BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4455 of 2025**
Date of filing	:	**08.09.2025**
Date of decision	:	**11.08.2026**

Mrs Prem Sethi And Mr Puneet Sethi
R/O: - H No 188-A, Sector -55
Village Ghata Tehsil
Sohna Distt Gurugram — **Complainants**

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 Hemant Phogat (Advocate) — **Counsel for Complainant**
Shri Dushyant Yadav (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.	Buyer's agreement	01.06.2015 (As per pg no.24 of the complaint)
7.	Unit no.	No. – 05, 3rd floor (As per pg no. 69 of the reply)
8.	Unit area admeasuring	300 sq. ft. (Super Area) (As per pg. no. 27 of the complaint)
9.	Date of MoU	01.06.2015 (As per pg no.53 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.	Due date of possession	01.06.2018 [36 months from signing of the MOU as per Fortune infrastructure V Trevor D'Lima judgement]
12.	Assured Return Clause	*Clause 4.* *"The Company shall pay a monthly assured return of* ***Rs. 27,000/-on the total amount received with effect from 01.06.2015*** *after deduction of Tax at Source and service tax, 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 pg. no. 55 of the complaint)*
13.	Total basic Sale consideration	Rs. 29,45,400/- (As per pg. no. *55 of the complaint*)
14.	Amount paid by the complainant	Rs. 34,21,170/- (As per pg. no. *66 of the reply*)
15.	Occupation certificate	14.08.2024 (As per RERA website)
16.	Offer of possession	Dated 09.12.2024 for demand of Rs. 6,44,888/- (As per pg. no. 63 of the complaint)

17.	Demand for fit out	Dated 28.02.2025 for demand of Rs. 12,39,000/- (As per pg. no. 66 of the complaint)
18.	Reminder	03.01.2025, 27.01.2025, 01.03.2025, 17.04.2025, (As per pg. no.73,72,71,69 of the reply)

B. Facts of the complaint

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

a. That, after going through the advertisement published by respondent in the newspapers and as per the brochure provided by it, the complainant booked a commercial space in the area designated for food court having its super area 300 Sq. ft. in the upcoming project of the respondent named "NEO SQUARE" situated in Sector-109, Dwarka Expressway, Gurugram for a total basic sale consideration of Rs. 29,45,400/- and total sale price of Rs. 32,64,315/- and the complainants have paid a sum of Rs. 34,21,170/- in respect of their unit.

b. The respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.

c. The buyer's agreement and memorandum of understanding were executed between the respondent and the complainant on 01.06.2015.

d. That the complainant has abided by all the terms of MOU and builder buyer agreement dated 01.06.2015 and has made all the payments/ installments in a timely manner, as and when demanded by the respondent and there are no dues pending in respect of the total sale

price of the unit as per the payment schedule of the builder buyers agreement.

e. That, as per clause–4 of the MOU dated 01.06.2025, the respondent was/is under legal obligation and was bound to pay the monthly assured return of Rs. 27,000/- on the total amount receipt w.e.f. 01.06.2015 until the commencement of first lease on the said unit.

f. That it is pertinent to mention here that the developer has failed to honour its own commitment of paying the monthly assured returns and has stopped paying the monthly assured return after 45 installments. The complainants have been communicating with the developer and have made several requests in respect of the payment of the assured returns by visiting the developer personally but the developer has not paid any heed to the just and genuine demands of the complainant and has been lingering on the demands of the complainant on one pretext or the other.

g. That it is pertinent to mention herein that upon regular and constant communications made by the complainants in regard to payment of due monthly assured returns, the respondent promised and conveyed to the complainants vide letter dated 01.02.2022 that the monthly assured returns accumulated shall be adjusted towards payment at the time of offer of possession.

h. That further, it is pertinent to mention here that the respondent after receiving of occupation certificate issued demand notice and officer of possession letter dated 9.12.2024, wherein contravention to the terms of builder buyer agreement and MOU dated 01.06.215 has raised unlawful demands on account of development charges to the tune of Rs. 2,12,400/- , FTTH Charges to the tune of Rs. 5500/- , Labour Cess to the tune of Rs. 7500/- and also imposed a penalty of Rs. 1,78,557/- on account of

delayed payment, despite of the fact that the complainants have paid all their installments well time as and when demanded by the respondent. The demands raised by the respondent in the said demand notice are not part and parcel of the payment schedule of the buyers agreement and these demands are being raised illegally and in an arbitrary manner by the respondent with the sole intention to extort more money from the complainant.

i. That the complainant upon the receiving of the demand and offer of possession letter dated 09.12.2024, confronted and approached the developer and sought clarification upon the unlawful demands raised in the letter dated 09.12.2024, despite of paying entire sale price as per the payment plan of the buyers agreement dated 01.06.2015 and further requested the developer for settling their due assured returns in respect of their unit and to adjust the legitimate demands pertaining to IFMS charges of Rs. 67,500/- raised in the offer of possession letter dated 09.12.2024 against the pending assured returns in respect of their unit, but the developer has failed to provide any satisfactory reply to the just and genuine request of the complainants.

j. That the respondent is acting in arbitrary manner by not accepting the just and genuine requests of the complainants and is further pressurizing the complainants to pay the demands raised in the demand notice and offer of possession letter dated 09.12.2024 and is further threatening the complainants on account of cancel of unit and imposing holding charges, CAM charges and interest despite of the fact that nothing remains due in respect of the unit as per the payment schedule of the builder buyers agreement.

k. That it is also pertinent to mention herein that the respondent has also raised a unlawful demand towards the fit out charges amounting of Rs. 12,39,000/- vide letter dated 28.02.2025. The demand for the fit out charges are completely bogus and are not part of the buyers agreement or the MOU and neither the payment schedule mentioned in the buyers agreement and MOU dated 01.06.2015.

l. That the respondent is completely ignoring the terms of the buyers agreement and is acting in an unlawful and arbitrary manner by making demands upon his whims and fancies which are not part of the buyers agreement with a sole intention to extort money out of the complainants in order to cause wrongful loss to the complainants.

m. The complainants have taken all possible requests and gestures to persuade the respondent, whereby requesting the respondent to withdraw these demands as they are not part of the payment structure of the buyers agreement and to pay him the assured returns as per the terms of MOU dated 01.06.2015 but the respondent has completely ignored the just and genuine demands of the complainants.

n. That, till today the complainants have not received any satisfactory reply from the respondent regarding payment of assured returns as well as the waiver off the unlawful demands made via demand notice and offer of possession letter dated 09.12.2024 & letter of fit out charges dated 28.02.2025 and therefore, the complainants are suffering from harassment and are going through a lot of mental and financial agony.

o. The respondent has committed grave deficiency in services by delaying the project, not paying the committed assured returns and further by demanding charges in contravention to the terms of the buyers

agreement, which is immoral, illegal and amounts to unfair trade practice.

p. The cause of action accrued in favour of the complainants and against the respondent, when complainant booked the said Unit and it further arose when respondent failed/neglected to pay the assured returns and further threaten the complainants to cancel the allotment of their unit vide offer of possession letters dated 09.12.2024 and by raising unlawful demands for fit out charges in contravention to the terms of builders buyer agreement dated 01.06.2015. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

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

I. To direct the respondent to pay due monthly assured returns until the commencement of first lease of unit as per the clause 4 of MOU dated 01.06.2015.

II. To direct the respondent withdraw and waive off the demands in respect development charges, FTTH charges, Labour Cess charges raised in letter dated 09.12.2024.

III. To direct the respondent withdraw and waive off the demands in respect of interest penalty of Rs. 1,78,557/- raised in letter dated 09.12.2024.

IV. To direct the respondent to withdraw and waive off the demands towards fit out charges raised in letter dated 28.02.2025.

V. To direct the respondent to offer the possession of the unit and get the conveyance deed executed in favour of complainants.

VI. To direct the respondent not to charge anything which is not part of payment schedule of buyers agreement dated 01.06.2015.

D. Reply by the respondent

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

a) It is submitted that the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", (hereinafter referred to as the "Project") situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 18/04/2015, whereby seeking allotment of unit No. 05, admeasuring 300 Sq. Ft Super Area on the 3RD Floor of the project having a basic sale price of Rs. 9818/- .The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

b) That upon the request of the complainants through the above said application form dated 18/05/2015, respondent vide welcome letter dated 28.05.2015 as well as allotment letter allotted unit bearing no. 05 on 3RD Floor as per the terms and conditions forming part of the application form & buyer's agreement.

c) That since the complainant had opted for the investment return plan, a memorandum of understanding dated: - 01/06/2015 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per terms of the "MOU", the returns were to be paid from 01/06/2015 till the commencement of first lease. It is also submitted that as per terms

of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.

d) That by no stretch of imagination it can be concluded that the complainants herein are "Allottee." That the complainants are simply investors who approached the respondent for investment opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

e) That at this stage, it is categorical to highlight that the complainant is trying to mislead this Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an "investment agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

f) That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. Without prejudice to the rights of the Respondent, at the utmost bonafide, the Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.

g) It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 01.06.2015 for shop no. 05 on 3rd Floor admeasuring 300 Sq. Ft Super Area in the project.

h) That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

i) It is humbly submitted that under the scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property. To elaborate this ground, it is necessary to reproduce certain provisions of the RERA Act, 2016.

j) That it is submitted that the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under section 13. It is submitted that S=section 13 nowhere mentions the agreements pertaining to assured return are covered under the RERA Act, 2016, it is imperative that a strict interpretation is given to its provisions while deciding the matters pertaining to assured return.

k) A perusal of the provisions would show that the RERA 2016 only envisages the enforcement of the Act and rules and regulations made there under. It is submitted that assured return is not a matter contemplated under any provision of RERA 2016 and thus the assumption of jurisdiction by the authority is wholly illegal and unsustainable in the eyes of law. In this regard the provisions of section

11 highlight the scope of the functions of the promoter, as envisaged under the Act. The same also, so do not impose any obligations in relation to returns of investment.

l) That in exercise of powers under section 84 of the Act, the Government of Haryana has enacted the "Haryana Real Estate (Regulation and Development) Rules, 2017". The rules in Rules 3 and 4 specifically provide the matters in respect of which disclosures are to be made by the promotor and in particular the promoter in relation to an ongoing project. It is submitted that the rules also keep "assured return" out of their scope. That rule 8 provides a clear indication as to the matters which are to be covered under the agreement of sale. The authority has no jurisdiction to enlarge a matter which is duly provided for by statute.

m) It is submitted that the rule clearly indicated the extent to which the rights of the allottees are protected, is the matters contained in the agreement, form of which is provided under the rules. It is submitted that even this agreement does not contain any condition governing assured returns. Thus, any order of payment of Assured Return would go beyond the statute and assumed jurisdiction in a wholly illegal manner.

n) In this regard the aims and object and the obligations and compliances required to be made by a promoter as enshrined in the RERA Act, 2016 may be examined. It is submitted that the assured return is an independent commercial arrangement between the parties which sometime a promoter offer, in order to attract buyers or users who may invest either in under construction or new launched projects. The commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an

amount is 'raised' under a real estate agreement, which is done with profit as the main aim. Such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- the real estate developer seeking to make a profit on the sale of the apartment, and the apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of Real Estate (Regulation and Development) Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not for the profit purposes.

o) On the basis of the above, it may be considered that there is no provision under the scheme of RERA Act 2016 for examining and deciding the issues relating to the provisions of assured return in an allotment letter, builder buyer agreement for purchase of flat, apartment or plot.

p) That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the parties. It is submitted that the Authority is exercising its power and jurisdiction as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale. However, in the present matter the complainant is relying upon the terms of MOU which is a distinct agreement than the buyer's agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

q) It is pertinent to note herein that the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations.

r) That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of anomaly prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the Respondent had no other alternative but to stop the payment of any return etc.

s) That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payment of returns on such unregulated deposits.

t) Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. That being a law-abiding company, the respondent upon the introduction of BUDS Act, cease to make further payments pertaining to Assured Return to the Allottees due above said prevailing confusion/anomaly.

u) Further, it pertinent to mention herein that the BUDS Act provides two forms of deposit schemes, namely regulated deposit schemes and unregulated deposit schemes. Thus, for any deposit scheme, for not to fall foul of the provisions of the BUDS Act, must satisfy the requirement of being a 'regulated deposit scheme' as opposed to unregulated Deposit Scheme.

v) It is also pertinent to mention herein that recently a Writ Petition was filed before the Hon'ble High Court of Punjab & Haryana in the matter of Vatika Ltd. vs Union of India & Anr. - CWP-26740-2022, on similar grounds of directions passed for payment of assured return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the Petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a Civil Writ Petition bearing no. 16896/2023 titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

w) That it is also apropos to bring into the knowledge of the Authority that an Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal. Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Authority, granting the relief of assured return in favour of the allottee.

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

y) It is submitted that as per clause 5.2 of the agreement the construction completion date was the date when the application for grant of completion/occupancy certificate was made.

z) Accordingly, as per clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.

aa) It is pertinent to mention 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.

bb) It is to be noted that the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs. 34,21,170/- against the total due amount of Rs. 34,87,501/-. It is to be noted that there is still an outstanding due of Rs. 6,44,888/- which is to be paid by the complainant against the unit booked as per the demand letter dated 09.12.2024.

cc) 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.

dd) That the respondents had substantially failed to discharge its obligations imposed upon them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

ee) 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 thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 01/06/2015 till the commencement of first lease. It is also submitted that as per clause 8 (a) of the MOU, the respondent herein had duly authorised the complainant to put the said unit on lease. That is because it contained a "lease clause" which empowers the complainant/developer to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.

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

payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

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

hh) That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 3500/- per Sq. Ft to the complainant which is sum of Rs. 12,39,000/- for getting the said unit fit out which is essential for getting the said unit leased out. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.

ii) It is a matter of fact, that time was essence in respect to the complainant obligation for making the respective payment. As per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the Respondent.

jj) That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. 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.

kk) It is further pertinent to mention here that the complainant failed to clear the outstanding dues of Rs. 6,44,888/- payable against the unit.

ll) That in the present case, the complainant has not obliged its duties as per the mou & buyer's agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault. It is relevant to mention that the complainant herein has clearly violated the duties of an allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the allottee and the promoter.

mm) It is humbly submitted that the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.

nn) It is pertinent to mention that the respondent has not availed the amnesty scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003. To further substantiated the same, the name of the respondent is not appearing in the list of builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the

Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

oo) It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The aforesaid mentioned clause clearly states that the allottee is liable to pay interest on all delayed payment of taxes, charges etc.

pp) 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 period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the Respondent builder.

qq) It is pertinent to mention herein that since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent has completed the said project in all aspect and obtained the Completion Certificate from the office of DTCP.

rr) That the respondent for the reason best known to him have filed the present complaint. That present complainant have created a parallel group with a malafide intention of stalling the project.

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. To direct the respondent to pay due monthly assured returns until the commencement of first lease of unit as per the clause 4 of MOU dated 01.06.2015.

II. To direct the respondent withdraw and waive off the demands in respect development charges, FTTH charges, Labour Cess charges raised in letter dated 09.12.2024.

III. To direct the respondent withdraw and waive off the demands in respect of interest penalty of Rs. 1,78,557/- raised in letter dated 09.12.2024.

IV. To direct the respondent to withdraw and waive off the demands towards fit out charges raised in letter dated 28.02.2025.

V. To direct the respondent to offer the possession of the unit and get the conveyance deed executed in favour of complainants.

VI. To direct the respondent not to charge anything which is not part of payment schedule of buyers agreement dated 01.06.2015.

11. The above-mentioned reliefs sought by the complainants 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 complainants are seeking unpaid assured returns on monthly basis as per the terms of the MoU dated 01.06.2025 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU.

13. The respondent has submitted that the complainants in the present complaint are 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.

14. 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.*

15. 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.

16. 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;*

17. 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.
18. 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.
19. 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.

20. 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.

21. 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 01.06.2015.

22. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 01.06.2015, which is reproduced below for the ready reference:

> *Clause 4.*
> ***"The Company shall pay a monthly assured return of Rs. 27,000/- (Rupees Twenty Seven Thousand only) on the total amount received with effect from 01.06.2015,*** *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."

23. Thus, as per the abovementioned clause the assured return was payable @Rs.27,000/- per month w.e.f. 01.06.2015 until the commencement of the first lease on the said unit.

24. It is observed that as per the payment plan agreed between the parties vide buyer's agreement dated 01.06.2015, out of the sale consideration of Rs. 29,45,400/-, the complainants have already paid a sum of Rs.34,21,170/- against the unit in question to the respondent. The due date for possession was 01.06.2018 and the respondent obtained occupation certificate from the competent authority on 14.08.2024. Subsequently, vide offer of possession letter dated 09.12.2024, the possession of the unit was offered by the respondent, subject to payment of an amount of Rs.6,44,888/-, 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 complainants that the unit has been successfully leased out to "World of Shalom Restaurants Pvt. Ltd." and demanded an amount of Rs.12,39,000/- towards fit-out charges without any bifurcation and justification to the complainants. Therefore, the validity of the demands raised by the respondent must be determined. Accordingly, the Authority is deliberating its findings on the said demands:

- **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 complainants viz-

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

- **FTTH Charges:** The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.
- **Interest on delayed payment:** The Authority has perused offer of possession letter dated 09.12.2024, wherein an amount of Rs.1,78,557/- has been levied towards interest on delayed payment. Upon examination of the record, it is noticed that the complainant has already paid a sum of Rs. 29,45,400/- out of the total basic sale consideration of Rs. 34,21,170/- as delineated under clause 4 of MoU. In terms of the payment plan delineated under MoU, it is stipulated that the complainant is liable to pay the outstanding amount towards IFMS, EDC/IDC, registration charges, stamp duty, and other applicable charges at the time of issuance of the offer of possession. It is evident from the record that the offer of possession of the said unit was issued to the complainant on 09.12.2024 and the OC was received only on 14.08.2024. In view of the provisions of Section 19(7) of the Act, 2016, an allottee is under a statutory obligation to make timely payment of all charges as agreed under the MoU.

  It is an admitted position on record that the occupation certificate for the project was obtained by the respondent only on 14.08.2024 and the offer of possession was thereafter issued on 09.12.2024. Therefore, the liability of the complainants to clear the charges payable at the time of possession could arise

only upon issuance of a valid offer of possession after obtaining the occupation certificate from the competent authority. Prior thereto, the respondent could not have fastened any liability upon the complainant for alleged delayed payments relating to charges at the time of offer of possession.

The Authority further observes that although the respondent has sought to levy interest on delayed payment, no documentary material has been placed on record demonstrating the basis of such computation, the date from which the alleged default commenced, the specific demand notices against which such interest has been calculated. Mere reflection of an amount in the statement of account cannot, by itself, establish the legality or enforceability of such demand. The burden lies upon the respondent to substantiate the levy by producing cogent material showing that the complainant had defaulted in payment of a valid and payable demand in terms of the agreement executed between the parties.

In the present case, the respondent itself failed to offer possession within the stipulated period and obtained the occupation certificate much after the contractual due date of possession. In such circumstances, and in the absence of any convincing evidence establishing a default attributable to the complainant, the levy of interest on delayed payment appears arbitrary, unsupported by the record and contrary to the contractual arrangement between the parties. Consequently, the respondent is not entitled to recover the aforesaid amount towards interest on delayed payment from the complainant.

- **Fit-out charges:** In the letter dated 28.02.2025, the respondent has raised a demand towards fit-out charges amounting to Rs.12,39,000/- and has directed the complainant to make the said payment in favor of a third party, namely *H5 Hospitality LLP*, by providing bank details that do not pertain to the respondent

company. The complainant has raised objection towards the fit-out charges raised by the respondent is seeking relief to waive off the demand of the same as they were not part of agreement nor the MoU executed between parties.

In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the MoU, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 28.02.2025 towards fit-out charges amounting to Rs.12,39,000/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. Since the promoter failed to discharge its contractual and statutory responsibility in the manner prescribed, the said demand cannot be sustained in the eyes of law and is accordingly struck off.

Upon perusal of the MOU dated 01.06.2015, this Authority finds that the said MoU does not contain any clause authorizing the respondent to levy fit-out charges. In the absence of any contract supporting the demand, the fit-out charges raised by the respondent cannot be sustained and are held to be invalid in the eyes of law.

Respondent be directed not to raise any payment demand which is in contrary to the agreed terms of the allotment/MoU.

G. Directions of the Authority

25. 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.27,000/- from the effective date as per clause 4 of the MoU i.e., 01.06.2015 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 Interest Amount as per the letter dated 09.12.2024 and Fit-Out Charges. 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.

26. Complaint stands disposed of.

27. File be consigned to registry.

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