BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1933 of 2025**
Date of filing	**:**	**11.04.2025**
Date of decision	**:**	**19.05.2026**

Ashwini Chadda
R/o: - M-7/1, Street No. 1, Near Kakativa Club
Katatiya Nagar Hasiguda Hyderabad **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 Dushyant (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	27.04.2015 (As per pg no.30 of the complaint)
7.	Unit no.	Unit no. priority no. 35 on floor no. 3th Floor , nature of unit as per BBA is Restaurant. (page no. 35 of the complaint)
8.	Unit area admeasuring	250 sq. ft. (Super Area) (As per pg. no. 35 of the complaint)
9.	Date of MoU	27.04.2015 (As per pg. no. 18 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. 20 of the complaint)
12.	Assured return clause	Clause 4 of MoU *"The Company shall pay a monthly assured return of Rs. 22,500/-(Rupees Twenty Two Thousand Five Hundred only) on the total amount received with effect from 27th April 2017 after deduction of Tax at Source and service tax, 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 annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s) from 27th April 2017 onwards until the commencement of the first lease on the said unit."* (As per pg. no. 20 of the complaint)
13.	Due date of possession	15.12.2018 [36 months from commencement of construction as per the possession clause]

14.	Total basic Sale consideration	Rs. 19,92,000/- (As per pg. no. *20 of the complaint*)
15.	Amount paid by the complainant	Rs. 20,65,938/- (As per pg. no. *20 of the complaint*)
16.	Occupation certificate	14.08.2024 (As per DTCP site)
17.	Offer of possession	26.12.2024 (As per pg. no. 69 of the complaint)
18.	Reminders for payment	14.02.2025 and 25.02.2025 [on page 72 and 73 of complaint]
19.	Lease assignment via email	28.02.2025 with demand of Rs. 10,32,500/- [on page 74 of complaint]
20.	Final reminder	22.03.2025 [on page 75 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
   a. That the complainant Mr. Ashwini Chadda S/o Late Mr. K.K. Chadda, R/O M-7/1, Street No.1, Near Kakativa Club, Kakatiya Nagar, Habsiguda, Secunderabad, Jama I Osmania, Hyderabad, Andhra Pradesh - 500007, 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 no. G 02 & 03, Neo Square, 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 clients and works for gain.

c. That in or around march, 2014, the complainant came across the project of "M/s Neo Developers Private Limited namely "Neo Square" situated in Sector 109, Dwarka Expressway, Gurugram. The complainant met with representatives of the company who explained the project to the complainant. Later, the complainant were introduced to Mr. Ashish Anand, Director, when they visited the office of respondents situated at Gurgaon. Mr. Ashish Anand, the Director and employees of the Company explained the project to complainant wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.

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 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 complaint to purchase the unit in their assured return plan wherein the company would make the payment at the rate of Rs. 90 per sq. ft. per month for the area purchased if full payments towards the unit are 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 assured return under any circumstances whatsoever.

f. That complainant entered into Memorandum of Understanding and builder buyer agreement on 27.04.2015. Mr. Ashish Anand Director of the company explained the site plan wherein it was provided that the Third floor of the building consists of restaurant and food court, which is above the floors consisting of retail stores. It was explained that the 3rd floor would be solely dedicated to modern restaurants, lounge and food court. Mr. Ashish Anand, Director of the company again assured that there will be no delay in making payment towards the 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 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 restaurant in future. Based on the above inducement and assurance of Mr. Ashish Anand, Director and the employees of the company, the complainant purchased a space for restaurant on the third floor and executed the Memorandum of Understanding and Builder Buyers Agreement dated 27.04.2015, having area admeasuring 250 sq. ft. super built-up area at the rate of Rs. 7968/- per sq. ft. wherein commercial unit No. 35 was assigned on 3nd floor. The price of the unit @ Rs. 7968/- per sq ft was arrived after adjusting the two-year assured return in advance. because of the said reason only the assured return w.r.t the unit of the complainant commenced on 27.04.2017 i.e., after two year after entering into BBA and MOU.

h. The complainant paid a sum of Rs. 20,65,938/- towards consideration of the commercial unit no. 35, through a cheque and RTGS, firstly vide cheques no. 655004 dated 05.02.2015 drawn on Axis Bank and secondly vide RTGS No. 52015042700044046 dated 27.04.20215 & drawn on Axis bank which were duly accepted by the company. It was agreed under the MOU that a monthly return of Rs. 22,500/-. shall be payable as assured return from 27.04.2017.

i. The respondent on 27.04.2018 sent an email and raised the cumulative demand of Rs. 1,32,720/- of EDC and IDC for unit no. 35 on 3rd floor of the project.

j. The company demanded vat from complainants, several times on the same unit despite the fact that the same was paid at the time of very first demand only. The company raised the demand towards VAT amounting to Rs. 1,05,525/- on 30.03.2017 for unit no. 35.

k. That the truth of the assurances made by the directors and employees of the company surfaced when the company started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped since September, 2017. That the mala fide intentions of the company also became conspicuous when the company stopped paying any assured return as per MOU and BBA. Such a unilateral decision made by the respondent is per-se illegal and against the terms and conditions of the agreement entered between the parties since the payment towards the assured return was integral part of the agreement.

l. It aspires that the payment towards VAT which was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent-company and due to the said reason, the respondent-company is demanding vat again and again from the buyers with the sole intent of cheating the buyers and gaining wrongfully from them. The respondent issued a letter dated 30.10.2020 to deposit the VAT amounting to Rs. 1,84,575/- for the unit. Neither any explanation was given as to why the said amount was not included earlier in March, 2017 when the payment was made towards the VAT nor any explanation was provided. Hence, the demand for the VAT raised subsequently are illegal per-se and liable to be set aside.

m. That the company sent an email dated 18.12.2019 wherein they unilaterally stopped paying the assured return, 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 Assured return would be adjusted at the time of possession.

n. That the company in order to obliviate itself from its responsibility of paying monthly assured return, invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in MOU or in Agreement. The company is forcing complainants to sign lease assignment form by which the company intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the company will be obliviated from its responsibility to pay the monthly 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 assured return to the buyers and had prepared biased MOU to suit its whims and wishes.

o. That on 01.10.2020 the respondent sent an email registration of BBA and MOU. That the respondent also sent an email for invitation for starting the proceeding for assignment of lease dated 01.10.2020. It is submitted that no lease assignment could have been entered into, as the project was incomplete at the relevant time, and the unit could not have been leased out prior to obtaining the completion certificate and occupation certificate, which the respondent had not received at the time of sending the email dated 01.10.2020. Furthermore, the respondent's claim that the unit has been leased to a third party responsible for making assured return payments is highly unbelievable. it is inconceivable that a third party, who had not received possession of the unit, would have entered into an agreement with the respondent for a project lacking a completion certificate and would begin making payments to the buyer without first generating rental income from the unit.

p. 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 more than 7 years. The building wherein food court and restaurants as were explained at the time of entering MOU, has been constructed up to 2nd floor only and there is no sign of construction of the tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment zone were shown in the brochure. It has also come into complainant's, knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building. The company has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well. Further the company has syphoned the money of the buyers and at present don't have the requisite money to pay the assured return and compete the project.

q. The respondent at the time of entering the mou made misrepresentation with respect to the project and it is tower/building whereas the construction is not in conformity with the promises made since the respondent never had the permission to construct building/tower beyond the office building. 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.

r. 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.

s. The respondent has no intention to complete the project since no permission is available to construct the project beyond the office tower. It is submitted that the restaurant unit is also being made in the office tower and therefore is in contravention to the MOU and BBA entered by the parties. Further, by refusing to give assured return, it is abundantly clear that the respondent has not abide by the terms and conditions of the agreement rather illegal and unreasonable demands with respect to the VAT has been raised again and again.

t. The company has issued a demand notice and offer of possession via email dated 26.12.2024 stating that the occupation certificate has been received and possession is now being offered, subject to clearance of outstanding dues and required documentation. Despite previously committing to assured returns, the company unilaterally stopped monthly payments and is now demanding full payment for possession, warning that delays will incur holding charges, CAM charges, and interest per the Builder Buyer Agreement. The notice mandates execution of a common area maintenance agreement before possession and lists required documents, including identity proof, PAN card, NOC and Power of Attorney. Possession will only be granted after payment of stamp duty, registration charges, and other applicable fees, raising concerns over the company's adherence to its financial commitments.

u. It is submitted that the payment plan , annexed with the MoU dated 27.04.2015, explicitly stated that at the time of offer of registration, the company would charge IFMS, Registration, Stamp Duty, Other Charges as applicable, and EDC+IDC. However, the new demand raised via email dated 26.12.2024 is not in consonance with the original Annexure-1 of the payment plan and is therefore illegal, null and void as the company respondent cannot charge as to what is not included in the MOU and BBA.

v. Despite receiving the OC, the respondent failed to handover the possession as well as convey the title of the property in favour of the complainant. Further, without paying the assured return pending since September 2017, the respondent is illegally demanding the money such as development charges, FTTH charges by of the demand letter dated 26.12.2024. Besides this the illegal demands are raised by the respondent vide letter dated 28.02.2025 wherein the builder without first conveying the property in the name of the complainant proposed to lease out the unit to a third party without the permission of the complainant and without even seeking the consent on terms of the conditions for such lease deed. Illegal demand of fitout charges of Rs. 10,32,500/- has been raised in order to setoff the assured return due and payable by the respondent. Neither date of commencement of the lease has been provided in order to enable the complainant to take the lease amount from the prospective lessee. Thus, it is apparent that builder is exploiting its dominant position and without fulfilling its promises directing the complainant to obey by the reciprocal promises so made, which can be avoided by the complainant. Hence, the lease deed as well as the fitout charges demanded by the respondent are liable to be set aside being illegal and beyond the terms and conditions of the agreement.

w. That the respondent, vide email dated 22.03.2025 titled as "possession final reminder for demand notice payment and offer of possession," demanded an amount of Rs. 5,40,710/- allegedly due on 02.01.2025. The respondent further stated that failure to make the said payment would result in the cancellation and termination of the allotment of the said unit. This email is nothing but an attempt to unlawfully coerce the complainant into making an illegitimate payment, which is contrary to the terms and conditions of the BBA and the MOU executed between the parties as these payments are nowhere mentioned in the agreements signed. Furthermore, threatening the complainant by stating that if the payment alleged due to the respondent is not paid then the respondent would cancel and terminate the allotment of the unit purchased by the complainant is also an attempt by the respondent to use its dominant position. It is submitted that the payment towards the unit has already been done by the complainant and therefore the respondent cannot cancel and or terminate the allotment of the unit.

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

y. That the complainants are constrained to file the present complaint seeking the payment of assured return at the rate of Rs. 90 per sq feet amounting to Rs. 22,500 for unit no. 35 admeasuring 250 sq feet, since September, 2017 till the handing over the possession/ Lease out of the property after the completion of the construction. The respondent may be directed to complete the project as promised to the complainants and execute the sale deed in favour of the complainants with respect to the restaurant space purchased by him. To set aside the illegal demand of VAT by the respondent and compensation towards the delay in completing the project. Further, to set aside Illegal Demands which include Development Charges, FTTH, Labour Cess, Fit-out charges etc., raised in contravention of the terms of the MOU dated 27.04.2015 signed by the parties. 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 Authority.

C. **Relief sought by the complainant:**

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

I. Direct the respondent to pay assured returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 22,500/- for unit no. 35, since September, 2017 till handing over the possession.

II. To execute the sale deed in favour of the complainant for the unit immediately.

III. Set aside the illegal demand of VAT made by the respondent vide letter dated 30.10.2020.

IV. Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant and therefore set aside the letter dated 28.02.2025.

V. To direct the respondent to not charge what is not part of the mou and bba which includes the demand of development charges, FTTH, Labour Cess, Fit-out charges etc. which was raised via demand letters dated 26.12.2024, 14.02.2025, 25.02.2025.

VI. Restrain the respondent from terminating or cancelling the unit of the complainant and to set aside the email dated 22.03.2025.

VII. 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) At the outset, the complainants have erred gravely in filing the present complaint and misconstrued the provisions of the Real Estate (Regulation & Development) Act, 2016. It is imperative to bring the attention of this Authority that the RERA Act was passed with the sole intention of regularization of real estate projects, and the dispute resolution between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of RERA Act. That the complainants herein, have failed to provide the correct/complete facts that they are investors and not allottees therefore, the same are reproduced hereunder for proper adjudication of the present matter.

b) It is submitted that the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 10/02/2015, whereby seeking allotment of unit No. 35, admeasuring 250 Sq. Ft Super Area on the 3RD floor of the project having a basic sale price of Rs. 7968/- .The Complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

c) That since the complainant had opted for the investment return plan, a memorandum of understanding dated:- 27/04/2015 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 complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 27/04/2017 till commencement of first lease. It is also submitted that as per terms of the MOU, the complainants herein had duly authorized the respondent to put the said unit on lease.

d) That by no stretch of imagination it can be concluded that the complainants herein are allottee That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

e) That at this stage, it is categorical to highlight that the complainant is trying to mislead this Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "investment agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

f) That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. Without prejudice to the rights of the respondent, at the utmost bonafide, the Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.

g) It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 27.04.2015 for shop No. 35 on 3rd Floor admeasuring 250 Sq. Ft super area in the project.

h) That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

i) It is humbly submitted that under the scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property.

j) A perusal of the above provisions would show that RERA 2016 only envisages the enforcement of the act and rules /regulations made there under. It is submitted that assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of Section 11 highlight the scope of the functions of the promoter, as envisaged under the act. The same also, so do not impose any obligations in relation to returns of investment.

k) That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. It is submitted that the rules also keep "assured return" out of their scope. That Rule 8 provides a clear indication as to the matters which are to be covered under the agreement of sale. The authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

l) That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the mou between the parties. It is submitted that the Authority is exercising its power and jurisdiction as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale. However, in the present matter the complainant is relying upon the terms of MOU which is a distinct agreement than the buyer's agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder- allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

m) That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of anomaly/confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the respondent had no other alternative but to stop the payment of any return etc.

n) That 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.

o) Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the respondent upon the introduction of BUDS Act, cease to make further payments pertaining to assured return to the complainant due above said prevailing confusion/anomaly.

p) It is submitted that the as per clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate. For the convenience of the Authority clause 11 of MOU is reproduced hereunder for ready reference:

q) That without prejudice to the right of the respondents and without admitting to any of the averments of the complainant, since this Authority has stated in other cases of respondent that this Hon'ble Tribunal has the jurisdiction to the entertain the MOU entered into the parties.

r) That it is pertinent to mention here that the complainant failed to abide to the terms of the builder buyer agreement and memorandum of understanding executed by and between the parties.

s) That the respondents had substantially failed to discharge its obligations imposed upon them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

t) That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 27/04/2017 till the offer of possession . It is also submitted that as per clause 8 (a) of the MOU, the respondent herein had duly authorized the complainant to put the said unit on lease. That is because it contained a "lease clause" which empowers the complainant/developer to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.

u) That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

v) That apart from the above it is worth mentioning here that the allotee is not entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease. The decision taken and terms negotiated by the company shall be final and binding on the allotee(s).

w) That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 3500/- per Sq.Ft to the complainant which is sum of Rs. 10,32,500/- for getting the said unit fit out which is essential for getting the said unit leased out. That the respondent to avoid making the payment for the demand for fit out, deliberately filed the present suit.

x) That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. It is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, interest, registration charges, security deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MoU.

y) It is further pertinent to mention here that the complainant failed to clear the outstanding dues of Rs. 39,95,229/- payable against the unit.

z) That in the present case, the complainant has not obliged its duties as per the MOU & buyer's agreement and further has not made the payments as per the agreed timeline. in these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault. It is relevant to mention that the complainant herein has clearly violated the duties of an allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the allottee and the promoter.

aa) That from the facts indicated above and documents appended, 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 period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

bb) It is pertinent to mention herein 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 said project in all aspect and obtained the completion certificate from the office of DTCP.

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

E. **Jurisdiction of the Authority**

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

> ***Section 11***
>
> *.....*
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the relief sought by the complainant.

I. **Direct the respondent to pay assured returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 22,500/- for unit no. 35, since September, 2017 till handing over the possession.**

II. **To execute the sale deed in favour of the complainant for the unit immediately.**

III. **Set aside the illegal demand of VAT made by the respondent vide letter dated 30.10.2020.**

IV. **Restrain the respondent from entering the lease deed with 3rd party without seeking the consent of the complainant and therefore set aside the letter dated 28.02.2025.**

V. **To direct the respondent to not charge what is not part of the mou and bba which includes the demand of development charges, FTTH, Labour Cess, Fit-out charges etc. which was raised via demand letters dated 26.12.2024, 14.02.2025, 25.02.2025.**

VI. **Restrain the respondent from terminating or cancelling the unit of the complainant and to set aside the email dated 22.03.2025.**

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

11. All the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

12. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 27.04.2015 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

13. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.

14. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid

of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

> *(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
> *(ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement.*

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

16. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

> (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*

> *(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

17. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the promoter at the time of booking or immediately thereafter and as agreed upon between them.

18. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.

19. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

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

21. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question.

However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the promoter is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MoU dated 27.04.2015.

22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 27.04.2015, which is reproduced below for the ready reference:

> *Clause 4.*
> ***"The Company shall pay a monthly assured return of Rs. 22,500/-(Rupees Twenty Two Thousand Five Hundred only) on the total amount received with effect from 27th April 2017 after deduction of Tax at Source and service tax, 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 annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s) from 27th April 2017 onwards until the commencement of the first lease on the said unit."***

23. Thus, as per the abovementioned clause the assured return was payable @Rs.22,500/- per month w.e.f. 27.04.2017 until the commencement of first lease on the said unit.

24. The Authority is of the view that as per the MoU dated 27.04.2015, 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. 22,500/- from the date i.e., 27.04.2017 until the commencement of first after obtaining occupation certificate or completion certificate from the competent authority.

25. 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"*

26. Clause 3 of the MoU dated 27.04.2015 provides for handing over of possession and is reproduced below:

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

27. **Due date of possession:** As per clause 3 of the MoU dated 27.04.2015, 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 15.12.2018

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

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

29. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80% per annum.

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

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is being liable to be paid to the complainant in case of delay possession charges.

32. On consideration of documents available on record and submissions made by the complainant, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 15.12.2018.

33. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

34. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 27.04.2015. 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.22,500/- on the total amount received with effect from 27.04.2017 till the commencement of first lease. 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. 22,500/- per month whereas the delayed possession charges are payable approximately Rs. 18,593/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the offer of possession letter. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

35. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

36. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid assured return as per the terms of BBA and MoU executed thereto along with interest on such unpaid assured return. As per MoU dated 27.04.2015, the promoter had agreed to pay to the complainant monthly assured return @Rs.22,500/- on the total amount received with effect from 27.04.2017 till the commencement of first lease.

37. Therefore, considering the facts of the present case, the respondent is directed to pay assured return at the agreed rate i.e. @Rs. 22,500/- with

effect from 27.04.2017 till the commencement of first lease after obtaining occupation certificate from competent authority.

38. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

39. Further, complainant is seeking relief with regard to the waiver of charges demanded by the respondent in offer of possession dated 26.12.2024.

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* ***Service Tax, VAT, 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 26.12.2024, wherein an amount of Rs.1,41,533/- 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 Rs20,65,938/- out of the total basic sale consideration of Rs. 19,92,000/- as delineated under clause 4 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 26.12.2024 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 26.12.2024. 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.

VAT

- It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. The promoter shall charge VAT from the allottees **where the same was leviable,** at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads

Fit-out Charges

- The complainant has filed reminder letter for demand notice payment and offer of possession, and the other pertaining to the leasing-out communication issued by the respondent on 28.02.2025. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties.

- In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 28.02.2025 towards fit-out charges amounting to Rs.10,32,500/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Upon perusal of the MOU dated 27.04.2015, this Authority finds that the said MoU does not contain any clause authorizing the respondent to levy fit-out charges. In the absence of any contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law and are accordingly struck off.

40. 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 8 (a) of the MoU dated 27.04.2015 has been reiterated hereunder:-

> *Clause 8(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.***

41. 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

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

I. The respondent/promoter is directed to pay the assured returns to the complainant at the agreed rate i.e., @Rs.22,500/- with effect from 27.04.2017 till commencement of the first lease on the said unit, 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 fit out charges, 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 and VAT 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.

43. Complaint stands disposed of.

44. File be consigned to registry.

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