

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

Complaint no. : 6193 of 2025
Date of complaint : 12.12.2025
Date of order : 13.10.2026

Seema Chauhan,

R/o: - A205, Dream Apartment, Plot No.14, Sector
22, Dwarka, New Delhi-110075.

Complainant

Versus

M/s Neo Developers Pvt. Ltd.

Regd. Office at: - Unit No. G-02, G-03, Neo Square,
Village-Pawla, Khusrupur, Sector-109, Gurugram.

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Garvit Gupta (Advocate)

Dushyant Yadav (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.
 - A. **Project and unit related details**
2. 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	07.12.2019 (As per pg. no.31 of the complaint)
7.	Unit no.	Priority No.117, 3 rd Floor (page no. 39 of the complaint)
8.	Unit area admeasuring	500 sq. ft. (Super Area) (As per pg. no. 39 of the complaint)
9.	Date of MoU	07.12.2019 (As per pg. no. 62 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 <i>The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate.</i>

12.	Due date of possession	07.06.2023 [36 months from signing of the MOU as per the possession clause + 6 months on account of Covid-19]
13.	AR Clause	<i>Clause 4.</i> <i>"The Company shall pay a penalty of Rs.49,955/- per month on the said unit, on the total amount received with effect from 25.11.2020 subject to TDS, taxes, cess or any other levy.....until the offer of possession."</i> (As per pg. no. 65 of the complaint)
14.	Total basic Sale consideration	Rs. 49,36,610/- (As per pg. no. 39 of the complaint)
15.	Amount paid by the complainant	Rs.57,94,443/- (as per page 76 of complaint)
16.	Occupation certificate	14.08.2024 (As per DTCP website)
17.	Offer of possession	24.12.2024 (as per page 74 of complaint)
18.	Reminder for fit-out charges	02.04.2025, 17.04.2025 (page 79-80 of complaint)
19.	Final reminder	25.10.2025 (as per page 81 of complaint)
20.	Cancellation	24.11.2025 (as per page 85 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

1. That the respondent offered for sale units in a commercial complex known as 'NEO Square' situated in Sector-109, Gurugram, Haryana. The complainant received a marketing call from the office of the respondent in the month of July, 2019 for booking in the said project of the respondent. The marketing staff of the respondent also assured timely completion of all the obligations of the allotment. It was specifically

projected by the respondent that the main USP of its said project is that it would diligently offer the allottees penalty on the amount paid by the complainant till the offer of possession and thereafter the respondent would lease the unit and would thereafter pay lease rentals to the complainant for the entire period of lease by leasing the unit to a third party.

- II. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as she required the same in a time bound manner. The complainant made a payment of Rs.5,00,000/- on 20.10.2019 and Rs.52,94,443/- on 24.11.2019 to the respondent and the same was acknowledged by the respondent vide its receipt dated 25.10.2019 and 26.11.2019. The respondent provided the complainant with a copy of the buyer's agreement. After going through the buyer's agreement, the complainant realized that the provisions contained in the said buyer's agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally un-balanced and unwarranted. The complainant repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. The respondent/promoter refused to amend or change any term of the preprinted buyer's agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the buyer's agreement was not signed and submitted. Hence, the complainant had no other option but to sign the buyer's agreement on 07.12.2019.
- III. That as per Clause 2.1 of the buyer's agreement the complainant was allotted a unit bearing Priority No. 117, Third Floor admeasuring 500 sq.ft. in the said project. Furthermore, as per Annexure-I of the said buyer's agreement, the basic sale consideration including GST of the unit

was Rs.55,57,443/- and the total consideration of the unit was Rs.59,06,943/- inclusive of the taxes, IFMS, External Development Charges and Internal Development charges.

- IV. That on the said date, a memorandum of understanding (MOU) was also executed between the respondent and the complainant. As per the terms of the MOU, it was agreed that the respondent will make payment to the complainant under the nomenclature of 'penalty' of Rs.49,955/- per month from 25.11.2020 (Effective date-II as per Clause 4 of MOU) onwards till offer of possession. The respondent had categorically assured at the time of the execution of the said MOU that it would be diligent in making payment towards the penalty amount and in adhering to its contractual obligations. It is submitted that as per Clause 4 of the said MOU, it was agreed that the respondent would pay a penalty of Rs. 49,955/- per month. Furthermore, it was agreed vide Clause 8(a) of the said MOU that the respondent would make payment of lease rentals at assured lease @Rs.81.75/- per sq. ft. per month rent to the complainant from commencement of first lease. Furthermore, it was decided as per Clause 9(a) of the MOU that the respondent was to finalize the terms for leasing the premises with a prospective lessee.
- V. That as per Clause 3 of the MOU, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of this agreement or the date of start of construction. Thus, the due date to offer the possession as per the terms of the MOU was 07.12.2022. The complainant visited the office of respondent to enquire about the date of possession and pending payment of the monthly penalty. It was informed that the possession of the unit would soon be offered along with adjustment of the delayed payment interest and monthly penalty. The representatives of respondent assured the

complainant that the possession of the unit would be offered over to her very shortly as the construction was almost over and that it would soon start the payment towards the monthly penalty as per its obligations as stated in the MOU.

- VI. That after enormous delay, finally the respondent issued the offer of possession to the complainant vide letter dated 24.12.2024 wherein an amount of Rs.4,86,237/- was demanded. Based on the demands made by the respondent, complainant continued to make further payments towards the sale consideration amount.
- VII. That the respondent finally, after a considerable delay sent a letter dated 28.02.2025 and informed the complainant about leasing of the allotted unit of the complainant. Respondent vide the said letter demanded fitout charges at the rate of Rs.3,500/- per sq. ft. from the complainant. Ongoing through the contents of the said letter, the complainant realized that the respondent had failed to adjust the amount of the monthly penalty as assured by the respondent. As per Clause 4 of the MOU, it was agreed that the amount of penalty would be adjusted in the total sale consideration and the complainant was also assured by the respondent that the monthly payments would be adjusted at the time of possession. As per the terms of the MOU, the penalty amount from 25.11.2020 till 25.11.2025, calculated at the rate of Rs.49,955/- is Rs.29,97,300/-. The respondent completely sidelined its own obligations and failed to adjust any such amount in the remaining sale consideration. The complainant was never informed that the respondent had any right to demand any such fitout charges from the complainant. The parameter of fitout charges never found mentioned in buyer's agreement or in the MOU and the complainant was informed about the same for the first time at the time of receipt of the letter dated 28.02.2025 only. The respondent

cannot be allowed to charge any additional amount only because it deems fit to do so. The demand against the said charges is against the terms of the contract and even as per the provisions laid down by law. Importantly, vide letter dated 28.02.2025, the respondent has admitted that the respondent would offer the possession of the unit to the complainant only after the complainant makes the payment towards the said illegal charges.

- VIII. That the respondent, vide its reminder letters dated 02.04.2025 and 17.04.2025, once again called upon the complainant to make payment towards the fit-out charges. In response, the complainant repeatedly requested the respondent to withdraw the said reminder letters, contending that the amounts demanded were not payable at that stage and that the monthly penalty already being charged ought to be adjusted towards the sale consideration, following which possession of the allotted unit should be duly offered. Despite several follow-up communications and enquiries addressed by the complainant seeking clarification and resolution regarding the said demands, no substantive response or clarification was ever furnished by the respondent.
- IX. That instead of addressing the complainant's concerns, the respondent issued a final reminder dated 25.10.2025, reiterating its demand for payment of the fit-out charges. Consequently, the complainant, vide email dated 03.11.2025, once again set out her grievances in detail, sought clarification regarding the pending assured return/penalty amount, basis of the illegal fit-out charges being repeatedly raised, and requested the respondent to provide a proper explanation for the same. It was also stated by the complainant that the fitout charges have been demanded illegally and in complete contrast to the terms of the agreement and the MOU. However, despite this communication, the

complainant did not receive any meaningful response or justification from the respondent regarding the continued insistence on payment of the said charges.

- X. That instead of responding to the complainant's email or addressing the issues raised therein, the respondent proceeded to issue a notice for allotment cancellation dated 24.11.2025. As per the said cancellation notice, it has been alleged by the respondent that the complainant failed to make payment of the demand raised by the respondent vide letter dated 25.10.2025. Upon receipt of the said notice, the complainant personally visited the office of the respondent and requested that the allotment not be terminated, explaining that the fit-out charges being demanded were not contemplated under, nor supported by, the agreement executed between the parties. The complainant further sought an opportunity for clarification and resolution. However, the respondent once again disregarded the complainant's concerns and failed to offer any explanation, justification, or reconsideration of the proposed cancellation. It is pertinent to mention here that the said termination is not valid and thus the said cancellation letter deserves to be revoked.
- XI. That it is pertinent to mention herein that the complainant has already made the payment of Rs.62,80,680/- out of the total sale consideration of Rs.59,06,943/-. Thus, after having paid more than 100% of the total sale consideration, the respondent terminate the allotment of the complainant. The complainant has been duped of her hard-earned money paid to the respondent regarding the unit in question. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

- XII. That the respondent by adopting unfair trade practices, misuse of funds, failed to offer a valid offer of possession of the unit allotted to the complainant as well as the other allottees. Instead of abiding by the terms of the contract, the respondent has now cancelled the allotment and is also threatening to forfeit the already paid substantial amount.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to set aside cancellation.
 - Direct the respondent to pay assured return.
 - Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges.
 - Direct the respondent to revoke the demand towards fit-out charges.
 - Direct the respondent to lease the unit and to pay lease rental.
5. 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

6. The respondent has contested the complaint on the following grounds:
- That the complainant 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 complainant decided to apply to the respondent by submitting a booking application form dated 20.10.2019, whereby seeking allotment of priority no. 117, admeasuring 500 sq. ft super area on the 3rd floor of the project having a basic sale price of Rs. 9873.22/- the complainant, 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 07.12.2019 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 complainant 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 25.11.2020 till offer of possession. It is also submitted that as per terms of the MOU, the complainant 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 complainant herein is "allottee/consumer." The complainant is simply investor 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 07.12.2019 for the said unit 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 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 complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant 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.57,94,443/- against the total due amount of Rs. 62,79,934/-.
- 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 complainant 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 respondent. 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 allottee(s), then in that event the same shall be paid by the respondent, strictly within the period of 15 days from the day of written notification by the company and if the respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

- xii. That apart from the above it is worth mentioning here that the allottee 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 allottee(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.20,65,000/- 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, she is 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.
7. 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

8. 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

9. 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

10. 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.

11. 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.

12. The respondent has taken a stand that the complainant is investors and not an allottee/consumer. Therefore, she is 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 07.12.2019, it is revealed that the complainant is buyer, and she has paid a total price of Rs.57,94,443/- 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;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is allottee as the subject unit was allotted to her 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 allottee being investor is not entitled to protection of this Act stands rejected.

F. II Objection regarding force majeure circumstances.

14. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, Covid-19 etc. The Authority observes that the due date of possession was 07.12.2022. 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 07.06.2023. 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 complainant:

G. I Direct the respondent to set aside cancellation.

G. II Direct the respondent to revoke the demand towards fit-out charges.

15. In the instant case, vide buyer's agreement and MoU dated 07.12.2019, the complainant was allotted a unit bearing priority no. 117, 3rd Floor, measuring 500 sq. ft. (super area) in the project of the respondent named 'Neo Square' at Sector 109, Gurugram.
16. The complainant has submitted that as per the terms of the MoU, it was agreed that the respondent will make payment to the complainant under

the nomenclature of 'penalty' of Rs.49,955/- per month from 25.11.2020 (Effective date-II as per Clause 4 of MoU) onwards till offer of possession. The respondent issued the offer of possession to the complainant vide letter dated 24.12.2024 wherein an amount of Rs.4,86,237/- was demanded. The respondent vide letter dated 28.02.2025 informed the complainant about leasing of the allotted unit of the complainant and demanded fitout charges at the rate of Rs.3,500/- per sq. ft. from the complainant. Ongoing through the contents of the said letter, the complainant realized that the respondent had failed to adjust the amount of the monthly penalty as assured by the respondent. The respondent, vide its reminder letters dated 02.04.2025 and 17.04.2025, once again called upon the complainant to make payment towards the fit-out charges. In response, the complainant repeatedly requested the respondent to withdraw the said reminder letters, contending that the amounts demanded were not payable at that stage and that the monthly penalty already being charged ought to be adjusted towards the sale consideration. Instead of addressing the complainant's concerns, the respondent issued a final reminder dated 25.10.2025, reiterating its demand for payment of the fit-out charges. Consequently, the complainant, vide email dated 03.11.2025, once again set out her grievances in detail, sought clarification regarding the pending assured return/penalty amount, basis of the illegal fit-out charges being repeatedly raised, and requested the respondent to provide a proper explanation for the same. Instead of responding to the complainant's email or addressing the issues raised therein, the respondent proceeded to issue a notice for allotment cancellation dated 24.11.2025. The respondent has submitted that the complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the

respondent. Further, the complainant has failed to abide to the terms of the builder buyer agreement and memorandum of understanding executed by and between the parties. Now the question before the Authority is that whether the cancellation made by the respondent vide letter dated 24.11.2025 is valid or not.

17. After considering the documents available on record as well as submissions made by the parties, it is observed that as per the payment plan agreed between the parties vide buyer's agreement dated 07.12.2019, out of the sale consideration of Rs.49,36,610/-, the complainant has already paid a sum of Rs.57,94,443/- against the unit in question to the respondent. The due date for possession was 07.06.2023 and the respondent obtained occupation certificate from the competent authority on 14.08.2024. Subsequently, vide offer of possession letter dated 24.12.2024, the possession of the unit was offered by the respondent, subject to payment of an amount of Rs.4,86,237/-, but it has not adjusted the payments towards pending assured return that was agreed to be adjusted at the time of possession. Thereafter, vide letter dated 28.02.2025, the respondent intimated the complainant that her unit has been successfully leased out to "World of Shalom Restaurants Pvt. Ltd." and demanded an amount of Rs.20,65,000/- towards fit-out charges without any bifurcation and justification to the complainant. The complainant after receipt of the same, wrote email dated 03.11.2025 to the respondent regarding adjustment of outstanding dues from the pending assured return and justification for fit-out charges, but the respondent kept on raising demands and ultimately cancelled the unit of the complainant vide cancellation letter dated 24.11.2025. Therefore, while dealing with cancellation, the validity of the demands raised by the respondent must be determined. Accordingly, the Authority is deliberating its findings on the said demands:

- **Fit-out charges:** The complainant has raised objections towards the fit-out charges raised by the respondent vide letter dated 28.02.2025 and is 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 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 complainant.

- **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 complainant is completely arbitrary and the complainant cannot be made liable to pay any labour

cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **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 complainant viz- à-viz the total area of the particular project. The complainant will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH 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 complainant. 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 the respondent vide offer of possession letter dated 24.12.2024 has levied delay payment interest on the complainant. However, as per record, the complainant has already paid a sum of Rs.57,94,443/- against the basic sale consideration of Rs.49,36,610/- to the respondent and there appears no default on part of the complainant. Thus, it is evident on record that the amount paid by the complainant is substantially higher than the total basic sale consideration agreed between the parties. In view of the above facts, the Authority is of the view that the levy of interest on delayed payment from the complainant as reflected in the SOA dated 24.12.2024 is unjustified.

18. Considering the above, the Authority observes that the offer of possession letter dated 24.12.2024 incorporates certain unlawful demands such as labour cess, FTTH charges that were not part of the MoU/BBA and the respondent has unlawfully raised a demand of Rs.20,65,000/- towards fit-out without any bifurcation/justification and it has also not adjusted pending assured return while offering possession to the complainant. Accordingly, the cancellation made by the respondent vide letter dated 24.11.2025, in continuance of the said demands was not valid and is accordingly set aside.

G.III Direct the respondent to pay assured return.

G.IV Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges.

19. In the present complaint, the complainant is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 07.12.2019. The complainant has submitted that as per clause 4 of the said MoU, it was

agreed that the respondent would pay monthly assured return of Rs.49,955/- with effect from 25.11.2020 till the date of offer of possession. The complainant is seeking unpaid assured returns on monthly basis as per the MoU dated 07.12.2019 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.

20. 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 complainant is an allottee.

21. The Authority observes that the MoU dated 07.12.2019 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 07.12.2019 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.

22. 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.*

23. 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;

24. 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.
25. 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.
26. 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.
27. 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 complainant 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.

28. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 07.12.2019, which is reproduced below for the ready reference:

4. "The Company shall pay a penalty of Rs.49,955/- per month on the said unit, on the total amount received with effect from 25.11.2020 subject to TDS, taxes, cess or any other levy.....until the offer of possession."

29. Thus, the assured return was payable @Rs.49,955/- per month w.e.f. 25.11.2020, till the date of offer of possession is issued to the complainant.
30. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 07.12.2019, it was obligation on part of the respondent to pay the assured return. 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 complainant on 24.12.2024. However, the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 07.12.2019. 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 complainant at the agreed rate i.e., @Rs.49,955/- per month from the date i.e., 25.11.2020 till the date of offer of possession i.e. 24.12.2024, as per the terms of memorandum of understanding dated 07.12.2019, after deducting the amount already paid on account of assured return to the complainant.

Delay Possession Charges:

31. In the present complaint, the complainant intends to continue with the project and is 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."*

32. Clause 3 of the MoU dated 07.12.2019 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.

33. **Due date of possession:** As per clause 3 of the MoU dated 07.12.2019, 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 07.06.2023.

34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.

35. 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.
36. 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%.
37. The definition of term 'interest' as defined under section 2(z) 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 allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and*

interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being liable to be paid to the complainant in case of delay possession charges.
39. On consideration of documents available on record and submissions made by the complainant 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 07.06.2023. 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 complainant on 24.12.2024. 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.
40. 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.49,955/- per month w.e.f. 25.11.2020. 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 25.11.2020 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.

41. 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.
42. In the present complaint, as per clause 4 of the MoU dated 07.12.2019, the amount on account of assured return was payable from 25.11.2020 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 complainant on 24.12.2024. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.49,955/- per month from the date i.e., 25.11.2020 till the date of offer of possession i.e. 24.12.2024, as per the terms of memorandum of understanding dated 07.12.2019, after deducting the amount already paid on account of assured return to the complainant.
43. The complainant is seeking physical handover of possession. However, the Authority observes that vide Clause 9 of the MoU dated 07.12.2019, the complainant 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 complainant with regard to handover of physical possession to them stands declined.

44. 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 complainant. 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 complainant 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 complainant 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.V Direct the respondent to lease the unit and to pay lease rental.

45. The complainant is seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide Clause 8(a) of the MoU dated 07.12.2019, it was agreed that the respondent would make payment of lease rentals at Rs.81.75/- per sq. ft. per month to the complainant from commencement of first lease. Further, vide clause 9 of the MoU dated 07.12.2019, it was agreed between the parties that the respondent would have the exclusive right to lease out the unit in question to the prospective lessee. Since, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024, the respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed

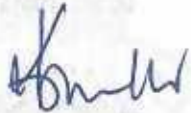
rate as per the terms of the memorandum of understanding dated 07.12.2019.

H. Directions of the authority

46. 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 cancellation is set aside.
- ii. The respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.49,955/- per month from the date i.e., 25.11.2020 till the date of offer of possession i.e. 24.12.2024, as per the terms of memorandum of understanding dated 07.12.2019, after deducting the amount already paid on account of assured return to the complainant.
- iii. The respondent is directed to supply a copy of the updated statement of account after adjusting assured returns within a period of 30 days to the complainant.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of assured returns within a period of 60 days from the date of receipt of updated statement of account.
- v. The respondent is directed to handover possession of the unit to the complainant in terms of the MoU as well as buyer's agreement dated 07.12.2019, 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.

- vi. The respondent is directed to put the unit allotted to the complainant on lease and to pay lease rental at the agreed rate as per the terms of the memorandum of understanding dated 07.12.2019.
 - vii. The respondent shall not charge anything from the complainant which is not the part of the BBA/MoU dated 07.12.2019.
 - viii. 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.
47. The complaint stand disposed of.
48. File be consigned to registry.


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.10.2026

**HARERA
GURUGRAM**