BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1487 of 2025**
Date of complaint	:	**27.03.2025**
Date of order	:	**29.09.2026**

Ranvir Singh and Krishna Lata Singh,
Both R/o: - Flat No. C-301, Raheja Atharva,
Sector- 109, Gurugram.

Complainants

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32B, Pusa Road,
Karol Bagh, New Delhi-110005.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Atul Tiwari (Advocate) — Complainants
Venket Rao (Advocate) — Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

7. The particulars of the project, the details of 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	03.12.2019 (As per pg. no.28 of the complaint)
7.	Unit no.	Unit no. priority no. 118 on Third Floor (As per pg. no. 31 of the complaint)
8.	Unit area admeasuring	300 sq. ft. (Super Area) (As per pg. no. 31 of the complaint)
9.	Date of MoU	03.12.2019 (As per pg. no. 54 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. 56 of the complaint)
12.	Due date of possession	03.06.2023 [36 months from signing of the MOU as per the possession clause + 6 months grace period on account of Covid-19]
13.	AR Clause	*Clause 4.* *"The Company shall **pay a Penalty of Rs.29,973/- per month on the said unit,***

		on the total amount received with effect from 03.12.2020 (Effective date-II) subject to TDS, taxes, cess or any other levy.....until the offer of possession letter date, on prorata basis." (As per pg. no. 56-57 of the complaint)
14.	Total basic Sale consideration	Rs. 23,72,400/- (As per pg. no. *56 of the complaint*)
15.	Amount paid by the complainant	Rs. 21,20,489/- (As per pg. no. *56 of the complaint*)
16.	Occupation certificate	14.08.2024 (As per page 42 of respondent)
17.	Offer of possession	04.12.2024 (As per pg. no. 68 of the complaint)
18.	Reminder 1	14.02.2025 [on page 71 of complaint]
19.	Reminder 2	25.02.2025 [on page 72 of complaint]

B. Facts of the complaint

8. The complainants have made the following submissions: -

I. That in 2019, the respondent himself and through its marketing executives and advertisement done through various medium and means approached the complainants with an offer to buy commercial space in the proposed project named Neo Square being developed by the respondent at Sector 109, Dwarka Expressway, Gurgaon. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondents and booked a commercial space in the said project of the respondent.

II. That the complainant has paid to the respondents Rs.21,20,489/- towards the advance/part consideration of the commercial unit and the same has been duly admit and acknowledged by the respondent.

III. That the respondent finally signed and executed Buyer's agreement and memorandum of understanding on 03rd December 2019.

IV. That in contravention of the buyer's agreement and MOU dated 03rd December 2019, the respondent has delayed the possession of the said unit. Till the filing of this compliant the possession the said unit has not been handed over to the complainants.

V. That the respondent has duly acknowledged in the MoU dated 03rd December 2019 that the respondent shall pay a penalty of Rs. 29,973/- per month on the said unit but the respondent, in contravention of the MOU and Buyer's agreement has failed to do the same and it is pertinent to mention herein that till date no possession has been provided by the respondent.

VI. That as per the memorandum of understanding (Mou) on 3d December 2019 the complainant has strictly adhered to the payment schedule specified in the MoU and total payment of Rs.21,20,499/- comprising of Basic sale price, 100% of External development charges (EDC) and internal development charges (IDC) inclusive of GST has been remitted in favour of the respondent and as per the MoU the balance payment of Rs. 7,63,356/- was agreed to be payable at the time of possession, despite that the respondent has delayed the possession for over four years, and no possession has been given till date.

VII. That the respondent has issued a letter on 15th April 2024 namely "Demand letter and offer for fit out" in which the respondent has raised the unjust demand of Rs. 21,75,947/- (against Rs. 7,53,356/- as per the original payment schedule). The complainant as a law-abiding citizen has duly replied to the illegal and unjust demand issued by the respondent.

VIII. That to the utter shock and amazement of the complainant respondent has issued reminder letters dated 04th Dec 2024, 14th Feb 2025 and 25th

Feb 2025 vide which the respondent has raised an unjustified demand of Rs.10,29,923/- which is not only unjustifiable but also bad in eyes of law and the respondent vide its letter dated 25.02.2025 has refuted all the malicious claims of the respondent.

IX. That despite the full compliance by complainant with the financial obligations of the respondent, respondent has failed to deliver the timely possession of unit no. Priority no.118 on 2nd floor, revised area 300.00 sq. ft. at project "Neo Square".

X. That the respondent is in clear violation of the clause 4 of MOU where the respondent was in contractual obligation to compensate the complainant accordingly.

XI. That as per the MOU the total amount due on the respondents till the filing of the petition is Rs.26,15,904/- and despite that till date no possession has been given and the respondent is harassing the complainants by raising undue and unjust demands.

XII. That the respondents under the terms of the Builder- Buyer agreement and the MOU, possession was contingent on the timely issuance of the occupation certificate (OC) while the respondents now claim to have obtained the occupation certificate, the inordinate and unexplained delay has caused significant loss to the complainant for which the respondent is solely liable.

XIII. That the respondents vide demand notice dated 4th December 2024 has raised various unwarranted charges which are neither legally nor raised various unwarranted charges which are neither legally nor contractually justifiable, including but not limited to: A) Rs.7,500/- as labour cess and Rs. 6,490/- as FTTH charges, unsupported by any contractual agreement. B) Rs. 2,12,400/- for development charges, purportedly covering electrical, sewerage, and water connections, which are exorbitant and

unjustifiable. C) Rs. 14,694/- as interest on delayed payments, despite all payments being timely and in compliance with MOU. D) It is pertinent to mention herein that all these charges are arbitrary, devoid of merits and constitute an egregious violation of the Builder Buyer agreement and MOU.

XIV. That the respondents have consistently failed to adjust the penalty and assured returns against the alleged outstanding dues, as contractually obligated. This refusal amounts to a blatant breach of the MOU on part of respondents.

XV. That being aggrieved by the undue and unjust demand of the respondent complainant has sent legal notice dated 21-07-2024 & Legal Notice dated 16-12-2024 seeking amicable resolution of the issue, but all in vain. It is pertinent to mention herein that respondent on numerous occasions has tried his level best to meet the representative of the respondent but nothing effective came out of the same too, which is clear indicative of the wilful disregard for the legitimate grievances of the complainant.

XVI. That it is therefore submitted that as per facts and circumstances mentioned above, it is clear that the respondents received the payments from the complainants and allotted the said units to them with a promise to deliver the possession within stipulated time, the respondents has failed to fulfil their obligations bestowed upon them by the contract as well the law and the complainants are still awaiting for the legal and valid possession of their unit despite payment of the majority of the sale consideration and expiry of the promised date of delivery.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):

i. Direct the respondent to pay assured return.

ii. Direct the respondent to handover possession and to pay delay possession charges.

iii. Direct the respondent to adjust all unjustified demand and recalculate the dues as per BBA and MoU.

iv. Direct the respondent to pay compensation.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

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

i. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form, requesting the respondent to allot a unit/space, admeasuring 250 sq. ft. super area in the project "NEO Square". Considering the request of the complainant, the respondent allotted a unit bearing priority No. 75, on 3rd Floor, admeasuring 250 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/documents with respect to lease rental, assured return etc. however, the complainant failed to come forward to do the needful.

ii. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 03.12.2019. Since, 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 03.12.2019 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.

iii. That the occupation certificate of the project was granted by the competent authority on 14.08.2024. Thereafter, the respondent sent an

offer of possession letter dated 04.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit. 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 14.02.2025, 25.02.2025 requesting the complainant to do the needful.

iv. 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. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

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

a) The unit is allotted to the complainant on the condition that the unit shall be leased through respondent;
b) The respondent shall be authorized to lease the unit;
c) The complainant has authorized the respondent to finalize the terms and conditions of the leasing with any prospective lessee;
d) If the complainant fails to execute the necessary documents/lease deed, then in those circumstances, the respondent shall execute the lease deed;

e) The complainant shall not raise any objection with respect to terms and conditions of the lease, the lease amount or to whom the units are leased out;

vi. That it was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself. The whole idea behind the leasing of the subject unit through the respondent was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the project who, by themselves, could not get big brands to take their units on lease. It is further submitted herein that the complainant has invested in the instant project for earning lease rental can be verified from the fact that under clause 6 of the BBA. It is pertinent to mention herein that no protest in this regard has ever been raised by the complainant and the same was willingly and voluntarily agreed upon between the parties.

vii. That there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. The demand of the development charges as have been sought in the demand letter from the complainant, which is Rs. 600 per sq. ft., equitably distributed amongst the unit. Under Clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date. It is noted herein that the development charges are reimbursement towards the cost incurred by the respondent towards providing facilities in the project. The complainant himself has agreed to pay the development charges, therefore, at this belated stage, the complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.

viii. That as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the unit, fitout demands are as per the MOU and as per the leasing requirements. There is no change or increase, or escalation in the sale consideration of the unit. The sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. The demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU. It is reiterated herein that the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant, inside the shop/office/space/unit, the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the complainant, under clause 8(d) of the MOU, has categorically agreed that in case the lessee desires any infrastructural changes in the unit, then the complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. It is further agreed that in case the complainant fails to pay the same, then the respondent shall pay the expenses on behalf of the complainant and deduct the same from the lease rental payable to the complainant, along with a monthly interest of 2 per cent. The

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

ix. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. It is noted herein that the building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. After that the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024. It is pertinent to mention herein that after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1st lease with

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

x. That the complainant under Clause 9 (a) of the MOU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the lease, the amount of lease, usage or to who the unit is leased out. It is noted herein that under Clause 9 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. In case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant. Therefore, in view of the agreed terms and conditions of the MOU, it is submitted herein that the lease deed executed by the respondent on behalf of the complainant are valid as the same are executed as per the terms and conditions of the MOU.

xi. That on the one hand the complainant is seeking payment of assured return on the basis of MOU, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the complainant cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the complainant is claiming his right under the MOU, then he should also be ready to fulfil his responsibility under the MOU.

xii. That the complainant, vide the present complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016.

xiii. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/completion of the project got hampered due to force majeure situations beyond the control of the respondent such as NGT orders/construction bans, demonetization, GST implications, Jat reservation agitation, non-payment of dues by allottees etc.

12. 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

13. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

14. 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

15. 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.*

16. 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. Objection regarding the complainants being investor.

17. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are 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 03.12.2019, it is revealed that the complainants are buyers, and they have paid a total price of Rs.21,20,489/- 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 complainants are allottees 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.

F. II Objection regarding force majeure circumstances.

19. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, Covid-19 etc. The Authority observes that the due date of possession was 03.12.2022. Further, an extension of 6

months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 03.06.2023. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-promoter 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 cannot be granted any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

G. I Direct the respondent to pay assured return.

G.II Direct the respondent to handover possession and to pay delay possession charges.

20. The complainants in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the MoU dated 03.12.2019. The complainants have submitted that as per clause 4 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.29,973/- with effect from 03.12.2020 till the date of offer of possession. The complainants are seeking unpaid assured returns on monthly basis as per the MoU dated 03.12.2019 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MoU.

21. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by

the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

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

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainants are allottees.

22. The Authority observes that the MoU dated 03.12.2019 regarding the assured return can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the said letter and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under Section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the MoU dated 03.12.2019 is the transaction of assured return inter-se parties. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship.

23. It is pleaded on behalf of respondent/promoter 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.*

24. 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;*

25. 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.

26. 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.

27. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured 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.

28. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the respondent is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

29. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 03.12.2019, which is reproduced below for the ready reference:

> 4. *"The Company shall* ***pay a Penalty of Rs.29,973/- per month on the said unit, on the total amount received with effect from 03.12.2020 (Effective date-II) subject to TDS, taxes, cess or any***

other levy.....until the offer of possession letter date, on prorata basis."

30. Thus, the assured return was payable @Rs.29,973/- per month w.e.f. 03.12.2020, till the date of offer of possession is issued to the complainants.

31. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 03.12.2019, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 03.12.2019. Further, it is to be noted that the occupation/completion certificate for the project in question has already been obtained by the respondent on 14.08.2024 and the possession of the subject unit was offered to the complainants on 04.12.2024. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.29,973/- per month from the date i.e., 03.12.2020 till the date of offer of possession i.e. 04.12.2024, as per the terms of memorandum of understanding dated 03.12.2019, after deducting the amount already paid on account of assured return to the complainants.

Delay Possession Charges:

32. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."*

33. Clause 3 of the MoU dated 03.12.2019 provides for handing over of possession and is reproduced below: -

> *3. "The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate.*

34. **Due date of possession:** As per clause 3 of the MoU dated 03.12.2019, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date execution of agreement, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 03.06.2023.

35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at prescribed rate of interest. 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]***
>
> *(1) 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.*

36. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of

interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

37. 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., 29.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

38. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

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

40. On consideration of documents available on record and submissions made by the complainants and the respondent, 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 by 03.06.2023. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and possession of the unit was offered to the complainants on 04.12.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

41. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the BBA or in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is Rs.29,973/- per month w.e.f. 03.12.2020. If we compare this assured return with delay possession charges payable under proviso to Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottees that they will be entitled for this specific amount from 03.12.2020 upto the date of offer of possession. Accordingly, the interest of the allottees is protected even after the due date of possession is over. The purpose of delay 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 delay possession charges whichever is higher.

42. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

43. In the present complaint, as per clause 4 of the MoU dated 03.12.2019, the amount on account of assured return was payable from 03.12.2020 upto the date of offer of possession. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and possession of the unit was offered to the complainants on 04.12.2024. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.29,973/- per month from the date i.e., 03.12.2020 till the date of offer of possession i.e. 04.12.2024, as per the terms of memorandum of understanding dated 03.12.2019, after deducting the amount already paid on account of assured return to the complainants.

44. The complainants are seeking physical handover of possession. However, the Authority observes that vide Clause 9 of the MoU dated 03.12.2019, the complainants unconditionally and irrevocably agreed and confirmed that the respondent would have the exclusive right to lease out the unit in question and has also given his unconditional consent on the terms and conditions of the lease arrangement which may be finalized by it. It was further agreed between the parties that the unit will be handed over to the lessee directly. Consequently, the relief sought by the complainants with regard to handover of physical possession to them stands declined.

45. The Authority further 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 allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The possession of the subject unit has already been offered to the complainants after obtaining occupation certificate on 14.08.2024. Therefore, the respondent is directed to get the conveyance deed of the allotted unit executed in favour of the complainants 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.

G.III Direct the respondent to adjust all unjustified demand and recalculate the dues as per BBA and MoU.

46. The complainants are seeking additional reliefs w.r.t adjusting the unjustified demands collected on account of labour cess, fit-out charges, FTTH charges, development charges, interest on delayed payments and recalculate the dues as per BBA and MoU. Accordingly, the Authority is deliberating its findings on the above said demands as follows:

- **Fit-out charges:** The complainants have raised objections towards the fit-out charges raised by the respondent vide offer of possession and are seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties. The Authority observes that as per the Clause 8 of the MoU executed between the parties, the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

> *8 (d)*
> ***That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee,*** *strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the*

allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received.

Upon understanding of the said clause, it is clear that Clause 8(d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainants should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 8(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the complainants.

- **Labour cess:** It is observed that 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 complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.
- **Development charges:** The Authority observes that 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 complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges:** The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainants. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.
- **Interest on delay payment:** The Authority observes that Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the unit as per section 19(10) of the Act. Accordingly, the rate of interest chargeable from the complainants by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent as per Section 2(za) read with section 19(7) of the Act.

47. Accordingly, the respondent is directed to comply with the findings recorded above by the Authority. The respondent is further directed to not charge anything from the complainants which is not the part of the BBA/MoU dated 03.12.2019.

G.IV Direct the respondent to pay compensation.

48. The complainants are 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.*** 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 and legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation.

H. Directions of the authority

49. 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.29,973/- per month from the date i.e., 03.12.2020 till the date of offer of possession i.e. 04.12.2024, as per the terms of memorandum of understanding dated 03.12.2019, after deducting the amount already paid on account of assured return to the complainants.

ii. The respondent is directed to handover possession of the unit to the complainants in terms of the MoU as well as buyer's agreement dated 03.12.2019, 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.

iii. The respondent shall not charge anything from the complainants which is not the part of the BBA/MoU dated 03.12.2019.

iv. The respondent in case of default shall charge interest on delay payments from the complainants at the prescribed rate i.e., 10.80% as per Section 2(za) read with Section 19(7) of the Act.

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

50. The complaint stand disposed of.

51. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.09.2026