BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**2979 of 2025**
Date of filing	**:**	**27.06.2025**
Date of decision	**:**	**11.08.2026**

Manabendra Kr. Maity
R/o: - F404, Happy homes apartments,
Plot no. 12A,
Sec- 07, Dwarka, New Delhi 110075 **Complainant**

Versus

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

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Shri Rajan Kumar (Advocate) **Counsel for Complainant**
Shri Venkat Rao (Advocate) **Counsel for 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Date of MoU	11.04.2018 (As per pg no.38 of the complaint)
7.	Buyer's agreement	11.04.2018 (As per pg no.55 of the complaint)
8.	Unit no.	Priority No. 21, 3rd floor (page no. 58 of the complaint)
9.	Unit area admeasuring	350 sq. ft. (Super Area) (As per pg. no. 58 of the complaint)
10.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.

11.	Possession clause	Clause 3 of MoU *The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate* (As per pg. no. 40 of the complaint)
12.	Due date of possession	11.10.2021 [36 months from signing of the agreement for sale as per the possession clause + 6 months grace period]
13.	Total basic Sale consideration	Rs. 31,10,800/- (As per pg. no. 40 *of the complaint*)
14.	Amount paid by the complainant	Rs. 18,41,924/- (As per receipts annexed on page 82, 83, 84,85,86,87,88,89 of the complaint)
15.	Assured return clause	*The Company shall pay a monthly assured return* ***of Rs.34,363/-*** *(Rupees Thirty Four Thousand Three Hundred And Sixty Three Only) on the total amount received with effect* ***from 11/04/19 before deduction of Tax at*** *Source, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-I. The monthly assured return shall be paid to the Allottee(s)* ***until the commencement of the first lease on the said unit.*** *This shall be paid from the effective date.* [As per page page 41 of complaint]

16.	Occupation certificate	14.08.2024 (As per DTCP site)
17.	Offer of possession	10.12.2024 with a demand raised for Rs. 21,69,883 (As per pg. no. 96 of the complaint)
18.	Reminder	27.02.2025, [As per pg. no 47 of reply]
19.	Reminder for fit out charges	28.02.2025, 02.04.2025, with a demand of Rs. 14,45,500/- [on page 50, 49 of reply respectively]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

a. That the complainant Manabendra Kumar Maity S/o Nagendra Nath Maity is a permanent resident of F 404, Happy Home Apartments, Plot No. 12 A, Sector 7, Dwarka, Delhi, 110075.

b. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, complainant falls under the category of "Allottee" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Authority.

c. That the respondent M/s Neo Developers Pvt Ltd is a company incorporated under the Companies Act, 1956 having its Registered office at 32B Pusa Road, New Delhi-110005 and corresponding office at 1205 B, Signature Towers, South City-1 NH-8, Gurugram-122002.

d. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Authority.

e. That the project in question is known as "NEO SQUARE" situated at Sector 109, Gurugram, Haryana. That the unit in question is one priority allotment serial number bearing 21 measuring 350 sq. ft. of super built-up area and carpet area of about 140 sq ft. on the 3rd floor.

f. That in the year 2018, The complainant got information about an advertisement in a local newspaper about the project "NEO SQUARE" at Sector 109, Gurugram, Haryana. The marketing staff of the respondent showed a rosy picture of the project and allured with proposed specifications and invited him for a site visit. That the complainant visited the project site and met with the local staff of respondent, gave an application form and assured them that they will be given a food court unit of 350 Sq. Feet in the project with an assured return payment plan.

g. That On 27.03.2018 the complainant through a duly filled application form along with a booking amount of Rs. 3,00,000/-applied for a food court unit in the upcoming project of respondent namely "NEO SQUARE" at Sector 109, Gurugram, Haryana.

h. That the respondent compelled the complainant to pay up a hefty amount immediately, and that too without issuing any demand letter in writing. On the repeated insistence of the respondent, the complainant had no option but to comply in giving Rs. 16,56,100/- within a short time span of 15 days.

i. That even before the execution of builder buyer agreement between the complainant and respondent, the respondent compelled the complainant to pay the hefty amount which is the direct contravention to Section 13 of the RERA Act. There has been a serious breach of the RERA Act by the respondent to extract money from the complainant.

j. That on 11.04.2018, the respondent executed a memorandum of understanding with the complainant. As per the terms and conditions agreed between both the parties that the contents of MOU shall prevail over the contents of buyer's agreement in case of conflict between the two, otherwise the contents of the buyer's agreement and MOU will be interpreted harmoniously.

k. That as per clause 3 of the MOU, the respondent allotted a unit measuring 350 sq. ft. of super built-up area on the third floor, with the basic sale consideration fixed at the rate of Rs. 8,888/- per sq. ft., amounting to a total basic sale consideration of Rs.31,10,800/-.

l. That as per clause 3 of MOU, the possession of the said unit was agreed to be given, within 36 months from the date of execution of the agreement or from the start of construction, whichever is later. That the respondent under clause no. 4 of the said MOU acknowledged that it has received a sum of Rs. 16,56,100/-.

m. That clause 4 of the MOU states that the respondent will pay assured return of Rs. 34,363/- per month on the said unit, with effect from 11.04.2019 until the commencement of the first lease on the said unit.

n. That on 26.12.2022, A pre-printed one-sided arbitrary builder buyer agreement was executed in which it was stated that the complainant has been allotted an area for food court without specifying the unit's name and number. The said unit has a super area of approx. 350 Sq. Feet super area, in the commercial complex named NEO Square.

o. That till date respondent has not issued any exact unit number, instead of this one priority allotment serial number bearing 21 have been provided.

p. That the BBA clearly mentioned the size of the unit as admeasuring 350 Sq. ft. super area and carpet area about 140 sq ft and the basic sales price of the unit was arrived at Rs. 31,10,800/- and As per Annexure 1 of the BBA, the total price of the unit inclusive of EDC, IDC and GST, IFMS and Other charges was arrived as Rs. 37,48,654/-.

q. That the complainant has already paid an amount of Rs. 18,41,924/-. This payment was paid as per the assured return plan, as agreed between the parties.

r. That on 09.01.2020, the respondent issued a letter to the complainant regarding the construction update and the status of the monthly interest cheques, wherein the respondent acknowledged their obligation to pay interest to the complainant. However, despite such acknowledgment, the Respondent has failed to make the said payments.

s. That on 07.03.2020, the respondent sent an email to the complainant regarding the assured return cheque for the month of march, wherein the respondent requested the complainant not to deposit the said ar cheque in their bank account, stating that their RERA account had been constrained and withdrawals from the account had been restricted.

t. That on 09.04.2020, the respondent again sent an email to the complainant, invoking 'force majeure / unforeseeable event' as the reason for not fulfilling their financial obligations. In the said email, the respondent failed to provide any clear timeline or assurance regarding the payment of the AR amount. Despite earlier acknowledgments and repeated assurances, the respondent once again failed to release the AR payment, reflecting a continued pattern of delay and non-compliance.

u. That on 15.04.2024, the respondent issued an illegal demand letter along with an offer of fit-out possession, despite the fact that the occupation

certificate for the project had not been obtained at that time. In the said letter, the respondent unlawfully demanded the complainant to pay an amount of Rs.35,36,667/-, even though the total sale consideration for the unit is Rs.37,48,654/-, out of which the complainant has already paid Rs.18,41,924/-.

v. That on 11.05.2024, the complainant sent an email to the respondent raising a query regarding the illegal and unjustified demand related to the unit. In the email, the complainant objected to the extra charges which were not part of the builder buyer agreement and asked the respondent to explain and justify the same. However, the respondent failed to give any proper response, showing a clear lack of transparency and responsibility.

w. That on 10.12.2024, the respondent once again issued a demand notice along with an offer of possession after obtaining the occupation certificate for the project. However, the Respondent raised an illegal demand of Rs. 2,63,040/, which was not part of the agreed terms under the builder buyer agreement.

x. That on 09.01.2025, the complainant sent an email to the respondent requesting clarification regarding the final demand of Rs.21,84,226/- and asked for a detailed calculation sheet of the balance payment. However, the respondent failed to respond to the email and chose to remain silent, further demonstrating non-cooperation and lack of transparency.

y. That on 28.02.2025, the respondent issued a lease letter informing the complainant that their allotted commercial space had been successfully leased and signed with "World of Shalom Restaurants (P) Ltd." for the restaurant brands "Laid Back Café" and "In The Punjab". Along with this communication, the respondent unlawfully demanded the complainant

to pay an increased amount, which was not agreed upon and is in clear violation of the terms of the builder buyer agreement.

z. That on 05.03.2025, the complainant sent an email to the respondent, seeking a response to the earlier email regarding clarification of the illegal demand and a request for the detailed calculation sheet. However, the respondent once again failed to reply and remained silent, thereby continuing their non-responsive and evasive conduct.

aa. That the main grievance of the complainant in the present complainant from respondent, is that the respondent has taken a heavy amount of Rs. 18,41,924/-, which is a life saving of the complainant. The respondent is liable to pay an assured return of Rs.34,363/- per month till the commencement of the first lease, and to provide an minimum assured first lease rent of Rs. 34,363/- per month till the expiry of first least and also to provide the lease rent till eternity as agreed by the terms and conditions of MOU but the respondent is refusing to provide the assured return to the complaint.

bb. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the Respondent and as such, they are liable to be punished. The complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable for unfair trade practice.

cc. That for the first time cause of action for the present complaint arose on 11.04.2018 when MOU was signed. The cause of action again arose on various occasions, till date, when the verbal protests were lodged with the respondent when he stopped paying the assured return amount of Rs. 34,363/- as stated in MOU. The cause of action is alive and continuing and

will continue to subsist till such time as this Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

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

I. Pass an appropriate order quashing the unlawful additional demand of Rs.2,63,042/- raised by the respondent in the demand letter dated 10.12.2024.

II. Pass an appropriate award directing the respondent, to pay the pending assured return of Rs. 24,39,773/- as stated in memorandum of understanding.

III. Pass an appropriate order directing the respondent to adjust the demand of Rs.19,06,841/- ,as mentioned in the demand letter dated 10.12.2024, against the pending assured returns payable to the complainant, and to issue a revised and updated demand letter accordingly.

IV. Pass an appropriate order directing the respondent to pay the balance amount of assured returns remaining after adjusting the demand of Rs. 19,06,841/- as per the letter dated 10.12.2024.

V. Pass an appropriate order imposing penalty on the respondent for accepting more than 10% of the total sale consideration from the complainant without executing a builder buyer agreement.

VI. Pass an appropriate award directing the respondent, to allot the unit number which is missing in the BBA.

D. Reply by the respondent

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

a) That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking

application form, requesting the respondent to allot a unit/space, admeasuring 300 sq. ft. super area in the project "Neo Square".

b) That the request of the complainant, the respondent allotted a unit bearing priority no. 21, on 3rd floor, admeasuring 350 sq. ft. super area.

c) Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.

d) That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 11.04.2018.

e) That, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through respondent, therefore a memorandum of understanding dated 11.04.2018 was executed between the parties, recording the lease grant rights in favor of respondent, terms and conditions of payment of assured return and lease rental, fit-out charges etc.

f) It is noted herein that since the building was completed way before the grant of the occupation certificate, therefore, prospective lessees were approaching the respondent for taking the units in the project. That the respondent was anticipating that the occupation certificate would be granted by the competent authority shortly, and leased out the subject unit and vide letter dated 01.10.2020, requested the complainant to forward to complete the formalities with respect to leasing of the unit.

g) The occupation certificate of the project was granted by the competent authority on 14.08.2024.

h) Thereafter, the respondent sent an offer of possession letter dated 10.10.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.

i) Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminder dated 27.02.2025 requesting the complainant to do the needful.

j) That the respondent vide letters dated 28.02.2025, 02.04.2025 requested the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.

k) That the respondent vide letter dated 24.04.2025, requested the complainant to make payment of the maintenance charges as per the agreed terms and conditions of the MOU. It is pertinent to note herein that the complainant, despite receiving the aforementioned demands/reminders, failed to come forward to fulfil his obligations under the MOU and BBA.

l) That the present complaint has been preferred by the complainants before the Authority on frivolous and unsustainable grounds and the complainant has not approached the Authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the Respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merit and is fit to be dismissed in limine.

m) It is pertinent to mention herein that the complainant is a investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.

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

o) That from a bare perusal of the aforementioned terms and conditions of the MOU, it is evident that the complainant has invested in the instant project with the sole motive of earning lease rental by getting the subject unit lease through the respondent. It was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself. That the whole idea behind the leasing of the subject unit through the respondent was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the project who, by themselves, could not get big brands to take their units on lease. It is further submitted herein that the complainant has invested in the instant project for earning lease rental can be verified from the fact that

under clause 6 of the bba, it is clearly mentioned that the terms and conditions pertaining to leasing of the unit are mentioned in the MOU.

p) It is reiterated herein that from the very beginning, the understanding between the parties was to lease out the unit through the respondent. That it was never agreed between the parties that physical possession of the unit shall be handed over to the complainant. That a MOU recording the terms and conditions of the Leasing and lease rental is executed between the parties. It is pertinent to mention herein that no protest in this regard has ever been raised by the complainant and the same was willingly and voluntarily agreed upon between the parties.

q) That it is an entrenched principle of law that a lease may be limited to take effect either immediately or from a future date. That by virtue of such an understanding, the complainants enjoys the right of the lessor and hence, enjoys the constructive possession of the unit, after the offer of possession.

r) It is noted herein that a lessor is always considered to part with the physical possession of the property and stay in constructive possession through the lessee. That such a relationship is valid and has been recognized in law at various occasions.

s) It is pertinent to mention herein that the complainant, vide his complaint, is raising an issue that he has already paid the entire sale consideration and that the respondent is raising additional demands.

t) It is most humbly submitted that there is no additional demand nor any price escalation, and the unit sold to the complainant is of the same price. That the demand of the development charges have been sought in the demand letter from the Complainant, which is Rs. 600 per sq. ft., the details of which are mentioned in Para 15 herein below, equitably

distributed amongst the unit. That under Clause 11 of the BBA, the Complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.

u) It is noted herein that the development charges are reimbursement towards the cost incurred by the respondent towards providing facilities in the project. It is noted herein that some of the reasons attributed to development charges are: Change in government norms, which led to cost incurred towards Electrification, cost incurred towards the Electrical meter charges, cost incurred towards power backup charges, cost incurred towards Trane PO for Chillers, Chiller shifting, Cooling Towers, Pumps, Plant room works, including panels and other miscellaneous costs related to these facilities, cost towards STP, cost towards water connection charges.

v) That from a bare perusal of the aforementioned clause of the BBA, it is evident that the complainant himself has agreed to pay the development charges, therefore, at this belated stage, the complainant cannot raise issues with respect to payment of development charges and wriggle out of his obligation to pay the said charges.

w) It is noted herein that due to additional costs incurred by the respondent in providing the aforementioned facilities, the development charges are demanded from the complainant as per clause 11 of the BBA. Therefore, as per the agreed terms and conditions of the BBA, the complainant is bound to pay the development charges and the respondent is entitle to recover the same, so it is evident that there is no escalation in the price of the subject unit, the price remains frozen, that the development charges as and when could have been quantified, the respondent would

have been in a position to charge. That after issuance of the occupation certificate, the development charges have been quantified, therefore, the same have been demanded from the complainant as per clause 11 of the BBA.

x) It is pertinent to mention herein that as per the agreed terms and conditions of the MOU the complainant is liable to pay the fitout charges as per the leasing requirement. At the very outset, it is humbly submitted that there is absolutely no escalation in the sale consideration of the unit, fitout demands are as per the MOU and as per the Leasing requirements. There is no change or increase, or escalation in the sale consideration of the unit. That the sale consideration of the unit remains frozen at the rate which was agreed at the time of allotment of the unit and as agreed to under the BBA. That the demand for fitout charges is not part of the sale consideration of the unit, rather, an essential requirement for leasing of the unit in terms of the MOU.

y) It is reiterated herein that the complainant has invested in the project with the sole intent of earning an assured return and lease rental by leasing the unit through the respondent. Since, the understanding between the parties was very clear that the unit was to be leased out to a prospective lessee and the parties being aware of the fact that whenever any shop/office/space/unit is leased out to a lessee, there may arise a situation where the lessee wants some infrastructural changes or any other change which involves the expenses on part of the complainant, inside the shop/office/space/unit, that the cost of such changes/modification inside the shop/office/space/unit has to be borne by the owner. Therefore, the complainant, under clause 7(d) of the MOU, has categorically agreed that in case the lessee desires any

infrastructural changes in the unit, then the complainant shall be bound to pay for the expenses to be incurred for making the unit ready as per the requirement of the lessee. It is further agreed that in case the complainant fails to pay the same, then the respondent shall pay the expenses on behalf of the complainant and deduct the same from the lease rental payable to the complainant, along with a monthly interest of 2 percent

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

aa) That the obligation of the payment of fitout charges is nothing but an understanding between the parties that whenever the units get leased out, any infrastructural modifications/requirements such as installation of separate gas pipelines, sewage connection or any other changes for which an expense is required to cover such modification/requirement, such expenses shall be paid by the complainant as per clause 7 (d) of the MOU. It is further clarified herein that the expenses on account of such fit-outs are agreed to be paid by the complainant, as the same are recoverable from the owner of the unit, if not, then from the lease rental

itself. Thus, as per clause 7 (d) of the MOU, the respondent has the right to recover the expenses incurred for getting the unit ready for leasing.

bb) That it is evident that while the complainant wishes to pick and choose clauses for enforcement under the MOU, i.e., while he relies on claiming the assured returns basis the clauses of the MOU, he completely wishes to deny the obligations of payments of fit-out charges etc, which are also part of the MOU. Therefore, the complainant cannot be permitted to partly rely on the MOU which are beneficial to him and denies the other.

cc) It is pertinent to note herein that the units were sold as a bare shell, and they were to be made fit out ready at the time of possession. It is clear that the sale consideration for the units did not include any fit-out expenses therefore, the fit-out expenses were meant to be recovered as on the date of leasing rather than as on the date of booking. Much time has lapsed from the date of booking to the date of leasing, and the cost and also the preferences of the lessees have also undergone changes, and accordingly, the fit-out ready leases are as per the current market preferences and prices.

dd) That the respondent has always been transparent about the fit-out charges. That as and when the buyers have approached the respondent, clarifications and details with respect to fit-out charges were provided to such buyers.

ee) It is noted herein that payment of the fit-out charges is very crucial for leasing out the subject unit, as it is required for making the subject unit ready for occupation of the lessee to run its business. Without getting the subject unit ready as per the requirements of the lessee, it is not possible for any lessee to take the subject unit on lease. Furthermore, the subject unit is leased out along with other units as part of a larger

space, therefore, the unwillingness of the complainant towards not making payment of the fit-out charges will jeopardise the interests of all the other buyers of the project, whose leasing of the units will be hampered due to the defaults of the complainant. Therefore, as per the agreed terms and conditions of the MOU, and considering the rights of other buyers in the project and the overall fate of the project, the complainant is bound to pay the fit-out charges.

ff) That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate, has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. It is noted herein that the building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself, and since the prospective lessee were showing interest in taking the units in the project on lease, therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee.

gg) However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.

hh) It is pertinent to mention herein that after the first lease of the units, intimations were sent to the complainant to come forward for completion of the formalities with respect to 1st lease with the lessees.

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

jj) Without prejudice to submissions made herein above, it is noted herein that in the MOU, there was never any precondition of obtaining the occupation certificate for the execution of the lease. The respondent had executed the first lease deed upon completion of the building and applied for the occupation certificate. It is noted herein that 1st lease was executed as the building was completed and the fit-out works as per the requirement of the lessees, were to be started, however, the same could not be started as the buyers, after receiving the intimation with respect to completion of the formalities with respect to 1st lease of the units, failed to do the needful.

kk) It is most humbly submitted that it is an established practice in the real estate sector, wherein the promoter executes a lease deed with a lessee for a future project even before the completion of the said project. In fact, there is no bar by any statutory provision on entering into such an understanding. There have been numerous such instances where renowned developers have adopted such a practice.

ll) In view of the above-mentioned submissions, it is evident that executing a lease deed before the completion of a project or grant of the

occupation certificate is a common practice adopted by the developers/promoters in the real estate sector. It is noted herein that leasing the unit before the issuance of the occupation certificate does not mean that the unit is occupied by the lessee or that any business activities are conducted on the said unit. That the units/spaces are taken on lease by the companies/lessee in an under-construction project, solely to reserve the said units/spaces to be opened for business after issuance of the occupation certificate.

mm) It is reiterated herein that the complainant under clause 8 (a) of the MOU has authorized the respondent to finalize the terms and conditions of the lease with any prospective lessee and agreed not to raise any objections with respect to terms and conditions of the lease, the amount of lease, usage or to who the unit is leased out.

nn) It is noted herein that under clause 8 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.

oo) That from a mere perusal of the aforementioned submissions, it is evident that the complainant himself have authorized the respondent to finalize the terms and conditions of the lease and categorically agreed to execute a separate lease deed, if required. Further, the complainant himself agreed that in case of his failure to execute a separate lease deed if required, the respondent shall be authorized to execute the lease deed on behalf of the complainant. Therefore, in view of the agreed terms and conditions of the MOU, it is submitted herein that the lease deed executed by the respondent on behalf of the complainant are valid as the same are executed as per the terms and conditions of the MOU.

pp) Without prejudice to the submissions made herein above, it is most humbly submitted that on the one hand the complainant is seeking payment of assured return on the basis of MOU, and on the other hand the complainant denies their responsibility of payment of outstanding dues under the MOU. It is pertinent to mention herein that the complainant cannot partly rely on the MOU and claim their right and shrug off their responsibilities under the MOU. That if the complainant are claiming his right under the MOU, then he should also be ready to fulfil his responsibility under the MOU. It is most humbly submitted that if the Authority considers the right of the complainant in seeking the payment of assured return, then the right of the respondent with respect to leasing of the unit, and payment of fit-out charges under the MOU should also be allowed.

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

rr) It is pertinent to mention herein that in the present complaint, the complainant has failed to annexe any demand letters wherein maintenance charges are demanded by the respondent. It is noted herein that though the respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainant shall be liable to make timely payment of maintenance charges and other related dues.

ss) It is a matter of fact, that time was essence in respect to the Complainant's obligation to make the respective payment. And, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.

tt) It is noted herein that the respondent has made multiple requests to the complainant to clear the outstanding dues, however, the complainant has failed to make the payments, which amounts to violation of Section 19 (6) of the RERA Act, 2016.

uu) That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or

led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:

vv) That from the facts indicated above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the agreement.

ww) It is clear from the submissions that the construction/ completion work of the project was hampered due to force majeure situations beyond the control of the respondent. That the respondent despite facing the force majeure situations beyond its control, has completed the construction/development of the project, obtained the occupation certificate and offered possession of the subject unit in terms with MOU.

xx) That it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. It is noted herein that the complainant has vehemently failed to showcase how a prima facie case has been built in his favour.

6. Copies of all the relevant documents have been filed and placed on 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

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

9. 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.*

10. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. **Findings on the relief sought by the complainant.**

I. **Pass an appropriate order quashing the unlawful additional demand of Rs.2,63,042/- raised by the respondent in the demand letter dated 10.12.2024.**

II. **Pass an appropriate award directing the respondent, to pay the pending assured return of Rs. 24,39,773/- as stated in memorandum of understanding.**

III. **Pass an appropriate order directing the respondent to adjust the demand of Rs.19,06,841/- ,as mentioned in the demand letter dated 10.12.2024, against the pending assured returns payable to the complainant, and to issue a revised and updated demand letter accordingly.**

IV. **Pass an appropriate order directing the respondent to pay the balance amount of assured returns remaining after adjusting the demand of Rs. 19,06,841/- as per the letter dated 10.12.2024.**

V. **Pass an appropriate order imposing penalty on the respondent for accepting more than 10% of the total sale consideration from the complainant without executing a builder buyer agreement.**

VI. **Pass an appropriate award directing the respondent to allot the unit number which is missing in the BBA.**

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

12. The complainant seeks a direction to allot the unit number, which is missing in the BBA dated 11.04.2018. The Authority notes that the BBA identifies the unit only by priority allotment serial no. 21, 3rd floor, super area 350 sq. ft. The parties have also executed an MoU dated 11.04.2018, which records the terms of allotment and the agreed unit particulars. A priority serial number does not identify the physical unit.

13. Section 19(1) of the Act of 2016 entitles the allottee to obtain information relating to the sanctioned plans, layout plans and specifications approved by

the competent authority, and such other information as is provided in the Act, the rules and regulations made thereunder, or the agreement for sale signed with the promoter. The unit number is the particular that locates the allotted unit on the approved layout plan and ties it to its sanctioned specifications. It is therefore information to which the complainant is entitled, and the respondent, as promoter, cannot withhold it. The relevant provision is reproduced hereunder :-

> 19. Rights and duties of allottees.
> (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

14. The respondent is directed to provide the complainant with the unit number allotted to him, along with the relevant particulars of the unit, within 30 days from the date of this order.

15. The complainant is seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 11.04.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

16. The respondent has submitted that the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties which is a distinct agreement than the buyer's agreement and thus, the MoU is not covered under the provisions of the Act, 2016. Thus, the said complaint is not maintainable on this basis that there exists no relationship of promoter-allottee in terms of the MoU, by virtue of which the complainant is raising their grievance.

17. It is pleaded on behalf of respondent that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of

assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word '*deposit*' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

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

18. 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 builder at the time of booking or immediately thereafter and as agreed upon between them.

19. 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;

20. 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.

21. 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.

22. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

23. The promoter is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the promoter/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship.

24. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question.

However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the promoter is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MoU dated 11.04.2018.

25. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 11.04.2018., which is reproduced below for the ready reference:

> *Clause 4.*
> ***"The Company shall pay a monthly assured return of Rs. 34,363/- (Rupees thirty four thousand three hundred and sixty three only) on the total amount received with effect from 11.04.2019,*** *before deduction of Tax at Source and any other levy which is due and payable by the Allottee(s) to the Company. The balance sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s)* ***until the commencement of the first lease on the said unit. This shall be paid from the effective date."***

26. Thus, as per the abovementioned clause the assured return was payable @Rs.34,363/- per month w.e.f. 11.04.2019 until the commencement of the first lease on the said unit.

27. 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 11.04.2018, out of the sale consideration of Rs.31,10,800/-, the complainant has already paid a sum of

Rs.18,41,924/- against the unit in question to the respondent. The due date for possession was 11.10.2021 and the respondent obtained occupation certificate from the competent authority on 14.08.2024. Subsequently, vide offer of possession letter dated 10.12.2024, the possession of the unit was offered by the respondent, subject to payment of an amount of Rs.21,69,883/-, 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.14,45,500/- towards fit-out charges without any bifurcation and justification to the complainant. Therefore, 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 respondent has raised demands towards the fit-out charges vide letter dated 28.02.2025. The Authority observes that as per Clause 7 of the MoU executed between the parties, the complainant has agreed to pay such charges. The said clause is reiterated below for ready reference:

> *7 (d)*
> ***That the Allottee(s) further agrees and understands that in case the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other change which involves expense on the part of allottee(s), then in that event the same shall be paid by the Allottee,*** *strictly within the period of 15 days from the day of written notification by the company on the registered e-mail address of the allottee(s). In case the allottee(s) fails to come forward to tender the payment as demanded by the Company then in that event the company shall bear the same from its own pocket and deduct the same from the rental payable to the allottee(s) with monthly interest of 2%. The allottee(s) shall not register any protest towards the deductions from the rental. The rent shall be paid to the allottee(s) in the above mentioned arrangement defined at clause 7(b) after the expense incurred by the company along with the monthly interest of 2% is recovered by the company from the rent received.*

Upon understanding of the said clause, it is clear that Clause 7 (d) of the MoU do mention about the allottee being responsible for certain additional charges, such as when a tenant requires like a separate sewage arrangement, gas pipeline, or other infrastructural changes. However, the clause has been worded in very broad terms and does not define any extent for determining such charges. This creates a grey area. Also, the complainants should have taken note of this clause while executing the MoU, as it reflects an understanding between the parties that such additional charges may arise. The clause also refers to expenses for infrastructural changes which may fall within the scope of fit out charges. However, the respondent cannot use the clause terms to impose demands in an excessive manner. Therefore, if the respondent seeks to levy fit out charges it must first intimate the allottee about the request of the tenant or lessee for such work and the necessity of carrying it out. Without such prior intimation, the allottee cannot be made liable for additional financial burden after the work has already been executed. Further, the respondent is required to provide full justification of the charges by submitting a proper breakup of costs, supporting invoices and other relevant documents, and preferably a certification from a competent architect or engineer confirming both the necessity of the works and the reasonableness of the expenditure. Only when such proof, along with evidence of intimation to the allottee about the lessee's request and the necessity of the work, is furnished, can the fit-out charges be considered as falling within the scope of Clause 7(d) of the MoU. In the absence of such substantiation, the demand raised in its present form cannot be imposed on the 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.

G. Directions of the Authority

28. Hence, the Authority hereby passes this order and issues 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/promoter is directed to pay the assured returns to the complainant at the agreed rate i.e., @Rs.34,363/- from the effective date as per clause 4 of the MoU i.e., 11.04.2019 till

commencement of first lease, after deducting the amount already paid on account of assured return to the complainant.

II. The respondent/promoter is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

III. The respondent shall not charge anything from the complainant which is not part of the MoU or buyers' agreement. The respondent is not entitled to charge holding charges, FTTH and Labour cess from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.***

IV. The respondent is directed to recover development charges only on an actual and pro-rata basis, strictly supported by documentary proof of payments.

V. The respondent shall charge interest on delayed payment from the complainant, if any.

VI. The respondent is directed to restrict its demand towards advance maintenance charges strictly to a maximum period of one year only, and any demand raised in excess thereof shall be deemed unsustainable and liable to be withdrawn/adjusted in accordance with law.

VII. 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.

VIII. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges as per applicable local laws from the date of this order.

IX. The respondent can charge fit out charges only after providing 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.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.08.2026