2024 (As per pg. no. 61 of the complaint)
19.	Reminders for payment	Letters dated 16.10.2024, 20.11.2024 and 03.12.2024 raising a demand of Rs. 24,10,898/- [on page 49, 50 and 51 of reply respectively
20.	Cancelation letter	28.02.2025 (on page 65 of complaint)
21.	Reminders	Letters dated 03.03.2025 raising a demand of Rs. 44,25,000/- [on page 53 of reply respectively]

B. Facts of the complaint

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

   a. That the complainant Mrs. Suman Lata W/o Sh. M.S. Prasad, R/O B-203, Durga Pooja, Sector-13, Plot-8, Dwarka-110078 also at - G 32 Enigma

Apartments, Sector – 10, Gurugram, Haryana - 122017 , is law-abiding citizen, taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.

b. 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 unit G 02 & 03, Neo Squre, Sector 109, Palam Vihar, Gurugram - 122017. 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.

c. That in or around March 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 was introduced to Mr. Ashish Anand, Director, during a visit to the office of the respondents situated in Gurgaon. Mr. Ashish Anand, along with employees of the company, explained the project to the complainant, stating that it consists of multiple towers having dedicated spaces for retail, offices, restaurants, a food court, service apartments, a hyper-mart, and a cinema, etc.

d. 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. The complainant relied upon the commitments made by director and the employees of the respondent company. 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.

e. 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.

f. That complainant entered into memorandum of understanding and buyer agreement on 10.04.2019. 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/office/entertainment/retail. 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.

g. 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 complainants 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 buyers agreement dated 10.04.2019, having area admeasuring 1500 sq. ft. super built-up area at the rate of Rs. 5000/- per sq. ft. wherein commercial unit priority no. 102 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/assured return in advance. because of the said reason only the penalty payment/assured return w.r.t the unit of the complainant commenced on 10.10.2020 i.e., after one year six months after entering into buyer's agreement and mou.

h. The complainant paid a sum of Rs. 84,00,000/- towards consideration of the commercial unit priority no. 102. It was agreed under the MOU that a monthly Penalty Payment/Assured Return of Rs. 1,08,615/- shall be payable as penalty payment/assured return from 10.10.2020.

i. It is submitted that the respondent company is forcing the complainant to sign lease assignment form by which the respondent company intends to lease out the unit purchased by the complainant to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliviated 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.

j. That on 01.10.2020 the respondent sent an email for signing of lease assignment form. The respondent also sent a reminder email for signing lease assignment form dated 07.12.2021. 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 01.10.2020 and 07.12.2021. Furthermore, the respondent's claim that the unit has been leased to a third party who is now 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 occupation certificate and would begin making payments to the buyer without first generating rental income from the unit.

k. That the company sent an email dated 01.02.2022 wherein they unilaterally decided to not pay the penalty payments/assured returns, citing restrictions under the RERA Act and guidelines. They stated that 70% of the amount received from buyers must be deposited in a separate account for construction and land costs, making it illegal for them to withdraw funds for monthly interest cheques and therefore the Payments would be adjusted at the time of possession.

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 the 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 as was shown in the brochure. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the penalty payment/assured return and compete the project.

m. The respondent at the time of entering the mou made misrepresentation with respect to the project and its 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 and the MOU.

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 respondent's 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 in accordance to the mou and buyers agreement and as was shown on the brochure. Further, by refusing to give penalty payment/assured return and delayed possession compensation in terms of clause 5.6 of the buyers agreement dated 10.04.2019, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement entered into by the parties.

p. The company has issued a demand notice and offer of possession via email dated 04.10.2024 stating that the occupation certificate has been received and possession is now being offered, subject to clearance of outstanding dues to the tune of Rs. 27,48,396/-. 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 as per the buyer's agreement. The notice mandates execution of a common area maintenance agreement before possession and lists required documents which are needed. The demand notice also states that possession will only be granted after payment of stamp duty, registration charges, and other applicable fees.

q. That upon visiting the office of the respondent, it was requested that the development charges, FTTH and labour cess are not part of the mou and buyers agreement and therefore are not payable by the complainant. It was further stated that the amount towards EDC, IDC and IFMS may be adjusted from the penalty payment/assured return and delay in compensation with the interest payable by the respondent. The respondent agreed to adjust the same and agreed to issue a fresh statement of account along with the demand notice and offer of possession. The complainant visited the office of the respondent on several occasions for correction in the amount as agreed, however the respondent failed to issue any such demand notice and offer of possession. The complainant also sent an email dated 09.10.2024 asking for clarifications regarding the payment demanded via letter dated 04.10.2024.

r. It is further submitted that the email dated 04.10.2024 expressly states that the unit is allotted on the 12A Floor. However, the unit type allotted to the complainant is designated as a food court/entertainment area, which was actually located on the 5th floor or similar at the time of entering the mou and buyers agreement.

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 food court 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, but harassment of the complainants by also misguiding them, keeping them in dark and putting their future at risk by rendering them income less.

u. That on 11.03.2025 the complainant received a letter dated 28.02.2025 wherein the respondent issued final notice of cancellation of the buyers agreement illegally on the premises that the demand raised by the respondent on 04.10.2024 were not fulfilled by the complainant. It is pertinent to mention that such termination in bad in law since the demand made by the respondents are illegal per se and the respondent vide letter dated 04.10.2024 only informed that it would only charge penalty as holding charges @ Rs. 30 per Sq. Ft. per month and no intimation of cancellation was communicated in default of payment. Further, when the respondent himself has defaulted in making payment of penalty payment/assured return, without adjudicating the same no demand could have been made which subsequently would have resulted in cancellation of the unit. Therefore, the cancellation/termination is bad in law and is liable to be set aside.

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. 1,08,615 for unit priority no. 102 on 12A Floor, admeasuring 1500 sq feet, from October, 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 favor of the complainants with respect to the commercial space purchased by her. Further, to set aside Illegal Demands which include development charges, FTTH, Labour Cess, etc. The cancelation/termination of the unit vide letter dated 28.02.2025 should be set aside. That the respondent be directed to allot the complainant a unit on the 3rd Floor, where the food court is actually situated. 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. That despite the clear and unequivocal commitment made by the respondent in the MoU and BBA regarding the penalty payment/assured return, the respondent has wilfully failed to make the said payments as per the agreed terms. The complainant has not received the penalty payment/assured return since its inception i.e., 10.10.2020, even though the possession has not been handed over.

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 nor completed the project within the stipulated timeline.

y. That the non-payment of the penalty payment is not a mere delay but a deliberate breach of the agreed terms, demonstrating the Respondent's malafide intentions. The complainant had entered into the transaction with the legitimate expectation of timely completion of the project and regular penalty payments. The unilateral stoppage of payments, along with the demand for additional compliance from the complainant, is nothing but an attempt to unjustly enrich itself at the expense of the complainant.

z. 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 along with interest and ensuring the completion of the project as per the agreed specifications. Further, to set aside Illegal demands which include development charges, FTTH, Labour Cess, etc. Any attempt by the respondent to enforce its demands without first addressing its own defaults is arbitrary, illegal, and liable to be struck down by this Authority.

C. Relief sought by the complainant:

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

I. Direct the respondent to pay penalty payment/assured returns (i)@ Rs. 72.41 per sq feet per month amounting to Rs. 1,08,615 for unit priority No. 102, since October, 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 allot the complainant a unit on the 3rd floor, where the food court is actually situated.

IV. The respondent be directed to pay delayed possession compensation @ Rs. 10 per Sq. Ft. per month from April,2022 in terms of clause 5.6 of the buyers agreement.

V. To set aside the development charges, FTTH and Labour Cess as demanded in the letter dated 04.10.2024.

VI. To set aside the final notice of cancellation vide letter dated 28.02.2025.

VII. Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant.

VIII. To direct the respondent to not charge what is not part of the mou and buyers agreement dated 10.04.2019.

IX. 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 with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking Application Form in July 2019, requesting the respondent to allot office space, admeasuring 835 sq. ft. super area in the project "NEO Square".

b) It is pertinent to mention herein that the complainant is an investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.

c) It is most humbly submitted that the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. That the intent was abundantly clarified and agreed to by the complainant at the stage of booking itself and further at the time of execution of the BBA. In fact, the complainant has executed an MOU which records the terms and conditions pertaining to leasing rights and lease rental, etc. also, because the complainants themselves have entrusted the respondent with the leasing rights of the units.

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

e) It is reiterated herein that from the very beginning, the understanding between the parties was to lease out the unit through the respondent. That it was never agreed between the parties that physical possession of the unit shall be handed over to the complainant. That a MOU recording the terms and conditions of the leasing and lease rental is executed between the parties. It is pertinent to mention herein that no protest in this regard has ever been raised by the complainant and the same was willingly and voluntarily agreed upon between the parties.

f) It is noted herein that a lessor is always considered to part with the physical possession of the property and stay in constructive possession through the lessee. That such a relationship is valid and has been recognized in law at various occasions.

g) It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the singed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

h) Therefore, it is evident from the agreed terms and conditions of the MOU that physical possession cannot be given, and the subject Unit shall be leased out.

i) Therefore, the present complaint is liable to be dismissed and it is evident from the bba and mou entered into, the complainant may be directed to accept constructive possession and be in adherence of terms of mou with respect lease obligation thereunder.

j) It is pertinent to mention herein that the complainant, vide his complaint, is raising an issue that he has already paid the entire sale consideration and that the respondent is raising additional demands.

k) It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. That the demand of the development charges have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft. That under Clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the bba or at any future date.

l) It is noted herein that the development charges are reimbursement towards the cost incurred by the Respondent towards providing facilities in the Project. It is noted herein that some of the reasons attributed to development charges are Change in government norms, which led to cost incurred towards Electrification, cost incurred towards the Electrical meter charges, cost incurred towards power backup charges, cost incurred towards Trane PO for Chillers, Chiller shifting, Cooling Towers, Pumps, Plant room works, including panels and other miscellaneous costs related to these facilities.

m) That from a bare perusal of the aforementioned clause of the BBA, it is evident that the complainant himself has agreed to pay the development charges, therefore, at this belated stage, the complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.

n) It is noted herein that due to additional costs incurred by the Respondent in providing the aforementioned facilities, the development charges are demanded from the complainant as per clause 11 of the BBA. Therefore, as per the agreed terms and conditions of the BBA, the complainant is bound to pay the development charges and the respondent is entitle to recover the same, so it is evident that there is no escalation in the price of the subject unit, the price remains frozen, that the development charges as and when could have been quantified, the respondent would have been in a position to charge. That after issuance of the occupation certificate, the development charges have been quantified, therefore, the same have been demanded from the complainant as per Clause 11 of the BBA.

o) It is pertinent to mention herein that as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the unit, fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the Unit in terms of the MOU.

p) It is reiterated herein that the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the Complainant, under Clause 8(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the Unit, then the Complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. It is further agreed that in case the complainant fails to pay the same, then the respondent shall pay the expenses on behalf of the complainant and deduct the same from the lease rental payable to the complainant, along with a monthly interest of 2 per cent.

q) That the respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainant about the details of the lease and requested the complainant to pay the fit-out charges to the company, which is facilitating the leasing process in the project. That the said payment is not for the utilisation of the respondent, rather will be utilised to make ready the space in terms of the requirements of the lessee for their business operation.

r) That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainant as per clause 8 (d) of the MOU. It is further clarified herein that the expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental itself. Thus, as per Clause 8 (d) of the MOU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing.

s) That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the MOU which are beneficial to him and denies the other.

t) It is noted herein that payment of the fit-out charges is very crucial for leasing out the subject unit, as it is required for making the subject unit ready for occupation of the lessee to run its business. Without getting the subject unit ready as per the requirements of the lessee, it is not possible for any lessee to take the subject unit on lease. Furthermore, the subject unit is leased out along with other units as part of a larger space, therefore, the unwillingness of the complainant towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the project, whose leasing of the units will be hampered due to the defaults of the complainant. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the Project and the overall fate of the Project, the Complainant is bound to pay the fit-out charges.

u) That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. It is noted herein that the building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the Lessee.

v) However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. After that the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.

w) It is pertinent to mention herein that after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1st lease with the Lessees. However, the complainant failed to come forward and to do the needful.

x) Since it was agreed in the MOU that the buyer shall be paid the assured return till the 1st lease, subject to MOU However, due to change in law and the introduction of the BUDS Act, the issue with respect to assured return was not clear and accordingly, a writ petition before the Hon'ble High Court of Punjab and Haryana was filed and the same is pending adjudicating.

y) Without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. It is noted herein that 1st lease was executed as the building was completed and the fit-out works as per the requirement of the Lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.

z) It is reiterated herein that the complainant under clause 9 (a) of the mou has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the Lease, the amount of lease, usage or to who the unit is leased out.

aa) It is noted herein that under Clause 9 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.

bb) That from a mere perusal of the aforementioned submissions, it is evident that the complainant himself have authorized the respondent to finalize the terms and conditions of the lease and categorically agreed to execute a separate lease deed, if required. Further, the complainant himself agreed that in case of his failure to execute a separate lease deed if required, the respondent shall be authorized to execute the lease deed on behalf of the complainant. Therefore, in view of the agreed terms and conditions of the MOU, it is submitted herein that the lease deed executed by the respondent on behalf of the complainant are valid as the same are executed as per the terms and conditions of the MOU.

cc) That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 on 21.02.2019, any scheme involving Assured Return/Penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.

dd) It is a matter of fact, that time was essence in respect to the complainant's obligation to make the respective payment. And, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent. It is noted herein that the Respondent has made multiple requests to the Complainant to clear the outstanding dues, however, the Complainant has failed to make the payments.

ee) That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:

(i) **Demonetization of Rs. 500 and Rs. 1000 currency notes:** The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The ,Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on Respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.

(ii) **GST Implications**: It is pertinent to apprise to the Ld. Authroity that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent due to the impact of **Good and Services Act, 2017** [hereinafter referred to as 'GST'] which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The Respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

(iii) **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of Respondent is situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work due to the fear of riots and remobilisation of work workforce took considerable time of 3-4 months.

(iv) **Cascading Impact of Default of the Buyer's on Project Progress:** That due to persistent and simultaneous defaults by several Buyers including the Respondent faced severe financial constraints, which significantly hampered the timely progress of construction of the Project. The financial model of the project was structured on the timely inflow of funds from buyers, which was disrupted due to non-payment of dues. This led to a shortage of working capital, affecting procurement, labour payments.

ff) That from the facts indicated above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the Respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the Agreement.

gg) That the complainant/allottee wilfully failed to comply with his contractual obligations to pay the requisite charges as stipulated under the builder buyer agreement, which included maintenance charges, IFMS, registration fees, stamp duty, taxes, levies, and other lawful dues. Despite repeated intimations and reminders issued by the respondent demanding payment of the said charges, the complainant deliberately chose to ignore the same. Such conduct amounts to a material breach of the terms of the agreement. Consequently, the respondent, being left with no other recourse, lawfully invoked clause 4.5 of the BBA. Despite repeated reminders, demand notices, and opportunities granted by the respondent, the complainant failed to adhere to the payment schedule over an extended period of time, thereby committing material breach of the contractual obligations.

hh)That the notice of cancellation of the unit was neither arbitrary nor unjustified but was a necessary contractual consequence of the complainant's own conduct. The respondent acted only after affording ample time and opportunity to the complainant to rectify his default and comply with his obligations.

ii) That the complainant cannot seek any relief under RERA while being in continuing default of payment. It is a settled principle of law that a person who himself breaches the contract cannot claim specific performance or compensation against the non-breaching party. The complainant's default disentitles him from any equitable or statutory relief before this Authority.

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 penalty payment/assured returns (i)@ Rs. 72.41 per sq feet per month amounting to Rs. 1,08,615 for unit priority No. 102, since October, 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 allot the complainant a unit on the 3rd floor, where the food court is actually situated.

IV. **The respondent be directed to pay delayed possession compensation @ Rs. 10 per Sq. Ft. per month from April,2022 in terms of clause 5.6 of the buyers agreement.**

V. **To set aside the development charges, FTTH and Labour Cess as demanded in the letter dated 04.10.2024.**

VI. **To set aside the final notice of cancellation vide letter dated 28.02.2025.**

VII. **Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant.**

VIII. **To direct the respondent to not charge what is not part of the mou and buyers agreement dated 10.04.2019.**

IX. **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 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. 84,00,000/- out of total basic sale consideration of Rs. 75,00,000/-.

13. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 10.04.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

14. 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.

15. 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 properly as specified in terms of the agreement or arrangement.*

16. 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.

17. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve

Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

> (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
>
> *(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

18. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the promoter at the time of booking or immediately thereafter and as agreed upon between them.
19. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.
20. The money was taken by the 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.

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

22. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the promoter is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MoU dated 10.04.2019.

23. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 10.04.2019, which is reproduced below for the ready reference:

> *Clause 4.*
> ***"The Company shall pay a Penalty of Rs.1,08,615/-*** *(Rupees one lac eight thousand six hundred fifteen only) per month on the said Unit, On the total amount received* ***with effect from 10th Oct 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."***

24. Thus, as per the abovementioned clause the assured return was payable @Rs.1,08,615/- per month w.e.f. 10.10.2020 until the offer of possession.

25. The Authority is of the view that as per the MoU dated 10.04.2019, 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. 1,08,615/- from the date i.e., 10.10.2020 till valid offer of possession after obtaining occupation certificate or completion certificate from the competent authority.

26. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which read 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"*

27. Clause 3 of the MoU dated 10.04.2019 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"*

28. **Due date of possession:** As per clause 3 of the MoU dated 10.04.2019, 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 start of date of construction of the project being later. Thus, the due date of possession come out to be 10.04.2022.

29. **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"*

30. The legislature in its wisdom in the subordinate legislation under 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.

31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable 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;"*

32. 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.

33. 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 10.04.2022.

34. 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?

35. 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 10.04.2019. 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.1,08,615/- on the total amount received with effect from 10.10.2020 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. 1,08,615/- per month whereas the delayed possession charges are payable approximately Rs. 76,500/- 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.

36. 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.

37. 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 10.04.2019, the promoter had agreed to pay to the complainant allottee

@Rs.1,08,615/- with effect from 10.10.2020 till valid offer of possession after obtaining occupation certificate from competent authority.

38. Therefore, considering the facts of the present case, the respondent is directed to pay assured return at the agreed rate i.e. @Rs. 1,08,615/- with effect from 10.10.2020 till valid offer of possession after obtaining occupation certificate from competent authority.

39. 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.

40. Further, complainant is seeking relief with regard to the waiver of charges demanded by the respondent in offer of possession dated 04.10.2024.

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, BOCW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax*** *and*

the like. These shall be paid on demand and in case of delay, these shall be payable with interest by the Allottee.

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.

- **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.
- **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.

- **Interest on delayed payment:** The Authority has perused offer of possession letter dated 04.10.2024, wherein an amount of Rs.5,08,588/- 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.84,00,000/- out of the total basic sale consideration of Rs. 75,00,000/- 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 04.10.2024 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.

- 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 04.10.2024. 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.

41. 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 and hence no direction for restraining the respondent from entering the lease deed can be allowed, clause 9 (a) of the MoU dated 10.04.2019 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.***

42. 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 10.04.2019, 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.

43. 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.

44. 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

45. 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 Authority is of the view that the cancellation of the unit is invalid and is hereby set aside. The respondent/promoter is directed to pay the assured returns to the complainant at the agreed rate i.e., @Rs.1,08,615/- with effect from 10.10.2020 till valid offer of possession after obtaining occupation certificate from competent authority, after deducting the amount already paid on account of assured return to the complainant.

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 only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

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

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.

46. Complaint stands disposed of.

47. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.05.2026