# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no.** | **:** | **2753 of 2025** |
| **Date of filing** | **:** | **13.06.2025** |
| **Date of decision** | **:** | **25.08.2026** |

Punit Kumar Dubey
**R/o:** - 302, 3rd Floor, Casa Feliz,
Kurudusonnenihalli, Sai Serinity Layout,
Avalahalli, Bangalore, Karnataka, 560049 **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 Garvit Gupta (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<br>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. | Welcome letter | 17.05.2019<br>[as per pg. 32 of complaint] |
| 7. | Buyer's agreement | 11.03.2020<br>(As per pg no.46 of the complaint) |
| 8. | Unit no. | Unit no. 1402 on 14th floor,<br>(page no. 50 of the complaint) |
| 9. | Unit area admeasuring | 501 sq. ft. (Super Area)<br>(As per pg. no. 50 of the complaint) |
| 10. | Date of MoU | Not executed |
| 11. | 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. |

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|---|---|---|
| 12. | Possession clause | Clause 5.2 of agreement for sale<br>*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*<br>(As per pg. no. 54 of the complaint) |
| 13. | Due date of possession | 11.09.2023<br>[36 months from signing of the agreement for sale as per the possession clause + 6 months grace period] |
| 14. | Total basic Sale consideration | Rs. 39,57,900/-<br>As per pg. no. *50 of the complaint*) |
| 15. | Amount paid by the complainant | Rs. 51,85,274/-<br>(As per receipts on page pg. no. 74,75,76,*79,80 of the complaint*) |
| 16. | Occupation certificate | 14.08.2024<br>(As per DTCP site) |
| 17. | Offer of possession | 20.09.2024<br>(As per pg. no. 77 of the complaint) |
| 18. | Reminder for fit out charges | 10.12.2024 for Rs. 14,75,950/-<br>17.12.2024 for Rs. 13,58,428/-<br>[on page 81 and 82 of complaint respectively] |

## B. Facts of the complaint

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

a. The complainant has throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to his

contractual obligations. The booking has been made by the complainant and the payments have been made by him with all the efforts and hope to fulfil his dream of his own space for a peaceful and secured life.

b. That the respondent is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent is comprised of several clever and shrewd types of persons. The respondent now does not enjoy good reputation at all and has cheated many innocent people like the complainant.

c. That as per Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of 'promoter' and is bound by the duties and obligations mentioned in the said Act and are under the territorial jurisdiction of this Authority.

d. That the respondent offered for sale units in a commercial complex known as 'NEO Square' which claimed to comprise of several facilities on a piece and parcel of land situated in Sector-109, Gurugram, Haryana. The respondent stated that it is well established in the business of real estate development and has significant expertise in developing and marketing of commercial complexes in various parts of India. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 102 of 2008 dated 15.05.2008 on a land area of about 3.06 acres in Village Pawala, Khusrupur, District Gurugram for development of the Commercial Complex in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.

e. That the complainant received a marketing call from the office of the respondent in the month of February 2019 for booking in the said project

of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity done by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. The marketing staff of the respondent also assured timely completion of all the obligations of the allotment and specifically assured the complainant that the unit in the said project of the respondent would be provided within the agreed timeframe. Furthermore, it was categorically and specifically asserted by the respondent that no charges other than those mentioned in the agreement would be charged from the complainant.

f. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as they required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the unit to be allotted would be positively given within the agreed time frame. On the basis of the representations made by the respondent and on its demand, the complainant made the payment towards the booking amount of Rs. 4,43,285/- vide cheque no. 531326 dated 08.05.2019 to the respondent. The same was acknowledged by the respondent vide its receipt dated 17.05.2019.

g. That the respondent sent a welcome letter dated 17.05.2019 apprising the complainant that the respondent has received the application for

booking of one unit admeasuring 501 sq. ft. in the project of the respondent. It is pertinent to mention herein that the respondent, on the same day, sent another welcome letter to the complainant that the application for booking of unit bearing no. 1402 admeasuring 501 sq. ft. in the said project has been received by the respondent and the buyer's agreement would be executed between the respondent and the complainant upon receipt of full and final payment.

h. That the respondent demanded payment towards the sale consideration from the complainant as per the agreed payment plan at the time of booking. On the basis of the said demand raised by the respondent, the complainant made a payment of Rs. 4,43,285/- vide cheque no. 531328 dated 20.06.2019 to the respondent and the same was acknowledged by the respondent vide its receipt dated 25.06.2019. Thus, it is pertinent to mention herein that the complainant had paid a sum of Rs. 8,86,570/- to the respondent as on 25.06.2019.

i. The respondent provided the complainant with a copy of the buyer's agreement. After going through the buyer's agreement, the complainant realized that the provisions contained in the said buyer's agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally un-balanced and unwarranted.

j. That it is pertinent to mention herein that it was stated in the buyer's agreement that in the event of non-payment of instalment amount by the complainant, the complainant would be liable for penalty @ 18% per annum. However, in case of delay on the part of the respondent in offering the possession, no such penalty was specifically stated in the buyer's agreement.

k. That the complainant made vocal objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of a buyer's agreement with balanced terms. During such discussions, the respondent assured the complainant that no illegality whatsoever, would be committed by them and that the interest payable by the respondent to the complainant would be strictly as per the norms prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainant to forfeit the previous amount paid towards the unit if the buyer's agreement was not signed and submitted. Hence, the complainant had no other option but to sign the buyer's agreement on 11.03.2020. as per clause 2.1 of the buyer's agreement the complainant was allotted a unit bearing no. 1402, fourteenth floor admeasuring 501 sq. ft. in the said project. Furthermore, as per Annexure-I of the said buyer's agreement, the basic sale price including GST of the unit was Rs. 44,61,345/- and the total sale price of the unit was Rs. 48,11,544/- inclusive of the taxes, EDC, IDC and IFMS. Furthermore, it was reiterated in clause 4.1 of the buyer's agreement that the complainant had paid a sum of Rs. 8,86,570/- towards part basic sale price of the unit at the time of the execution of the agreement and that the remaining sale consideration would be paid by the complainant as per the payment plan attached in the buyer's agreement.

l. That the complainant in adherence to the payment plan as annexed in the buyer's agreement made payment towards the balance sale consideration of the unit. The complainant made another payment of Rs.

2,70,607/- to the respondent and the said payment was acknowledged by the respondent vide its receipt dated 17.07.2020.

m. That the complainant vide cheque no. 168699 dated 20.07.2020 made a payment of Rs. 28,20,000/- to the respondent towards the remaining sale consideration of the unit. The respondent acknowledged the said amount vide its receipt dated 24.07.2020. It is pertinent to mention herein that as on 24.07.2020, the complainant had made a payment of Rs. 44,77,177/- to the respondent which is more than 93% of the total sale price of the unit.

n. That as per clause 5.2 of the buyer's agreement, the construction of the project was to be completed by the respondent within a period of 36 months from the date of execution of the buyer's agreement or the date of start of construction, whichever is later.

o. Since the buyer's agreement was executed between the respondent and the complainant on 11.03.2020, the due date to offer the possession as per the terms of the buyer's agreement was 11.03.2023. However, the respondent failed to adhere to its obligations in offering the possession of the said unit in the agreed time frame. The complainant visited the office of the respondent to enquire about the date of possession of the unit of the complainant. The respondent assured the complainant that it was in the process of applying the 'occupancy certificate' within the concerned authorities and after getting the OC, the respondent would immediately offer possession of the unit.

p. That the respondent finally, after a considerable delay vide its demand notice and offer of possession dated 20.09.2024, intimated the complainant that the unit allotted to him was ready for possession as the respondent had obtained the occupation certificate. On-going through

the statement of account attached as annexure 1 in the said demand notice and offer of possession, the complainant was shocked and surprised to see that the respondent had illegally demanded an additional amount of Rs. 11,30,879/-. The complainant realized that respondent had unilaterally increased the sale consideration of the unit by demanding illegal charges which were not attributable to the complainant. It is pertinent to mention here that the complainant had already paid a sum of Rs. 44,77,177/- out of the total sale consideration of Rs.48,11,544/- and the said fact is also evident from the statement of account attached along with the said offer of possession letter. The only amount due on part of the complainant was Rs. 3,34,367/-. The total amount demanded by the respondent at the time of offer of possession was Rs. 14,65,246/-. Hence, an additional amount of Rs. 11,30,879/- was demanded by the respondent from the complainant. The said offer of possession consisted of the following illegal demands:

q. It is pertinent to mention herein that the complainant had paid more than 93% of the total sale price of the unit to the respondent and under the threat of his unit being cancelled, the complainant had no option but to make payment towards the illegal charges demanded by the respondent at the time of offer of possession. However fearing that the possession would not be handed over by the respondent to the complainant, the complainant made payment of Rs. 7,08,097/- vide RTGS dated 27.09.2024 to the respondent towards the illegal demand demanded at the time of the offer of possession. However, since the payment demand towards the interest levied upon the complainant was completely and blatantly on the fact of it illegal, the interest amount of Rs. 7,57,149/- was not paid by the complainant. The respondent acknowledged the receipt

of the said amount vide its receipt dated 27.09.2024. As per law, the respondent cannot demand the labour cess amount, FTTH Charges, increased EDC and IDC and development charges and the same are to be considered and adjudicated as illegal and be refunded to the complainant. Hence, it is a fit case for refund of additional amount of Rs. 3,73,730/-by the respondent to the complainant and non-payment of Rs. 7,57,14/- towards alleged delay on the part of the complainant.

r. That despite making the payment of Rs. 51,85,274/- to the respondent which is more than the total sale price of the unit, the respondent has failed to physically handover the unit to the complainant. Furthermore, there is an inordinate delay of 8 months in physically handing over the possession from the date of receipt of offer of possession. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the Respondent/promoter.

s. After the receipt of the said offer of possession dated 20.09.2024, the complainant visited the site and was shocked to check the status of the unit allotted to him. The unit was not at all in a habitable condition and it was apparent that the common areas of the project was incomplete and lifts were not even operating. the complainant requested the respondent to rectify the defaults and physically handover the possession. However, the respondent failed to respond to the said queries of the complainant. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and is unconcerned about the physical possession of the unit despite repeated assurances.

t. That, the complainant was in complete shock and was surprised to note that the respondent vide letter dated 10.12.2024 informed the complainant that the unit of the complainant has been leased to DESQWORX Shared Offices Private Limited. The respondent vide the said letter illegally demanded an additional amount of Rs.14,77,950/-towards fitout charges for the customisation of the said unit. It is pertinent to mention herein that no lease agreement was ever executed between the parties. The arrangement between the complainant and the respondent from the very inception was that the respondent would handover the physical possession of the unit to the complainant and that it the reason why the agreement is completely silent on the aspect of 'leasing'. No letter prior to the date of the letter dated 10.12.2024 was ever issued by the respondent to the complainant wherein any arrangement for leasing was mentioned. Moreover, the complainant was never informed that the respondent had any right to demand any such fitout charges from the complainant. The parameter of leasing the unit or charging fitout charges never found mentioned in buyer's agreement and the complainant was informed about the same for the first time at the time of receipt of the letter dated 10.12.2024 only.

u. The respondent cannot be allowed to charge any additional amount only because it deems fit to do so. The demand against the said charges is against the terms of the contract and even as per the provisions laid down by law. The respondent cannot demand such charges and the complainant is not legally liable to make any payment against the same.

v. That the complainant raised objections against the illegalities performed by the respondent, but the respondent paid no heed to the genuine concerns of the complainant. Rather, the respondent served a revised

letter outlining the payment schedule for the fitouts dated 17.12.2024 to the complainant, informing the complainant that the fit-out charges stand revised at Rs. 13,58,428/-.

w. That the complainant has been running from pillar to post to seek his lawful right of physical possession of the unit, however, the respondent has paid no heed to the genuine concerns of the complainant. The respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about handing over the physical possession of the unit in question to the complainant even after paying more than the total sale price of the unit. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant.

x. That the complainant has been duped of his hard-earned money paid to the respondent regarding the unit in question. The complainant has been requesting the respondent multiple times but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.

y. Furthermore, as per clause 11 of the buyer's agreement, the sale deed had to be executed and registered in favour of the allottee. It is submitted that the respondent is duty bound and had a contractual obligation to execute the conveyance deed of the unit in favour of the complainant.

z. The complainant telephonically enquired about the execution of the conveyance deed in favour of the complainant. Initially, the respondent deliberately failed to even attend the calls of the complainant.

Subsequently, it was informed by the representatives of the respondent to the complainant that the conveyance deed of the unit would soon execute in the favour of the complainant and that it would not take more than a few days to do so and that legal team of the respondent would deal with the queries of the complainant. Since, the complainant had already deposited more than the total sale consideration to the respondent, in good faith believed the assurances made by the representatives of the respondent with a hope that the respondent would adhere to its contractual obligations.

aa. That the respondent by adopting unfair trade practices, misuse of funds, failed to offer the possession of the unit allotted to the complainant as well as the other allottees. The respondent has extracted sale consideration of the unit from the complainant as well as from other allottees and miserably failed to physically handover the possession of the unit to the complainant.

bb. That the respondent has misappropriated and siphoned the funds of the complainant and by doing so, cheated the complainant. The complainant had trusted the respondent with a dream to have a unit to himself but the respondent has breached the trust of the complainant and snatched away such dream and also caused huge financial losses to the complainant.

cc. That the respondent has violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and is liable for the same. As per section 18 of RERA 2016 and Rules 15(1) and 15(3) of Haryana RERA Rules, 2017, the respondent/promoter is liable to pay interest for every month of delay till actual handing over the possession of the unit.

dd. The respondent has deliberately, mischievously, dishonestly and with mala fide motives cheated and defrauded the complainant. It is submitted

that as per Section 4(2)(g) of the Real Estate (Regulation and Development) Act, 2016, a promoter is bound to submit proforma of the conveyance deed proposed to be signed with the allottees. Thus, in its deliberate and illegal omission to get the conveyance deed registered and signed, the respondent has failed to comply with the provisions as laid down in law.

ee. That the complainant apprehends that the respondent would illegally and unilaterally cancel/terminate the allotment by creating third party rights. The said strong apprehension is based on the fact that the representatives of the respondent have been issuing threats to the complainant that in case the complainant don't accept the unilateral reasoning given by the respondent then it would terminate the allotment of the complainant and would allot the unit in question to a third party. Hence, it is necessary for this Authority to issue directions under Section 36 of the RERA Act, 2016 to immediately restrain the respondent from cancelling the unit in question till the disposal of the case in question.

ff. That the respondent is enjoying the valuable amount of consideration paid by the complainant out of his hard-earned money and the complainant realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to physically handover the possession to the complainant along with delayed possession charges leaving him with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainant is entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

gg. That it is submitted that the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. the complainant believes that no completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Authority. The respondent in utter disregard of its responsibilities have left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.

hh. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to offer the possession of the unit within the agreed time frame, failed to hand over the physical possession of the unit, failed to make payment towards the delayed possession charges and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation. the complainant reserves his right to approach the appropriate forum to seek compensation.

**C. Relief sought by the complainant:**

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

I. Direct that the offer of possession dated 20.09.2024 as bad in law as the same contains illegal and excessive demands.

II. Direct the respondent to handover the physical possession of the unit in a habitable condition as per the specifications provided in the buyer's agreement.

III. Direct the respondent to refund the additional illegal amount of 3,73,730/- paid by the complainant at the time of offer of possession.

IV. Direct the respondent to revoke the demand against 'interest payable by the complainant' of Rs. 7,57,149/- raised at the time of offer of possession and be directed not to raise any illegal demand towards the same.

V. Direct the respondent to pay to the complainant delayed interest charges at the prescribed rate of interest as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the complainant from the due date of offer of possession i.e., 11.03.2023 till the date of handing over of possession.

VI. Respondent be directed to revoke the demand towards the fit-out charges and the respondent be directed not to demand Rs. 13,58,428/ or any such amount towards the same from the complainant.

VII. Respondent to not terminate the allotment or create third party rights on the allotted unit/space.

VIII. Direct to the respondent to execute conveyance deed under Section 17 of the RERA Act, 2016.

IX. Respondent not to raise any payment demand from the complainant which is contrary to the agreed terms of the allotment.

**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", 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 17/05/2019, whereby seeking allotment of unit no. 1402,

admeasuring 501 sq. ft super area on the 14th floor of the project having a basic sale price of Rs. 7900/- 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 17/05/2019, respondent vide welcome letter dated 17.05.2019 as well as allotment letter allotted unit bearing no. 1402 on 14th Floor as per the terms and conditions forming part of the application form & buyer's agreement.

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

d) 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.

e) 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.

f) It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 11.03.2020 for shop no. 1402 on 14th floor admeasuring 501 sq. ft super area in the project.

g) 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.

h) 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.

i) That a perusal of Section 13 (2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.

j) It is submitted that the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance

where the project was an ongoing project and provisions of the act were being made applicable, in such a situation, a strict interpretation of the statutory provisions are being mandated.

k) 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 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.

l) A perusal of the above provisions would show that the RERA 2016 only envisages the enforcement of the Act and rules /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.

m) 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.

n) It is submitted that the above 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.

o) 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/developer offer, to attract buyers/investors or users who may invest either in under construction or pre-launched/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 flat/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.

p) 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/plot.

q) Also, a perusal of the Section 2(d) defining allottee as well as Section 2 (zk) which defines "Promoter" does not include any transaction regarding "assured return". Therefore, the Assured Return scheme is beyond the scope of the RERA Act, 2016 and jurisdiction of the Ld. Authority.

r) 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 (Buyer's Agreement). 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.

s) 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. Thus, in view of the above, it is most humbly submitted herein that the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.

t) That it is pertinent to mention here that, RERA Act has been introduced by the Legislation to maintain the uniformity in the real estate industry throughout the country.

u) That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of anomaly/confusion 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.

v) 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.

w) 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/complainant due above said prevailing confusion/anomaly. That on bare reading of above preamble it is clear that the intention behind notifying the act is to ban the unregulated deposit schemes to protect the interest of depositor.

x) 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.

y) Therefore, if depositor accepts any deposit, it immediately required to take prior approval from the regulator as mentioned under schedule I of the BUDS Act. And therefore, for the present matter, the regulator shall be ministry of corporate affairs as provided under last entry of schedule I.

z) It is pertinent to mention herein that the BUDS Act is a central Act came subsequent to the Companies Act and the RERA Act, 2016, therefore, directing the respondent to pay assured returns shall be violation of the provisions of BUDS Act. It is also pertinent to note herein that for any kind of deposits and return over it shall be tried and adjudicated as per the relevant provisions of the BUDS Act by the competent Authority constituted under the Act.

aa) Further, any orders or continuation of payment of assured return or any directions thereof may be tantamount to contravention of the provisions of the BUDS Act.

bb) In catena of the above discussion, it is submitted that in the present complaint the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as assured return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

cc) It is also noteworthy that the grievances of the complainant are all arising from the MOU which is not within the jurisdiction of the Authority, therefore, there arise no grounds that can be adjudicated by this forum and thus, present complaint deserves to be dismissed at the very outset for want of jurisdiction.

dd) That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

ee) 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.

ff) 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.

gg) 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.

hh) 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.

ii) 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. 44,77,177/- against the total due amount of Rs. 51,85,274/-. It is to be noted that there is still an outstanding due of Rs. 14,65,246/- which is to be paid by the complainant against the unit booked as per the demand letter dated 20.09.2024.

jj) 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.

kk) 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.

ll) 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 regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 20/03/2020 till the offer of possession . 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.

mm) 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.

nn) 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).

oo) That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 2500/- per Sq.ft to the complainant which is sum of Rs. 13,58,416/- 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.

pp) It is a matter of fact, that time was essence in respect to the complainant obligation for making 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.

qq) 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 C-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.

rr) It is further pertinent to mention here that the Complainant failed to clear the outstanding dues of Rs. 14,65,246/- payable against the unit. 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 builder/promoter.

ss) 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.

tt) 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.

uu) 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. It is noted herein that the complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme.

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. **Direct that the offer of possession dated 20.09.2024 as bad in law as the same contains illegal and excessive demands.**

II. **Direct the respondent to handover the physical possession of the unit in a habitable condition as per the specifications provided in the buyer's agreement.**

III. **Direct the respondent to refund the additional illegal amount of 3,73,730/- paid by the complainant at the time of offer of possession.**

IV. **Direct the respondent to revoke the demand against 'interest payable by the complainant' of Rs. 7,57,149/- raised at the time of offer of possession and be directed not to raise any illegal demand towards the same.**

V. **Direct the respondent to pay to the complainant delayed interest charges at the prescribed rate of interest as per the provisions of RERA Act, 2016 and Haryana RERA Rules, 2017 on the amount paid by the complainant from the due date of offer of possession i.e., 11.03.2023 till the date of handing over of possession.**

VI. **Respondent be directed to revoke the demand towards the fitout charges and the respondent be directed not to demand Rs. 13,58,428/ or any such amount towards the same from the complainant.**

VII. **Respondent to not terminate the allotment or create third party rights on the allotted unit/space.**

VIII. **Direct to the respondent to execute conveyance deed under Section 17 of the RERA Act, 2016.**

**IX. Respondent not to raise any payment demand from the complainant which is in contrary to the agreed terms of the allotment.**

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 present complaint pertains to the allotment of unit no. 1402, admeasuring 501 sq. ft. situated on the 14th floor of the project namely "Neo Square", Sector 109, Gurugram, being developed by the respondent/promoter. The complainant was issued a welcome letter dated 17.05.2019, followed by execution of the buyer's agreement dated 11.03.2020. As per the particulars placed on record, the due date for handing over possession of the unit was 11.09.2023, whereas the occupation certificate for the project was obtained by the respondent on 14.08.2024 and an offer of possession was issued to the complainant on 20.09.2024. The complainant has stated that, against the basic sale consideration of Rs. 39,57,900/-, he has already paid a sum of Rs. 51,85,274/- to the respondent. However, despite issuance of the offer of possession, the complainant has alleged that the respondent has failed to hand over the actual physical possession of the unit in a habitable condition and has raised further demands towards various charges, including fit out charges.

13. The complainant in the present complaint intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, **interest for every month of delay, till the handing over of the possession**, at such rate as may be prescribed."*

14. **Due date of handing over possession:** As per clause 5.2 of the BBA executed between the parties, the respondent proposed to handover possession of the subject unit within a period of four years i.e. 36 months from the date of execution of this agreement or from start of construction, whichever is later. Therefore, the due date has been calculated as 36 months from the date of date of execution of agreement being later, an additional grace period of 6 months is allowed as per the terms of the agreement agreed among the parties. Thus, the due date of possession come out to be 11.09.2023.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, ibid. Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.

17. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

18. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> *Explanation. —For the purpose of this clause—*
> *(i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

19. Therefore, interest on the delayed payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent, which is the same as being granted to them in case of delayed possession charges.

20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that

the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.

21. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @10.80% p.a. w.e.f. 11.09.2023 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

22. 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 11.03.2020, out of the sale consideration of Rs.39,57,9000/-, the complainant has already paid a sum of Rs.51,85,274/- against the unit in question to the respondent. The due date for possession was 11.09.2023 and the respondent obtained occupation certificate from the competent authority on 14.08.2024. Subsequently, vide offer of possession letter dated 20.09.2024, the possession of the unit was offered by the respondent, subject to payment of an amount of Rs.14,65,246/-. Thereafter, vide letter dated 17.12.2024, the respondent intimated the complainant that the unit has been successfully leased out to "DESQWORX shared offices Pvt. Ltd." and demanded an amount of Rs.13,58,428/- 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**

  In the said demand letter dated 17.12.2024, the respondent has raised a demand towards fit-out charges amounting to Rs.13,58,428/-. In the present case, the respondent has failed to demonstrate that any prior written intimation or demand, as contemplated under any clause of the Buyer's agreement, was issued to the complainant before incurring the alleged fit-out expenses. Consequently, the demand raised vide letter dated 17.12.2024 towards fit-out charges amounting to Rs. 13,58,428/- appears to be unilateral, arbitrary, and in violation of the principles of natural justice. In the absence of any clause under the buyer's agreement agreed upon among the parties supporting the demand, the fit out charges raised by the respondent cannot be sustained and is held to be invalid in the eyes of law.

- **Labour cess**

  It is observed that labour cess is levied @1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as ***"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the

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

- **Development charges:** The Authority observes that the undertaking to pay the development charges was comprehensively set out in the buyer agreement in Clause 11. The said clause of the agreement is reproduced hereunder: -

> *"11. **That the Allottee agrees to pay all taxes, charges**. Levies, cesses, applicable as on dated under any name or category heading and or levied in future on the land and or the said complex and/or the said space at all times, these would be including but not limited to GST. **Development charges,** Stamp Duties, Registration Charges, Electrical Energy Charges, EDC Cess, IDC Cess, BOW Cess, Registration Fee, Administrative Charges, Property Tax, Fire Fighting Tax and the like. **These shall be paid on demand** and in case of delay. these shall be payable with interest by the Allottee"*

In light of the aforementioned facts, the Authority is of the view that the said demand for development charges is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the development charges, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the unit allotted to the complainant viz- à-viz the total area of the particular project. The complainant will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- **FTTH Charges:** The respondent apprised the Authority that the respondent is liable to raise the said demands under clause 11 as had been agreed between the parties. The Authority takes a note that Clause 11 as already elaborated above does not mention about the FTTH charges being payable by the complainant. Hence, the respondent shall only raise demand as per the agreed terms of the agreement and MoU executed between the parties.

- **Interest on delayed payment**

  The Authority has perused offer of possession letter dated 20.09.2024, wherein an amount of Rs.7,57,149/- 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. 51,85,274/- out of the sale consideration of Rs. 39,57,900/- as delineated under clause 2 of the agreement for sale. In terms of the construction linked payment plan delineated under BBA, 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 20.09.2024, the due date of possession was 11.09.2023 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 agreement for sale.

- The Authority 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, or the contractual provision authorising the recovery of the amount claimed. 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 sufficient 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 complainant has already made full payment of total sale consideration as per the terms of the agreement agreed among the parties. 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.

23. Further the complainant is seeking relief w.r.t execution of conveyance deed of the unit in question in their favour. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

24. The occupation/completion certificate has already been obtained by the respondent on 14.08.2024. Therefore, the respondent/promoter is directed to handover the possession of the unit to the complainants/allottee in terms of the buyer's agreement executed between them on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

## 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 interest to the complainant(s) against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 11.09.2023 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority i.e. 14.08.2024, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

II. The arrears of such interest accrued so far shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

III. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one months after obtaining occupation certificate from the competent authority.

IV. The respondent shall not charge fit out charges from the complainant as the same is not part of the buyers' agreement executed amount the parties. The respondent shall not charge any interest on delayed payment from the complainant.

V. The respondent is not entitled to charge FTTH charges, holding charges 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.***

26. Complaint stands disposed of.

27. File be consigned to registry.

**(Arun Kumar)**
**Chairman**
Haryana Real Estate Regulatory Authority, Gurugram
**Dated: 25.08.2026**

HARERA
GURUGRAM