BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 13.10.2026

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2026/2025	Vikas Thakur and Jasmine Thakur V/s M/s Neo Developers Pvt. Ltd.	Atul Tiwari (Complainants) Dushyant (Respondent)
2.	CR/5591/2025	Samarjeet Grover and Puja Bhasin Grover V/s M/s Neo Developers Pvt. Ltd.	Amarjeet Yadav (Complainants) Dushyant (Respondent)
3.	CR/5929/2025	Arpit Bansal V/s M/s Neo Developers Pvt. Ltd.	Aashul Agarwal (Complainant) Dushyant (Respondent)

CORAM:	
Arun Kumar	Chairman

ORDER

1. This order shall dispose of all the 3 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" being developed by the same 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 handover of possession, payment of delay possession charges and assured return.

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: "Neo Square", Sector-109, Gurugram
1. Occupation certificate- 14.08.2024
2. DTCP License no. *102 of 2008 dated 15.05.2008 valid upto 14.05.2025* - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.
3. Nature of Project- Commercial Colony
4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size (super area)	Date of execution of BBA /MoU	Assured Return Clause	Basic Sale Consideration / Total Amount paid by the complainant	Offer of possession
1	CR/2026/2025 Vikas Thakur and Jasmine Thakur Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 09.05.2025 **Reply:** 19.05.2026	Priority No.41 & 42, 3rd Floor (8 Meter Height), 528 sq. ft. (page no. 29 of the complaint)	**BBA:** 14.05.2018 (As per pg. no.26 of the complaint) **MOU:** 14.05.2018 (As per pg. no. 49 of the complaint)	*Clause 4.* *"The Company shall **pay a monthly assured return of Rs.35,640/- on the total amount received with effect from 14.05.2018 before deduction of tax at source, cess or any other levy.....until the commencement of the first lease on the said unit."***	**BSP:** Rs.51,83,904/- (As per pg. no. 29 of the complaint) **A.P.:** Rs.46,34,784/- (as per MOU at page 59 of complaint)	**O.O.P:** 09.12.2024 (as per page 59 of complaint)
2	CR/5591/2025 Samarjeet Grover and Puja Bhasin Grover Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 29.10.2025	Priority No.134, 3rd Floor, 1000 sq. ft. (page no. 36 of the complaint)	**BBA:** 16.03.2020 (As per pg. no.35 of the complaint) **MOU:** 16.03.2020 (As per pg. no.45 of the complaint)	*Clause 4.* *"The Company shall **pay a penalty of Rs.99,000/- per month on the said unit, on the total amount received with effect from 17.03.2021 subject to TDS, taxes, cess or any other levy.....until the offer of possession...."***	**BSP:** Rs.50,00,000/- (As per pg. no. 36 of the complaint) **A.P.:** Rs.25,76,000/-	**O.O.P:** 24.12.2024 (as per page 63 of reply)

	Reply: 22.07.2026			***Leasing Clause- 9 of MoU Fit-out Clause-8(d) of MoU***	(as per MOU at page 46 of complaint)	
3	**CR/5929/2025** Arpit Bansal Vs. M/s Neo Developers Pvt. Ltd. **DOF:** 14.11.2025 **Reply:** 22.07.2026	Restaurant No.7, 3rd Floor, 528 sq. ft. (page no. 28 of the complaint)	**BBA:** 04.10.2019 (As per pg. no.25 of the complaint) **MOU:** 04.10.2019 (As per pg. no.50 of the complaint)	*Clause 4.* *"The Company shall **pay a monthly assured return of Rs.51,839/- on the total amount received with effect from 05.10.2019 before deduction of tax at source, cess or any other levy.....until the commencement of the first lease on the said unit."*** ***Leasing Clause- 8 of MoU Fit-out Clause-7(d) of MoU***	**BSP:** Rs. 26,40,000/- (As per pg. no. 28 of the complaint) **A.P.:** Rs.32,65,297/- [as per SOA dated 01.09.2025] (As per pg. no. 96 of the complaint)	**O.O.P:** 28.11.2024 (page 63 of reply)

Relief sought by the complainant(s) in abovementioned complaints: -

1. Direct the respondent to pay assured returns.
2. Direct the respondent to handover possession and to pay delay possession charges.
3. Direct the respondent to adjust all unjustified demand and recalculate the dues as per BBA and MoU.
4. Direct the respondent to pay compensation.

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
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer Of Possession

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/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/2026/2025 titled as Vikas Thakur and Jasmine Thakur V/s M/s Neo Developers Pvt. Ltd. are being taken into consideration for determining the reliefs of the allottee(s) qua handover of possession, delay possession charges and assured return etc.

A. Project and unit related details

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

CR/2026/2025 titled as Vikas Thakur and Jasmine Thakur V/s M/s Neo Developers Pvt. Ltd.

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	14.05.2018 (As per pg. no.26 of the complaint)
7.	Unit no.	Priority No.41 & 42, 3rd Floor (8 Meter Height) (page no. 29 of the complaint)
8.	Unit area admeasuring	528 sq. ft. (Super Area) (As per pg. no. 29 of the complaint)
9.	Date of MoU	14.05.2018 (As per pg. no. 49 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*
12.	Due date of possession	14.11.2021 [36 months from signing of the MOU as per the possession clause + 6 months on account of Covid-19]
13.	AR Clause	*Clause 4.* *"The Company shall* ***pay a monthly assured return of Rs.35,640/- on the total amount received with effect from 14.05.2018 before deduction of tax at source, cess or any other levy.....until the commencement of the first lease on the said unit."*** (As per pg. no. 52 of the complaint)
14.	Total basic Sale consideration	Rs. 51,83,904/- (As per pg. no. 29 of the complaint)
15.	Amount paid by the complainant	Rs.46,34,784/- (as per MOU at page 59 of complaint)
16.	Occupation certificate	14.08.2024 (As per DTCP website)
17.	Offer of possession	09.12.2024 (as per page 59 of complaint)

B. Facts of the complaint

8. The complainants have made the following submissions: -

I. That in 2018 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 Saure being developed by the respondents at Sector-109, Gurgaon. Relying upon those assurances and

believing them to be true, the complainant booked/invested in a commercial space in the said project.

II. That the buyer's agreement and memorandum of understanding was executed between the parties on 14.05.2018.

III. That in contravention of the buyer's agreement and MOU dated 14th May 2018 the respondent has delayed the possession of the said unit.

IV. That as per the memorandum of understanding the respondent shall pay a monthly assured return of Rs.35,640/- on the total amount received with effect from 14th may 2018 but the respondent has duly failed to provide the same and it is pertinent to mention herein that from June 2020 the respondent has not paid the agreed amount and till date the agreed amount is pending.

V. That as per the memorandum of understanding (MOU) on 14h May 2018 the complainant has strictly adhered to the payment schedule specified in the MOU and total payment of Rs.46,34,784/- comprising 80% of Basic sale price (BSP), 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 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.

VI. That the respondent has issued a letter on 09.12.2024 namely "Demand letter and offer for fit out" in which the respondent has raised the unjust demand of Rs.19,98,365/- which is absolutely undue and unjust.

VII. That to the utter and shock and dismay of the complainant the respondent has sent final reminder dated 01 March 2025 in which the respondent has raised the undue and unjust demand of Rs.20,50,692/- and it is pertinent to mention herein that despite breach of point no.4 of

MOU whereby respondent has agreed on a monthly assured return on of Rs.35,460/-, respondent asking for more money is undue and unjust.

VIII. That despite the full compliance by complainant with the financial obligations of the respondent, respondent has failed to deliver the timely possession of unit.

IX. That the respondent has 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

X. That the respondent without any prior information, discussion or agreement has sent a letter date February 28th 2025 to the complainants vide subject: Congratulations on leasing Your restaurant/food court space on 3rd Floor and it is pertinent to mention herein that neither the complainants nor their representative has ever approached for lease, the respondent fraudulently send this letter in order to forego their liability of monthly assured return.

XI. That being aggrieved by the undue and unjust demand of the respondent complainant has sent legal notice dated 25.03.2025 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 complainants.

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 complainants with the intent to invest in the Real Estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 06.04.2018, whereby seeking allotment of unit no. 41 & 42, admeasuring 528 sq. ft super area on the 3rd floor of the project having a basic sale price of Rs. 9818/- the complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

ii. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 14.05.2018 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the return was to be paid from 14.05.2018 till commencement of first lease. It is also submitted that as per terms of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.

iii. That by no stretch of imagination it can be concluded that the complainants herein are "allottee/consumer." The complainants are

simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income.

iv. That the complainant voluntarily also executed the buyer agreement dated 14.05.2018 for Shop No. 41 & 42 on 3rd Floor admeasuring 528 Sq. Ft. super area in the project.

v. That the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention here that the relief of assured return is not maintainable before the Authority upon enactment of BUDS Act.

vi. That the as per Clause 11 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of completion/occupancy certificate.

vii. That the respondent from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons.

viii. That the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs.46,34,784/- against the total due amount of Rs. 65,98,592/-.

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

x. That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a completely

separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents. It is also submitted that as per clause 8 (a) of the MOU, the complainant had duly authorised the complainant to put the said unit on lease.

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

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

xiii. That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 3500/- per sq. ft to the complainant which is sum of Rs.21,80,640/- for getting the said unit fit out which is essential for getting the said unit leased out.

xiv. That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. It is humbly submitted that though the complainant may have cleared the basic sale

price of the said commercial property, however, they are still liable to pay all other charges such as VAT, Interest, registration charges, security deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MOU.

xv. 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. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts banning construction.

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 14.05.2018, it is revealed that the complainants are buyers, and they have paid a total price of Rs.46,34,784/- 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 14.05.2021. 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 14.11.2021. 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 14.05.2018. 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.35,640/- with effect from 14.05.2018 till the commencement of the first lease on the said unit. The complainants are seeking unpaid assured returns on monthly basis as per the MoU dated 14.05.2018 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 14.05.2018 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 14.05.2018 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 property 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 14.05.2018, which is reproduced below for the ready reference:

> *4. "The Company shall **pay a monthly assured return of Rs.35,640/- on the total amount received with effect from 14.05.2018 before deduction of tax at source, cess or any other levy.....until the commencement of the first lease on the said unit."***

30. Thus, the assured return was payable @Rs.35,640/- per month w.e.f. 14.05.2018, till the date of commencement of first lease on the said unit after obtaining of occupation/completion certificate.

31. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 14.05.2018, 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 14.05.2018. 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 subject unit has been put on lease by the respondent on 28.02.2025. However, the respondent has failed to pay the pending assured return till date. 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.35,640/- per month from the date i.e., 14.05.2018 till the date of commencement of first lease, as per the terms of memorandum of understanding dated 14.05.2018, 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 14.05.2018 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 14.05.2018, 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 14.11.2021.

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., 13.10.2026

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 14.11.2021. 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 09.12.2024. 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.35,640/- per month w.e.f. 14.05.2018. 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 14.05.2018 upto the date of commencement of first lease after obtaining of occupation/completion certificate. 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 14.05.2018, the amount on account of assured return was payable from 14.05.2018 upto the date of commencement of first lease after obtaining of occupation/completion certificate. The occupation/completion certificate of the project in question has been obtained by the respondent on 14.08.2024 and subject unit has been put on lease by the respondent on 28.02.2025. 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.35,640/- per month from the date i.e., 14.05.2018 till the date of offer of commencement of first lease, as per the terms of memorandum of understanding dated 14.05.2018, 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 8 of the MoU dated 14.05.2018, 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 Clause 7 of the MoU executed between the parties, the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

> *7 (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 7(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 7(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 14.05.2018.

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.35,640/- per month from the date i.e., 14.05.2018 till the date of offer of commencement of first lease, as per the terms of memorandum of understanding dated 14.05.2018, 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 14.05.2018, 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 14.05.2018.

iv. 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. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

51. The complaints stand disposed of.

52. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2026