

**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/6007/2025	Indra Banerjee V/s M/s Neo Developers Pvt. Ltd.	Mohit Singh (Complainant) Dushyant (Respondent)
2.	CR/4693/2025	Harish B Shetty V/s M/s Neo Developers Pvt. Ltd.	Sunil Kumar (Complainant) Dushyant (Respondent)

CORAM:	
Arun Kumar	Chairman

ORDER

1. This order shall dispose of both the 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.

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	Due date of possession, Offer of possession	Basic Sale Consideration / Total Amount paid by the complainant	Reliefs Sought
1	CR/6007/2025 Indra Banerjee Vs. M/s Neo Developers Pvt. Ltd. DOF: 19.11.2025 Reply: 13.10.2026	Unit No.43, First Floor, 369 sq.ft. (page no. 38 of the complaint)	BBA: 14.05.2018 (As per pg. no.26 of the complaint) MOU: 01.12.2012 (As per pg. no. 23 of the complaint)	23.08.2021 (project completion date as declared by the promoter while registering the project with the Authority due to non-availability of possession clause) O.O.P: 29.11.2024 (as per page 66 of complaint)	BSP: Rs. 18,45,000/- (As per pg. no. 38 of the complaint) A.P.: Rs.21,42,152/- (as per page 70 of complaint)	Possession, DPC, CD, AR, Compensation.
2	CR/4693/2025 Harish B Shetty Vs. M/s Neo Developers Pvt. Ltd. DOF: 29.09.2025 Reply: 14.01.2026	Priority No.8, 3 rd Floor (page no. 62 of the complaint)	BBA: 28.08.2019 (As per pg. no.59 of the complaint) MOU: 28.08.2019 (As per pg. no. 27 of the complaint) Leasing Clause- Clause 8 of MoU	28.04.2023 [Calculated as 36 months from signing of the MOU as per the possession clause 3 of MoU + 6 months on account of Covid-19] O.O.P: 11.10.2024 (as per page 106 of complaint)	BSP: Rs. 1,47,85,000/- (As per pg. no. 62 of the complaint) A.P.: Rs.1,65,59,200/- (as per page 108 of complaint)	Possession, DPC, CD, lease rental, Set aside illegal demands.

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
AR	Assured Return
DPC	Delay Possession Charges
CD	Conveyance deed

4. The aforesaid complaints were filed by the complainant 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/6007/2025 titled as Indra Banerjee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/6007/2025 titled as Indra Banerjee 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.	Unit No.43, First Floor (page no. 38 of the complaint)
8.	Unit area admeasuring	369 sq. ft. (Super Area) (As per pg. no. 38 of the complaint)
9.	Date of MoU	01.12.2012 (As per pg. no. 23 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	Not available
12.	Due date of possession	23.08.2021 (project completion date as declared by the promoter while registering the project with the Authority)
13.	AR Clause	Clause 2. <i>This MoU shall be deemed to be effective from 09.02.2013.</i> Clause 3. <i>"The allottee has opted for investment return plan and has agreed that the basic consideration for allotment of the premises is to be determined at Rs.5,000/- per sq.ft. taking into consideration a return of Rs.92.5/- per sq.ft. per month, subject to terms of this MoU."</i> Clause 16.

		<i>The builder in terms of its commitment to pay the assured return has handed over its postdated cheques taking into consideration the expected period of completion.</i> (As per pg. no. 25-26 of the complaint)
14.	Total basic Sale consideration	Rs. 18,45,000/- (As per pg. no. 38 of the complaint)
15.	Amount paid by the complainant	Rs. 21,42,152/- (as per page 70 of complaint)
16.	Occupation certificate	14.08.2024 (As per DTCP website)
17.	Offer of possession	29.11.2024 (as per page 66 of complaint)

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the respondent approached the complainant through advertisement/prospect, to sell the commercial unit No.43, First floor (changed from shop no. 58) admeasuring an approximate super area of 369 sq. ft. super built-up area and the builder has allotted her the said commercial unit upon the term & condition contained herein in the project "Neo Square" situated in Sector 109, Gurugram.
- II. That on basis of the said assurances, representations, and warranties by the respondent, on 14th January 2013 the complainant booked a unit in the "real estate project" which goes by the name of 'Neo Square' situated in Sector 109, Gurugram, bearing Commercial Unit No. 58 having area admeasuring a Super Area of 369 Sq. Ft. (344 Sq. Mtr.) at the rate of Rs. 5000/- per sq. ft. on First Floor for Rs.27,67,015/- (inclusive of Basic price plus EDC, PLC etc.), as per MOU and buyer's agreement dated 01.12.2012 and 13.01.2021 respectively between the complainant and respondent

- III. That the respondent induced the complainant to purchase the unit under the assured return plan wherein it would make the payment at the rate of Rs.92 per sq. ft. per month. The respondent assured the complainants that there will be no delay in making payment towards the assured return under any circumstances whatsoever.
- IV. That the complainant entered into a memorandum of understanding dated 01.12.2012 pursuant to which a buyer's agreement was executed between the parties on 13.01.2021. It was agreed that the 'assured return' would be paid till the completion of the project. Based on the assurances of the respondent, the complainant purchased and executed the memorandum of understanding dated 09.02.2013. As per clause 3 of the memorandum of understanding the basic consideration for allotment of the premises is to be determined at Rs.5000/- per sq. ft. and the assured returns were fixed at Rs 92.5 per sq. ft. per month. Therefore, on the said assurance by the respondent company, the complainant has executed the MOU and buyer's agreement with the respondent.
- V. That the complainant, at the time of executing the buyer's agreement for the above-mentioned unit had paid an amount of Rs.19,00,000/-. The same has been endorsed on the buyer's agreement.
- VI. That it was agreed under the MOU that a monthly return of Rs.34,132.50/- shall be payable as assured return from the date of signing of the MOU till actual possession. It is pertinent to note that there is no possession date mentioned in the application form as well as in the provisional letter of booking because complainant was also fully aware of the fact that promoter will be developing this project in phased manner and project construction will take substantial amount of time. The said project is registered with HRERA on 24.09.2017, wherein the project completion date is mentioned as 23rd August 2021 and the same is

reflected in registration certificate, which is also reflected on the RERA website. Therefore, promoter has not assured for the possession of the subject unit to be delivered.

- VII. That as per Section 11 (3), the promoter, at the time of the booking and issue of allotment letter, shall be responsible to make available to the allottee information about possession delivery date including stage wise time schedule of completion of the project are essential prerequisites to be incorporated in all relevant communications including in the application form and in the allotment letter/booking form at the time of booking. Despite such statutory mandatory requirements, this essential information is neither mentioned in MOU nor in buyer's agreement.
- VIII. That it was agreed under the MOU that a monthly return of Rs.34,132.50/- shall be payable as assured return to the complainant which was last paid for the month of March 2019. It is pertinent to mention that as on the date of filing of the present complaint, assured returns have not been paid for a period of 74 months totalling an amount of Rs. 23,77,805/-.
- IX. That the mala fide intentions of the respondent also became conspicuous when a letter dated 18.12.2019 was sent by the respondent communicating its unilateral decision of not paying any assured return till the completion of the project. It is pertinent to note that a letter of a similar nature was sent to the complainant on 01.02.2022 as well.
- X. That it is pertinent to mention that despite of the fact that the complainant has paid the complete amount of sale, the respondent has given an offer of possession but has refrained from giving physical possession neither offered the possession nor paid the assured return as per the agreements. The respondent has further maliciously attempted

to deprive the complainant from all pending payments of assured returns.

- XI. That the respondent has been forcing complainants to sign settlement deed by which the respondent intends to lease out their unit to a third party and has also inserted a clause according to which after the execution of lease assignment form, the respondent would be obliterated from its responsibility to pay the monthly assured return and threatens the complainants that if they do not sign the lease assignment form, the respondent will forfeit the unit in accordance with the MOU.
- XII. That the respondent approached the complainant vide demand notice and offer of possession dated 29.11.2024 stating that the 'occupation certificate' qua the said property was received by the respondent and that subject to payment of the pending balance amount of Rs.8,16,961/- the said property was ready to be handed over to her.
- XIII. That on 06.01.2025, the complainant visited the respondent's corporate office, wherein the complainant handed over a cheque of ₹8,50,000/- as a final amount for settlement of all dues. The complainant was shocked to then be told that the possession would only be handed over subject to entering into a memorandum of settlement wherein my client would be waiving off all pending dues of assured returns which remain unpaid to my client till date.
- XIV. That the complainant has sent a legal notice to the respondent against their illegal demand and non-payment of assured returns but till date no response from the side of the respondent.
- XV. That no fresh construction has been carried out in the project since 2019. The occupation certificate has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the

STP, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges.
 - ii. Direct the respondent to pay assured return.
 - iii. Direct the respondent to pay penalty of five percent of the estimated cost of the project.
 - iv. Direct the respondent to pay compensation.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds:
 - i. That the complainant with 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 14.01.2013, whereby seeking allotment of unit no. 43, admeasuring 359.47 sq. ft super area on the 1st floor of the project having a basic sale price of Rs. 5000/- 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 01.12.2012 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". 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 are "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 13.01.2021 for Shop No. 43 on 1st Floor admeasuring 359.47 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 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.
- vii. 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.21,42,152/- against the total due amount of Rs. 29,59,113/-.
- viii. 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.

- ix. 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.
- x. 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.
- xi. 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).
- xii. 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.

- xiii. 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.1 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 complainant is investor 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 14.05.2018, it is revealed that the complainant is buyer, and he has paid a total price of Rs.21,42,152/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is allottee as the subject unit was allotted to 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.

19. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 23.08.2021. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Further, 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-builder 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 pay assured return.

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

20. In the present complaint, the complainant is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 01.12.2012. The Authority observes that the complainant in the present complaint is seeking payment of delay possession charges as well as assured return. The authority has decided that in cases where assured return is reasonable and comparable with the delay possession charges, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. The complainant vide present complaint has submitted that as per clause 3 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.92.5/- per sq. ft. per month from the date of signing of the MOU till actual possession. However, there is nothing on record to substantiate the claim of the complainant that the said amount on account of assured return was payable from the date of MoU till possession as alleged by the complainant. Further, the MoU dated 01.12.2012 does not clearly stipulate the period for which the amount on account of assured return is to be payable to the complainant. In the absence of certainty and clarity with regard to the duration of the assured return payment obligation, the claim of the complainant with regard to payment of assured return cannot be sustained and is accordingly declined.
21. 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."

22. **Due date of possession:** The Authority observes that in the instant case, no clause pertaining to the timeline for delivery of possession is available on record. In view of the above, the Authority is taking the due date of possession as the date that has been declared by the respondent/promoter for completion of project while registering the project with the Authority. The respondent while registering the project had declared the date for completion of project as 23.08.2021. Accordingly, the due date of possession was 23.08.2021.
23. **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.
24. 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.

25. 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%.
26. 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:
- "(z) "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;"*
27. 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 the paid to the complainant in case of delay possession charges.
28. 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 Authority observes that the due date of possession of the subject unit/space was 23.08.2021. 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 complainant on 29.11.2024. 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.

29. The Authority further observes that Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 14.08.2024, whereas the respondent offered possession of the unit in question to the complainant only on 29.11.2024. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
30. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest at prescribed rate i.e. 10.80% p.a. on the amount paid, for every month of delay from due date of possession i.e., 23.08.2021 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules and Section 19(10) of the Act.

31. The complainant is seeking physical handover of possession. However, the Authority observes that vide Clause 9, 10 and 13 of the MoU dated 01.12.2012, 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 him stands declined.
32. 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.III Direct the respondent to pay penalty of five percent of the estimated cost of the project.**
33. The complainant is seeking further relief with respect to payment of five percent of the estimated cost of the project. However, the complainant has failed to plead or demonstrate any specific contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 in the present matter. Neither the complaint nor the oral or written submissions disclose the particular statutory provision under which relief has been sought. In view of the above, the said relief sought by the complainant is declined.

G.IV Direct the respondent to pay compensation.

34. The complainant is seeking above-mentioned relief w.r.t compensation. *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.
35. The complainant in **CR/4693/2025** is seeking additional relief with respect to setting aside of illegal amounts charged by the respondent (on account of fit-out charges, development charges and property tax, FTTH, labour cess and illegal interest) and payment of lease rental. Accordingly, the Authority is deliberating its findings on the said issues:
- **Fit-out charges:** The complainant has raised objections towards the fit-out charges raised by the respondent vide letter dated 11.10.2024 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 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.
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 he shall pay compound interest at the rate of 18% per annum for the period of delay.

Upon understanding of the said clause, it is clear that Clause 7 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 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 and property tax:** The Authority observes that the undertaking to pay the development charges and property tax was comprehensively set out in the buyer agreement in Clause 11. The complainant vide said clause has himself agreed to pay such taxes and charges to the competent authority. 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 11.10.2024 has levied delay payment interest on the complainant amounting Rs.10,39,874/-. However, as per record, the complainant has already paid a sum of Rs.1,65,59,200/- against the basic sale consideration of Rs.1,47,85,000/- 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 11.10.2024 is unjustified.

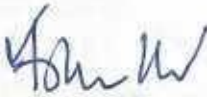
- **Lease Rental:** The complainant is seeking additional reliefs w.r.t putting the unit on lease as well as lease rental as per MoU. The Authority observes that vide clause 8 of the MoU dated 28.08.2019, it was agreed between the parties that the complainant will lease out the unit to 'Sagar Ratna' and in case the complainant fails to lease out the unit within a period of 6 months, then the respondent would have the exclusive right to lease out the unit in question to the prospective lessee. It is observed that as per record, the occupation certificate of the project in question has already been received by the respondent-promoter from the competent authority on 14.08.2024 but the unit in question has not been put on lease till date. Accordingly, 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 28.08.2019.

H. Directions of the authority

36. 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 interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.80% per annum for every month of delay from due date of possession till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of

- possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules and Section 19(10) of the Act.
- ii. The respondent is directed to issue a revised statement of account after adjusting the delay possession charges within a period of 30 days to the complainant. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of revised statement of account.
 - iii. The respondent is directed to handover possession of the unit to the complainant in terms of the MoU as well as buyer's agreement executed between the parties, 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 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.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the BBA/MoU executed between the parties. The respondent is further directed not to charges any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
 - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per Section 2(zb) of the Act.

- vi. 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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order. The respondent in CR/4693/2025 is further 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 28.08.2019.
38. The complaint stand disposed of.
39. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.10.2026