

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

Date of Order: 11.08.2026

Name of the Promoter		M/s Neo Developers Private Limited.	
Project Name		"Neo Square"	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/3044/2025	Sunil Yadav V/S NEO Developers Private Limited	Adv. Pitamber Yadav (Complainant) ADV VENKET RAO (Respondent)
2.	CR/2929/2025	Karan Singh V/S NEO Developers Private Limited	Adv. Pitamber Yadav (Complainant) Adv. VENKET RAO (Respondent)

CORAM:	
Shri Arun Kumar	Chairman

ORDER

1. This order shall dispose of 2 complaints titled as above filed before this Authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Neo Square" at Sector 109, Gurugram being developed by the respondent/promoter i.e., Neo Developers Private Limited. The terms and conditions of the builder buyer's

agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges etc.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project Name and Location		"Neo Square", Sector 109, Gurugram, Haryana			
Nature of the project		Commercial Colony			
Project area		2.71 acres			
Occupation certificate		14.08.2024			
1.	CR/3044/2025	Unit no. Sunil Yadav V/S NEO Developers Private Limited DOF: 02.07.2025 RR: 06.11.2025	Priority No. 7 First floor 550 Sq. ft. (page 77 of complaint)	BBA: 15.02.2021 (page 74 of complaint) MOU: 12.11.2013 (page 67 of complaint)	Clause 15 and 18 of MoU "15.The company shall pay a monthly return of Rs. 55,000/- on the total amount deposited till the signing of this MoU, with effect from 24.10.2013. 18. The builder in terms of its commitment to pay the assured return till possession shall issue the post dated cheques " (As per pg. no. 71 of the Complaint) T.S.C: Rs.55,82,500 /- (At page no. 77 of complaint) A.P.: - Rs.58,00,000 /- (as per MoU at page no. 71 of complaint)
2.	CR/2929/2025	Priority No. 08 First floor And 550 Sq. ft. (page 248 of complaint) DOF: 02.07.2025 RR: 06.11.2025	MOU: 19.04.2014 (page 238 of complaint)	Clause 15 and 18 of MoU "15.The company shall pay a monthly return of Rs. 55,000/- on the total amount deposited till the signing of this MoU, with effect from 24.10.2013. 18. The builder in terms of its commitment to pay the assured return till possession shall issue the post dated cheques " (As per pg. no. 242 of the Complaint)	T.S.C: Rs. 55,82,500/- (as per page no. 248 of complaint) A.P.: - Rs. 57,89,611/- (as per page no. 242 of reply)
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:					
Abbreviation		Full form			

DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
MOU	Memorandum of Understanding
AP	Amount paid by the allottee/s
RR	Reply received

4. The aforesaid complaints were filed by the complainant(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges etc.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/3044/2025 titled as Sunil Yadav V/S NEO Developers Private Limited.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3044/2025 titled as Sunil Yadav V/S NEO Developers Private Limited

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.	Date of MoU	12.11.2013 (As per pg. no. 67 of the complaint)
7.	Buyer's agreement	15.02.2021 (As per pg no.74 of the complaint)
8.	Unit no.	Unit no. 7 , first floor (page no. 77 of the complaint)
9.	Unit area admeasuring	550 sq. ft. (Super Area) (As per pg. no. 77 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 5.2 of BBA <i>The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate</i> (As per pg. no. 81 of the complaint)
12.	Assured return clause	16. <i>The company shall pay a monthly return of Rs. 55,000/- on the total amount deposited till the signing of this MoU, with effect from 24.10.2013.</i> 18. <i>The builder in terms of its commitment to pay the assured return till possession shall issue the post dated cheques</i> (As per page 71 of complaint)
13.	Due date of possession	15.08.2024

		[36 months from signing of the BBA as per the possession clause 5.2 + 6 months of grace period as per clause 5.4 of BBA]
14.	Total basic Sale consideration	Rs. 55,82,500/- (As per pg. no. 77 of the complaint)
15.	Amount paid by the complainant	Rs. 58,00,000/- (As per pg. no. 71 of the complaint)
16.	Occupation certificate	14.08.2024 (As per DTCP site)
17.	Provisional allotment	Dated 18.04.2024, in favor of Mr. Sunil Yadav after the demise of Sh. Prem Chand Yadav. (As per pg. no. 93 of the complaint)
18.	Offer of possession	Dated 02.12.2024, with a demand of Rs. 27,55,812/- (As per pg. no. 94 of the complaint)
19.	Reminder	03.01.2025, 01.03.2025 (As per pg. no. 48, 49 of the reply respectively)
20.	Demand letter for fit-out	Dated 15.04.2024, with demand of Rs. 37,76,287/- (As per pg. no. 50 of the reply)
21.	Demand for maintenance charges	Dated 24.02.2025, with demand of Rs. 47,513/- (As per pg. no. 51 of the reply)

B. Facts of the complaint

8. The complainant has made the following submissions: -
 - i. That the respondent "M/s Neo Developers Pvt. Ltd." company incorporate under company's act, 2013 or earlier applicable law having its registered office at 32b, Pusa road, new Delhi and corporate office at: 1205 B, Tower - B, 12th floor, signature tower, south city-1, nh-8, Gurugram, Haryana - 122001, launched "NEO SQUARE" commercial project approved by DTCP Haryana, Chandigarh vide license bearing no. 102/2008 dated 15.05.2008 for develop and maintain commercial offices/retails shops/restaurants on said land, which is mentioned in B.B.A. agreement vide page no. 4 under paragraph 3.

- ii. That respondent got the project "Neo Square" registered with the Town & Country Planning Department, Haryana and the said Department granted License No. 102 of 2008 dated 15.05.2008 for the development of commercial colony on land measuring 8.237 acres in Sector-109, Gurugram.
- iii. That the respondent got the registration done with this Authority and this Authority issued the registration certificate with registration no. 109 of 2017 on 24.08.2017 for the project titled "Neo Square" situated Sector-109, Gurugram.
- iv. That the complainant decided to submit an application for allotment of a commercial shop based on the elaborate representations, assurances and promises made by the respondent. The complainant subsequently submitted an application for allotment of a single commercial shop and paid the full price of the unit with amount of Rs. 58,00,000/- vide cheque no. 635372 on 23.10.2013.
- v. That the complainant paid a total amount of Rs. 58,00,000/- to the respondent for the commercial shop in the project titled "Neo Square". Subsequent to the payment, the complainant entered into a memorandum of understanding, with the respondent on 12.11.2013. That the complainant entered into a buyer's agreement with the respondent on 15.02.2021.
- vi. That the complainant was provisionally allotted unit no. 7 on the first floor of the project titled "Neo Square". That allotment has been done in the name of the complainant as the father of the complainant Shri Prem Chand Yadav has passed away.
- vii. That the complainant received a "demand notice and offer of possession" letter dated 02.12.2024 with regards to unit no. 1-07. As per the aforesaid

letter, the respondent offered possession of the commercial shop subject to payment of the "outstanding payments" amounting to Rs. 27,55,812/- which includes Interest Amount of Rs. 13,38,935/- and VAT amount of Rs. 7,34,081/-. There is no explanation for demanding VAT payment along with GST on other charges in the same invoice. Moreover, the interest amount calculation has not been explained at all particularly when the price of the unit has been paid in full upfront.

- viii. That along with the aforesaid demand, the respondent unilaterally reduced the 2 area of the commercial unit from 550 sq. ft. to 539.21 sq. ft., terming it as the "revised area" without offering any explanation, compensation, or justification for such reduction, thereby materially altering the terms of the agreement without the consent of the complainant.
- ix. That it is pertinent to mention that as per clause 15 of the memorandum of understanding dated 12.11.2013, the respondent was contractually bound to provide assured returns of Rs. 55,000/- per month to the complainant until the date of possession. However, the respondent abruptly stopped making assured return payments from march 2019 onwards, in complete breach of its obligations under the MOU.
- x. That due to the said breach, the complainant is entitled to arrears of assured returns amounting to Rs. 37,95,000/- calculated from April 2019 till December 2024, along with interest @ 12% p.a., which amounts to an Rs. 13,28,250/- Accordingly, the cumulative amount due and payable as on December 2024 stands at Rs. 51,23,250/-.
- xi. That as per clause 5.6 of the buyer's agreement dated 15.02.2021, the respondent was obligated to hand over possession of the unit within 36 months plus a grace period of 6 months, i.e., by August 2024. Despite the lapse of the contractual timeline, the respondent has failed to offer lawful

possession and execute the conveyance deed which is in direct violation of Section 17 of Real Estate (Regulation and Development) Act, 2016. Consequently, the complainant is entitled to a delay penalty @ rs. 10 per sq. ft. per month on the super area of the unit from August 2024 till date, amounting to Rs. 49,500/-.

- xii. That the complainant has already made payment amounting to Rs. 58,00,000/- which is in excess of 100% of the total basic price of Rs. 55,82,500/- as agreed between the parties. Despite such payment, the respondent has failed to honour its commitment to deliver possession and execute the conveyance deed.
- xiii. That the imposition of VAT of Rs. 7,34,081/- in the demand letter dated 02.12.2024 is arbitrary and illegal. Furthermore, the interest demand of Rs. 13,38,935/- has been raised without disclosing any computation, rationale, or basis, making it wholly unsubstantiated and unjust.
- xiv. That the respondent has failed to give possession and execute conveyance deed despite paying more than 100% of the basic price despite repeated requests constitutes. The respondent is simply trying to wiggle out of the obligations enumerated in the MOU and the buyer's agreement by charging VAT and interest unaccounted for.
- xv. That despite repeated requests, the respondent has neither provided any explanation nor withdrawn the illegal demands relating to interest and VAT, nor has it delivered lawful possession of the unit. It is evident that the Respondent is attempting to evade its contractual and statutory obligations under the MOU and buyer's agreement by raising baseless financial demands.

C. Relief sought by the complainant:

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

- I. Direct the respondent to hand over legal and physical possession of unit no. 1-07 in the project "Neo Square", Sector 109, Gurugram, in accordance with the buyer's agreement.
- II. Direct the respondent to execute conveyance deed of unit no. 1-07 in the project "Neo Square, Sector 109, Gurugram.
- III. Declare that the demand raised by the respondent vide letter dated 02.12.2024 for Rs. 27,55,812 which includes VAT amounting to Rs. 7,34,081/- and interest of Rs. 13,38,935/- as arbitrary, illegal, and unenforceable, and consequently quash the same.
- IV. Direct the respondent to pay the complainant the assured returns of Rs. 55,000/- per month from June 2019 till the date of actual possession, amounting to Rs. 37,95,000/-, along with interest @12% per annum, aggregating to Rs. 51,23,250/-.
- V. Award delay compensation of Rs.10 per sq. ft. per month for the period of delay beyond August 2024, as per clause 5.6 of the buyer's agreement, which currently amounts to Rs.49,500/- and continues to accrue till the date of possession.
- VI. Direct the respondent to refund or adjust any excess amount paid by the complainant beyond the agreed total basic sale consideration of Rs. 55,82,500/-, particularly in light of the area reduction from 550 sq. ft. to 539.21 sq. ft.
- VII. Award litigation costs to the complainant for the expenses incurred in pursuing this complaint.

D. Reply by the respondent:

10. The respondent vide its reply dated 06.11.2025 has contested the complaint on the following grounds:

- i. That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement, both the parties have unequivocally agreed to resolve any disputes through arbitration.
- ii. The respondent allotted a unit bearing priority no. 7, on 1st Floor, admeasuring 550 sq. ft. super area. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.
- iii. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 15.02.2021.
- iv. The complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 12.11.2013 was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.
- v. It is noted herein that since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent Authority shortly, and leased out the subject unit, requested the complainant to forward to complete the formalities with respect to leasing of the unit. the occupation certificate of the project was granted by the competent Authority on 14.08.2024.
- vi. Thereafter, the respondent sent an offer of possession letter dated 02.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

- vii. Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated 03.01.2025 and 01.03.2025, requesting the complainant to do the needful.
- viii. That the respondent vide letter dated 15.04.2024 requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- ix. That the respondent vide letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU.
- x. That the respondent vide letter dated 30.10.2020, requested the complainant to make payment of the VAT charges as per the agreed terms and conditions of the MOU.
- xi. That the respondent had duly discharged its obligations by paying a sum of Rs.33,77,550/- to the complainant towards assured return up to 21.10.2019. It is only subsequent to the complainant's default in fulfilling his contractual obligations and in view of the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019, that the respondent was constrained to discontinue further payments under the assured return arrangement.
- xii. That the complainant, despite receiving the demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.
- xiii. 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.
- xiv. 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.

- xv. 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.
- xvi. 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.
- xvii. 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. The rules also keep "assured return" out of their scope. 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.
- xviii. That even in case of a newly registered project, assured return is not a matter which would be included in the agreement of sale. The rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. That even this agreement does not contain any condition governing assured returns. Thus, any order of payment of assured return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.

- xix. In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the act, 2016 may be examined. The assured return is an independent commercial arrangement between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.
- xx. On the basis of the above, it may be considered that there is no provision under the scheme of act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot.
- xxi. Also, a perusal of the section 2(d) defining allottee as well as section 2 (zk) which defines "Promoter" does not include any transaction regarding "assured return". Therefore, the Assured Return scheme is beyond the scope of the Act, 2016 and jurisdiction of the Authority.
- xxii. That as per the provisions of the 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 (buyer's

agreement). 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 Act, 2016. 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.

- xxiii. That the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. The reliance is place on the judgement of the Hon'ble High Court of Delhi in the matter of M/s Serenity Real Estate Private Limited Vs. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016) wherein the Hon'ble High Court held as under:

"11. It is apparent from the above that the Arbitration clause in the Assured Return Agreement is materially different from the Arbitration clause contained in the Space Agreement. Although the Agreements are connected the rights and obligations of the parties under the said agreements are not identical. Thus, it is difficult to accept the Respondent's contention that the arbitration clause in the space agreement would prevail over the Arbitration clause in the later agreement."

- xxiv. Thus, in view of the above, the present complaint is arising out of the MOU which is not maintainable before the authority and thus, the present complaint is liable to be dismissed.
- xxv. 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.
- xxvi. 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 Allottees/Complainant due above said prevailing confusion/anomaly. The preamble of the act reads as under:

"An Act 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."

- xxvii. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.
- xxviii. Further, the BUDS Act provides two forms of deposit schemes, namely Regulated Deposit Schemes and Unregulated Deposit Schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.
- xxix. That the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act.
- xxx. That for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the Competent Authority constituted under the Act.
- xxxi. Further, any orders or continuation of payment of assured return or any directions thereof may tantamount to contravention of the provisions of the BUDS Act.
- xxxii. That the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain

consideration and certain percentage whereof is offered as Assured Return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

- xxxiii. That recently a writ petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. Vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the Respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.
- xxxiv. That as the complainant in the present complaint is seeking the relief of assured return/penalty, it is respectfully submitted that such a relief is not maintainable before this Ld. Authority in view of the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act"). Any direction for payment of Assured Return/Penalty would amount to violation of the provisions of the BUDS Act.
- xxxv. A bare reading of Section 13(2) demonstrates that Assured Return/Penalty is not contemplated within the ambit of an agreement for sale. It is a separate commercial arrangement, independent of the RERA framework.
- xxxvi. That Moreover, the present complaint is based on the terms of an mou entered into between the parties, which is distinct from the builder-buyer agreement.

The jurisdiction of the Authority is confined to disputes arising from the builder-buyer agreement. Since the MOU is an independent commercial understanding, the complaint founded upon it is not maintainable. Reliance is placed on M/s Serenity Real Estate Pvt. Ltd. v. Blue Coast Infrastructure Development Pvt. Ltd. (Arb. P. 796/2016, Delhi HC), wherein it was held that different agreements between the same parties, though connected, create distinct rights and obligations.

- xxxvii. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.
- xxxviii. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.
- xxxix. That the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the Respondent is not appearing in the list of Builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

- xl. That the demand of VAT is done as per Clause 11 of the Buyer's Agreement. The said clause clearly states that the Allottee is liable to pay interest on all delayed payment of taxes, charges etc. The complainant is liable to pay the VAT demands as the respondent has not availed any amnesty scheme.
- xli. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. The development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

S. N o.	Date of Order	Directions	Period Of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid Ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old Which are commonly used in construction Activity. The Order had Completely Hampered The construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had	Till date the order in force and no	30 days	The directions of NGT were a big blow



		directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	relaxation has been given to this effect.		to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating In NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was Absolute. The order had Completely Stopped Construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. With effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was



					consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
7.	24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed		30 days	Th directions of the NGT were again a

		the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.			setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the	04.11.2019 14.02.2020	- 102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not

		Hon'ble Supreme Court vide its order dated 14.02.2020.			resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months nationwide lockdown)	Since the 3 rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State	12.04.2021 - 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew.

xlii. 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 come within the meaning of force majeure. 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 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 Hon'ble 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 Hon'ble 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.

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

E. Jurisdiction of the authority

12. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

14. 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.

15. 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.

F. Findings on the objections raised by the respondent:**F.I Objections regarding force majeure.**

16. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 15.08.2024. It is observed that orders passed by NGT banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

F. II Objection regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, he is not entitled to the protection of the Act and is not entitled to file the complaint under Section 31 of the Act. The Authority

observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 15.02.2021, it is revealed that the complainant is buyer, and he has paid a total price of Rs.58,00,000/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr. has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

G. Findings on the reliefs sought by the complainant:

- G.I Direct the respondent to hand over legal and physical possession of unit no. 1-07 in the project "Neo Square", Sector 109, Gurugram, in accordance with the buyer's agreement.
- G.II Direct the respondent to execute conveyance deed of unit no. 1-07 in the project "Neo Square, Sector 109, Gurugram.
- G.III Declare that the demand raised by the respondent vide letter dated 02.12.2024 for Rs. 27,55,812 which includes VAT amounting to Rs. 7,34,081/- and interest of Rs. 13,38,935/- as arbitrary, illegal, and unenforceable, and consequently quash the same.

G.IV Direct the respondent to pay the complainant the assured returns of Rs. 55,000/- per month from June 2019 till the date of actual possession, amounting to Rs. 37,95,000/-, along with interest @12% per annum, aggregating to Rs. 51,23,250/-.

G.V Award delay compensation of Rs.10 per sq. ft. per month for the period of delay beyond August 2024, as per clause 5.6 of the buyer's agreement, which currently amounts to Rs.49,500/- and continues to accrue till the date of possession.

G.VI Direct the respondent to refund or adjust any excess amount paid by the complainant beyond the agreed total basic sale consideration of Rs. 55,82,500/-, particularly in light of the area reduction from 550 sq. ft. to 539.21 sq. ft.

G.VII Award litigation costs to the complainant for the expenses incurred in pursuing this complaint.

19. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.

20. 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 reads as under:

"Section 18: - Return of amount and compensation

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

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

21. **Due date of possession:** As per clause 5.2 of the BBA, 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 or whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement dated 15.02.2021 being later, grace period of 6 months has also been granted in the terms of BBA under clause 5.4 after the expiry of aforesaid period which has been taken into account. Thus, the due date of possession come out to be 15.08.2024.

22. In the present complaint, the occupation certificate granted by the competent authority on 14.08.2024, the respondent has obtained occupation certificate prior to the due date of handing over of possession. On consideration of the documents available on record and submissions made regarding contraventions of the provisions of the Act, the Authority is satisfied that the respondent has already obtained occupation certificate prior to the due date of handing over of possession. Thus, no case for delayed possession charges is made out under Section 11(4) (a) of the Act read with proviso to Section 18(1) of the Act. Accordingly, no direction to this effect.
23. The complainant is also seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 12.11.2013 at the rate mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.
24. 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 his grievance.
25. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

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

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

27. 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.

28. 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.

29. 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.

30. 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 builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the Memorandum of Understanding.
31. 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 in a ongoing project as per section 3(1) of the Act of 2016, 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 builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on.
32. In the present complaint, the assured return was payable as per clause 15 and 18 of the MoU dated 12.11.2013, which is reproduced below for the ready reference:
- "15. The company shall pay a monthly return of Rs. 55,000/- on the total amount deposited till the signing of this MoU, with effect from 24.10.2013.*
- 18. The builder in terms of its commitment to pay the assured return till possession shall issue the post dated cheques taking into consideration the expected period of completion....."*
33. Thus, as per the abovementioned clause the assured return was payable @Rs.55,000/- per month w.e.f. 24.10.2013, till the possession of the unit.
34. In light of the above, the Authority is of the view that as per the MoU dated 12.11.2013, it was obligation on part of the respondent to pay the assured return till possession of the unit. The occupation certificate for the project in question was obtained by the respondent on 14.08.2024 and offer of possession as made on

02.12.2024, since the unit was meant for leasing purposes accordingly, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.55,000/- from the date i.e., 24.10.2013 till the date of offer of possession after deducting the amount already paid on account of assured return to the complainant.

35. 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.
36. The complainant has further sought relief regarding the waiver of various ancillary charges, penalties, rates, and other monetary demands which, according to them, do not form part of either the Buyers' Agreement dated 15.02.2021 or the MoU dated 12.11.2013. The impugned demand letter dated 02.12.2024 reflects components such as VAT, Development Charges, FTTH charges and Labour Cess, which have been objected to by the complainant. The Authority is of the view that:

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

- **Interest on delayed payment**

The Authority has perused offer of possession letter dated 02.12.2024, wherein an amount of Rs.13,38,935/- 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. 58,00,000/- out of the total basic sale consideration of Rs55,82,500/- as delineated under clause 3 and 15 of MoU. In terms of the payment plan delineated under BBA, 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 02.12.2024, the due date of possession was 15.08.2024 the OC was received only on 14.08.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU.

The Authority 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 complainant has already made full payment of total sale consideration as per the terms of the agreement agreed among the parties. 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.

- **Development charges**

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

"11.

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

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

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

- **FTTH Charges**

The Authority has observed 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.

- **VAT**

The complainant has contended that the respondent has illegally charged amount from him towards VAT. But the version of respondent is otherwise and took a plea that respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The Authority is of view that 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 complainants 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. Further, in case, the respondent has received excess amount towards VAT, then the same shall be refunded to the complainant.

- **Fit-out Charges**

The letter dated 15.04.2024, demands Fit-out charges which amounts to Rs.37,76,287/-. In the said demand letter, the respondent has raised a demand towards fit-out charges amounting to Rs. 17,53,500/-. 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 15.04.2024 towards fit-out charges amounting to Rs.17,53,500/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off. In the absence of any clause under the MoU or BBA agreed upon among the parties

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.

37. Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment/MoU.
38. The Authority has considered the prayer of the complainant seeking refund/adjustment of the alleged excess amount paid on account of reduction in the area of the allotted unit from 550 sq. ft. to 539.21 sq. ft. It is observed that the area of the allotted unit has been reduced from 550 sq. ft. to 539.21 sq. ft., and the complainant is consequently entitled to an appropriate refund/adjustment of the excess amount charged towards the area which has not been allotted. In this regard, The Real Estate (Regulation and Development) Rules, 2017 Annexure-A, Clause 1.7 of the Agreement for sale provides for adjustment/refund of the excess amount paid by the allottee consequent upon reduction in the area. Accordingly, the respondent is directed to refund/adjust the excess amount, if any, paid by the complainant towards the reduced area, in accordance with The Real Estate (Regulation and Development) Rules, 2017 Annexure-A, Clause 1.7 of the Agreement for sale.
39. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

40. Further the complainant is seeking relief w.r.t execution of conveyance deed of the unit in question in their 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 complainants. 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.

41. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/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.

H. Directions of the authority

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

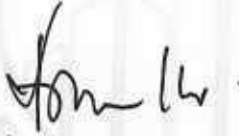
- i. The respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.55,000/- per month from the effective date i.e. 24.10.2013 till offer of possession of the unit dated 02.12.2024 after deducting the amount already paid on account of assured return to the complainants.
- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which

that amount would be payable with interest @8.80% p.a. till the date of actual realization.

- iii. The respondent/promoter is directed to 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.
- iv. The respondent can charge development charges and maintenance charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.
- v. The respondent shall not charge anything from the complainants which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge FTTH, Interest amount and Fit-out charges from the complainant/allottee.
- vi. The respondent is not entitled to charge holding charges, 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.
- vii. The respondent is directed to refund/adjust the excess amount, if any, paid by the complainant towards the reduced area, in accordance with The Real Estate (Regulation And Development) Rules, 2017 Annexure-A Clause 1.7 of the Agreement for sale.
- viii. The rate of interest chargeable from the complainant by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent as per Section 2(za) of the Act. Further, if the respondent has

recovered any excess amount from the complainant by levying interest at a rate higher than the prescribed rate on delayed payments, the excess amount so collected shall be refunded to the complainant.

- ix. 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. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of.
45. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.08.2026