

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

Complaint no.	: 168 of 2025
Date of filing complaint:	24.01.2025
Date of order	12.09.2025

1. Mahalingam Valleesan 2. Sowmiya Valleesan Both R/O: House No. 542, Pocket- E, Mayur Vihar, Phase - 2, Near Canara Bank, Chilla Saroda Khadar, Patparganj, Delhi - 110091	Complainants
Versus	
M/S Neo Developers Pvt. Ltd. Regd. Office: 32- B, Pusa Road, New Delhi-110005 Corporate Office: Unit no. 1205, 12 th floor, Tower B, Signature Tower, South City - I, Gurugram, Haryana	Respondent
CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Sh. Harshit Goyal (Advocate)	Complainants
Sh. Dushyant (Advocate)	Respondent

ORDER

1. This complaint has been filed by the complainants/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 provision of the Act or the Rules and regulations made

thereunder or to the allottee 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 complainants, 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.	Unit no.	5 th floor (page no. 36 of complaint)
7.	Unit area admeasuring	400 sq. ft. (page no. 36 of complaint)
8.	Date of MOU	01.10.2016 (page no. 19 of complaint)
9.	Buyer's agreement	01.10.2016 (Page no. 32 of complaint)
10.	Assured return Clause	4. The Company shall pay a monthly assured return of Rs.26,000/- on the total amount received with effect from 03.09.2016 before 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. (page no. 22 of complaint)

11.	Possession clause	3. The Company shall complete the construction of the said building/complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction.
12.	Due date of possession	01.10.2019 (calculated from the date of agreement)
13.	Basic sale consideration	Rs. 32,43,220/- (as per MOU at page 52 of complaint)
14.	Amount paid by the complainants	Rs.31,53,220/- (as per SOA at page no. 68 of complaint)
15.	Occupation certificate	14.08.2024
16.	Offer of possession	04.10.2024 (page no. 66 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the builder buyer agreement dated 01.10.2016 was duly executed between allottees and respondent in respect of unit no. 21, 5th floor measuring 400 sq. ft. super area under food court and entertainment category in real estate project in question namely 'Neo Square' situated at Sector 109, Dwarka Expressway, Gurgaon.
- II. That the memorandum of understanding dated 01.10.2016 was also duly executed between allottees and the respondent in respect of booked unit.
- III. That as per clause 4 of MOU dated 01.10.2016, the respondent was liable to pay assured return amount of Rs 26,000/- per month from 03 September 2016 till commencement of first lease in respect of booked unit. However, the respondent company has failed to pay agreed assured return amount from July 2019 till date to the complainants. The respondent has also failed to execute lease deed with prospective tenant in respect of booked unit till date.

- IV. That as per clause 3 of memorandum of understanding dated 01.10.2016, the respondent was liable to deliver possession of the booked unit within a period of 36 months from the date of execution of agreement. Therefore, the due date of delivery of possession was 01.10.2019. However, the respondent has failed to issue lawful and legal offer of possession of the booked unit to the complainants till date.
- V. That the respondent has also failed to pay accrued delayed possession charges till date. The respondent issued illegal and unlawful demand notice and offer of possession letter dated 04.10.2024 claiming unlawful fabricated outstanding amount of Rs. 12,42,631/- against complainants inspite of receipt of total sale consideration from complainants.
- VI. That the complainants had already paid Rs. 31,53,220/- duly acknowledged by payment receipts issued by respondent company out of agreed total sale consideration of Rs 32,43,220/- in respect of booked unit as and when demanded by the respondent company.
- VII. That the complainants had invested hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at in order to allure the complainants. However, the respondent has failed to abide all the obligations of him stated orally and under the Builder Buyer Agreement duly executed between both the present parties.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay the monthly assured returns of Rs. 26,000/- per month accrued from July 2019 along with interest to the complainants.

- ii. Direct the respondent to pay delayed possession charges from due date of delivery of possession of 01.10.2019 till date of offer of possession.
 - iii. Direct the respondent to deliver possession of the unit.
 - iv. Direct the respondent to execute and register conveyance deed of the booked unit.
 - v. To set aside unlawful fabricated outstanding amount of Rs. 12,42,631/- claimed vide unlawful demand notice and offer of possession dated 04.10.2024.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply dated 15.09.2025 on the following grounds: -
- I. 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 16/10/2019, whereby seeking allotment of unit no. 805, admeasuring 501 sq. ft. super area on the 8th floor of the project having a basic sale price of Rs. 5000/-. The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

- II. That upon the request of the complainants through the above said application form dated 16.10.2019, respondent vide welcome letter dated 15.10.2019 as well as allotment letter allotted unit bearing no. 805 on 8th Floor as per the terms and conditions forming part of the application form & buyer's agreement.
- III. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 19.10.2019 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit/space thereof. That as per terms of the "MOU", the returns were to be paid from 20.10.2020 till offer of possession. As per terms of the MOU, the complainants herein had duly authorised the respondent to put the said unit on lease.
- IV. That the MOU executed between the parties was in the form of an "Investment Agreement." The complainants 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 complainants along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession.
- V. That the complainants voluntarily also executed the buyer agreement dated 28.12.2020 for shop no. 805 on 8th floor admeasuring 501 sq. ft. super area in the project.
- VI. That as the complainants 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 Ld. 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.

- VII. 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 Ld. 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.
- VIII. That the complainants in the present complaint is claiming the reliefs on basis of the terms agreed under the MOU between the parties which is a distinct agreement than the buyer's agreement and thus, the MOU is not covered under the provisions of the 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 complainants are raising their grievance.
- IX. That the respondent cannot pay "Assured Returns" to the complainants 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.
- X. 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.
- XI. Thereafter, an act titled as "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") 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/complainants.

- XII. 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.
- XIII. 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.
- XIV. 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.
- XV. That the respondent from time-to-time issued demand request/reminders to the complainants to clear the outstanding dues against the booked unit. However, the complainants delayed the same for one or the other reasons.
- XVI. 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 complainants as per the records of the respondent had only paid Rs. 31,53,220/- against the total due amount of Rs. 39,15,135/-. That there is still an outstanding due of Rs. 12,42,631/- which is to be paid by the complainants against the unit booked as per the demand letter dated 04.10.2024.
- XVII. That since the complainants 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 complainants in the said project and leasing of the unit/space thereof. As per the mutually agreed terms between the complainants and the respondent, the returns were to be paid from 03/10/2016 till commencement of first lease. As per clause 8 (a) of the MOU, the complainants had duly authorised the respondent to put the said unit on lease. That is because it contained a "Lease Clause" which empowers the developer to put a unit of complainants on lease and does not have possession clauses, for handing over the physical possession.

- XVIII. That complainants are 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 complainants which is sum of Rs. 11,80,000/- 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.
- XIX. That time was essence in respect to the complainant's obligation for making the respective payment and as per the agreement the complainants were bound to make the outstanding payment as and when demanded by the respondent.
- XX. That the respondent herein had been running behind the complainants for the timely payment of dues towards the unit in question. That in spite of being aware of the payment plans the complainants herein has failed to pay the outstanding dues on time. The complainants 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. The complainants failed to clear the outstanding dues of Rs. 12,42,631/- payable against the unit.

- XXI. That the respondent is raising the VAT demands as per government regulations. The rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003.
- XXII. 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. That further it is submitted that the demand of VAT is done as per clause 11 of the buyer's agreement.
- XXIII. That the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the parties.

D. Jurisdiction of the Authority:

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

D.I Territorial Jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject-matter Jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the objections raised by the respondent.

E. I. Objection regarding the complainants being investor.

12. The respondent has taken a stand that the complainants are investors and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The Authority observes that any aggrieved person can file a

complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MOU/buyer's agreement dated 01.10.2016, it is revealed that the complainant are buyers, and they have paid total price of Rs. 31,53,220/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is an allottees as the subject unit was allotted to her by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottee being investor is not entitled to protection of this Act stands rejected.

F. Findings on the relief sought by the complainants:

- F.I Direct the respondent to pay the monthly assured returns of Rs. 26,000/- per month accrued from July 2019 along with interest to the complainants.**
- F.II Direct the respondent to pay delayed possession charges from due date of delivery of possession of 01.10.2019 till date of offer of possession.**

Assured Return

14. In the instant complaint, the complainants duly booked a unit located on the 5th floor admeasuring 400 sq. ft. in the respondent's project namely, Neo Square situated at Sector-109, Gurugram. The Memorandum of Understanding (MOU) was executed between the parties dated 01.10.2016 and on the same date the builder buyer agreement was also got executed between the parties.
15. The complainants in the present complaint are seeking relief w.r.t payment of assured return as per the terms of the MoU dated 01.10.2016. The complainants have submitted that as per clause 4 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.26,000/- with effect from 03.09.2016 until the commencement of the first lease on the said unit. The complainants are seeking unpaid assured returns on monthly basis as per the MoU dated 01.10.2016 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MoU.
16. The respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the

allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

17. Further respondent raised an objection that MOU dated 01.10.2016 cannot be treated as agreement for sale. The authority is of the view that the MoU dated 01.10.2016 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.
18. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by

way of advance, the 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.

19. The Authority has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
20. In the present complaint, the assured return was payable as per clause 4 of the MoU dated 01.10.2016, which is reproduced below for the ready reference:
- 4. The Company shall pay a monthly assured return of Rs.26,000/- on the total amount received with effect from 03.09.2016 before 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 until the commencement of first lease on the said unit.*
21. Thus, the assured return was payable @Rs.26,000/- per month w.e.f. 03.09.2016, till the commencement of first lease on the said unit.

22. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 01.10.2016, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 01.10.2016. Further, it is to be noted that no document has been annexed by the respondent regarding the lease of unit. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.26,000/- per month from the date i.e., 03.09.2016 till the commencement of first lease of the unit.

Delay Possession Charges:

23. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

24. In the present matter, MOU was executed between the parties on 01.10.2016 and the buyer's agreement was also executed on 01.10.2016. As per the clause 3 of the buyer's agreement dated 01.10.2016 the possession of the subject unit was to be handed over within a period of 36 months from the date of execution of agreement or from the start of construction. The relevant clause is reproduced hereunder for ready reference:

3. The Company shall complete the construction of the said building/complex, within which the said space is located within

36 months from the date of execution of this Agreement or from the start of construction."

25. The date of start of construction is not available on records so, the due date is calculated from the date of execution of agreement. The buyer's agreement was executed on 01.10.2016. Hence, the due date of possession comes out to be 01.10.2019.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*
- Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. 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., 12.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
31. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 01.10.2019. The occupation certificate for the said project was received on 14.08.2024 and subsequently unit was offered for possession on 04.10.2024. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as

per the agreement to hand over the possession within the stipulated period.

32. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?
33. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the MoU at the rate at which assured return has been committed by the promoter i.e., Rs.26,000/- per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he will be entitled for this specific amount from 03.09.2016 till the commencement of first lease on the said unit. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date and in return, he is to be paid either the assured return or delay possession charges whichever is higher.
34. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

35. In the present complaint, as per clause 4 of the MoU dated 01.10.2016, the amount on account of assured return was payable from 03.09.2016 till the commencement of first lease on the said unit. Further, it is to be noted that the unit has not been put on lease till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainants at the agreed rate i.e., @Rs.26,000/- per month from the date i.e., 03.09.2016 till the commencement of first lease on the said unit after deducting the amount, if any already paid on account of assured return to the complainants.

F.III Direct the respondent to deliver possession of the unit.

36. The complainants are seeking relief w.r.t the possession of the unit. The Authority observes that the respondent has obtained the occupation certificate on 14.08.2024 and subsequently offered the possession of the unit on 04.10.2024. Further as per Memorandum of Understanding (MOU) and Buyer's agreement dated 01.10.2016 the said unit was allotted for the purpose of leasing. Clause 8(e) of the MOU dated 01.10.2016 is relevant and reproduced hereunder for ready reference:

8 (e) That the unit will be constructed and completed by the Company and will be handed over to the lessee directly. The Company is duly authorized by the allottee(s) to enter into a lease deed with the lessee of their choice either before or after the execution of the sale deed in favor of the allottee(s). the allottee undertakes not to raise objection regarding the same at any stage and bear all costs and expenditure for leasing.

37. As per the said clause 8 (e) the unit has to be handed over to directly to the lessee. As it pertinent to note that respondent has already obtained occupation certificate and further offered the possession of the unit to complainants. Now the unit has to be handed over to the lessee.

F.IV Direct the respondent to execute and register conveyance deed of the booked unit.

38. The complainants are also asking for the relief of conveyance deed getting executed. As per section 11(4) (f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
39. The occupation certificate has been obtained on 14.08.2024 and subsequently unit was offered for possession on 04.10.2024. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants 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.

F.V To set aside unlawful fabricated outstanding amount of Rs. 12,42,631/- claimed vide unlawful demand notice and offer of possession dated 04.10.2024.

40. The respondent is directed not to charge anything which is not part of buyer's agreement/MOU.

G. Directions of the authority

41. 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):
- The respondent/promoter is directed to pay assured return to the complainants at the agreed rate i.e., @ Rs.26,000/- per month from

the date i.e., 03.09.2016 till the commencement of first lease on the said unit as per the memorandum of understanding dated 01.10.2016, after deducting the amount, if any already paid on account of assured return to the complainants.

- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
 - iii. The respondent/promoter is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
 - iv. The respondent/promoter shall not charge anything from the complainants which is not the part of the BBA/MoU.
 - v. The complainants are directed to pay outstanding dues, if any, after adjustment of payable assured returns.
42. Complaint stands disposed of.
43. File be consigned to registry.

Dated: 12.09.2025



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