

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

Date of pronouncement:- 18.08.2023

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|----------------------------|-----------------|--|--|
| NAME OF THE BUILDER | | M/s Neo Developers Pvt. Ltd. | |
| PROJECT NAME | | "Neo Square", Sector 109, Gurugram | |
| S. No. | Case No. | Case title | Appearance |
| 1 | CR/2233/2019 | Neo Developers Private Limited Vs. Vikas Choudhary | Sh. Pankaj Chandola Advocate Ms. Ankur Berry Advocate |
| 2 | CR/3866/2021 | Vikas Chaudhary Vs. Neo Developers Private Limited | Ms. Ankur Berry Advocate Sh. Pankaj Chandola Advocate |

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the allottee in the above referred matters is allottee of the project, namely, "Neo Square", Sector 109, being developed by the same promoter i.e., Neo Developers Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest. Since both the cases related to the allotted unit, one filed by the builder and the other one filed by the allottee, so for deciding both the cases, the facts of the first case are being taken.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| S. No. | Particulars | Details |
|--------|----------------------------------|--|
| 1 | Name and location of the project | "Neo Square", Sector 109, Gurugram |
| 2 | Nature of the project | Commercial |
| 3 | Project area | 2.71 acres |
| 4 | DTCP license no. | 102 of 2008 dated 15.05.2008 valid upto 14.05.2024 |
| 5 | Name of licensee | Shrimaya Buildcon Pvt. Ltd. and 5 others |



| | | | |
|----|---|-----|--|
| 6 | RERA Registered/ registered | not | Regd. No. 109 of 2017 dated 24.08.2017 valid up to 23.08.2021 |
| 7 | Allotment Letter | | 24.05.2012 |
| 8 | Shop no | | 83, Ground Floor, Tower A |
| 9 | Shop area admeasuring | | 566 sq. ft. |
| 10 | Date of builder buyer agreement | | 10.12.2012 |
| 11 | Possession clause | | <p>5.2 That 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 Occupation/Completion Certificate.</p> <p>5.4 That the allottee hereby also grant an additional period of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period.</p> |
| 12 | Date of start of construction is take from the affidavit which is submitted by the promoter | | 15.12.2015 |
| 13 | Due date of possession | | 15.06.2019 (Grace period is allowed) |

| | | |
|----|--|--|
| 14 | Basic Sale Price | Rs. 49,80,800/- (BSP) |
| 15 | Amount paid by the respondent/allottee | Rs. 19,29,026/- (As stated by the respondent/allottee) |
| 16 | Occupation certificate | Not obtained |
| 17 | Offer of possession | Not offered |
| 18 | Payment Requests | 03.03.2016 (Page 22 of reply) 23.10.2017 (Page 27 of reply) |
| 19 | Reminder Letters | Letters 03.05.2016 (Page 23 of reply) 25.05.2016 (Page 24 of reply) |
| 20 | Final Notice | 13.07.2016 (Page 25 of reply) |

A. Facts of the complaint

3. The complainant/promoter made the following submissions in the complaint:

- I. That on 16.05.2008, the Director, Town and Country Planning, Haryana issued a License bearing No. 102 of 2088, in favour of M/s. Shri Maya Buildcon Pvt. Ltd., Smt. Sunita W/o Surinder Singh, Rohit S/o Surinder Singh, Varsha D/o Surinder Singh, Smt. Kavita W/o Deepak Verma, Vijay Singh S/o Sh. Bhagwana, Gaje

- Singh, S/o Sh. Roop Ram, Dharambir Uraf Mangat, Karambir, Behram Prakash, Rajpal S/o Jagmal C/o M/s. Shri Maya Buildcon Pvt. Ltd. for setting up a Commercial Colony at village, Pawala, Khusrupur, Gurgaon. That the Complainant entered into a collaboration agreement with M/s Shrimaya Buildcon Pvt Ltd for the purpose of selling, marketing and development of the project, Neo Square located at Sector 109, Gurugram, Haryana.
- II. That the Respondent with his own free will and consent made an application for booking of an office/retail space in the Complainant's Project, subject to other terms and conditions Including the payment schedule thereof for BSP Rs.49,80,800/- and made a payment of Rs. 4,00,000/- as booking amount via two Cheques vide cheque numbers namely 004623 dated 15.02.2012 and 120205 dated 03.12.2012 whereas Respondents were supposed to pay Rs. 4,98,080/- at the time of booking as per the payment Schedule. The Complainant issued acknowledgement receipts dated 03.03.2012 against the payment of Rs. 3,00,000/- and Rs. 1,00,000/- accordingly. The Respondents were provisionally allotted Unit No.82, admeasuring 584sq. ft. That the Complainant received payment of Rs. 4,00,000/- vide cheque number 004646 dated 10.05.2012 towards the total consideration of the unit. Accordingly, an acknowledgement receipt was issued to the Respondent on 15.05.2012. That the Complainant issued an allotment letter dated 21.05.2012 in favour of the Respondent provisionally allotting Unit No.82 in Neo square. It is pertinent to mention here that the allotment was

- provisional and was subject to change in future. That as per the payment plan, the Respondent was supposed to make a payment of 20% of the BSP amounting to Rs.2,59,600/- inclusive of the service tax payable by 15.05.2012 as per the payment schedule. However, since the payment was not made, the Complainant raised a demand letter dated 24.05.2012 extending the time of making the payment to 01.06.2012. However, the Respondent failed to make the said payment.
- III. That as per the Payment Schedule, the Complainant was to make the payment of 30% of the BS by 22.06.2012. However, since the previous payment was also not made by the Respondent, the Complainant send a demand letter dated 22.06.2012 for the previous payment along with the current payment of 30% of BSP amounting to Rs.7,89,400/- including Service Tax. That after raising two demands, the Complainant received a payment of Rs. 2,59,600/- vide cheque no. 120224 dated 25.06.2012. Accordingly, a receipt of payment was issued to the Complainant. That a Buyer Agreement (herein after referred as "Agreement") was executed between the Complainant and the Respondent for Unit No.83 on 10.12.2012.
- IV. It is pertinent to note that the Respondent has failed to adhere to the payment plan as agreed. That the Complainant received a payment of Rs. 4,80, 812/-. Accordingly, an acknowledgement receipt dated 01.11.2012 was issued in favour of the Respondent. That a payment request was raised by the Complainant on 01.12.2015 of Rs. 3,91,421/-. A cheque dated 22.12.2015 with

cheque no.000072 of Rs. 3,87,614/- was received by the Complainant on 23.12.2015. An acknowledgement receipt dated 24.12.2015 was issued to the Respondent by the Complainant.

V. That a payment request was raised by the Complainant on 01.12.2015 on the start of 3rd Basement Roof of Rs. 3,91,421/-. A cheque dated 22.12.2015 with cheque no.000072 of Rs. 3,87,614/- was received by the Complainant on 23.12.2015. An acknowledgement receipt dated 24.12.2015 was issued to the Respondent by the Complainant. That on 03.03.2016, the Complainant raised a payment request on the start of Ground Floor of an amount of Rs. 5,23,952.05/- payable by 18. 03.2016. However, the Respondent failed to make the payment within the stipulated time and hence, a reminder letter dated 03.05. 2016 was issued to the Respondent. However, since the payment was not received even after the Reminder Letter, the Complainant issued a second reminder letter dated 25.05.2016. That even after the issuance of the Demand letter followed by the Reminder letters, no payment was received by the Respondent. The Respondent, left with no choice, was forced to serve a final notice dated 13.07.2016 whereby in case of failure to remit the amount, the Complainant would be constrained to cancel the allotment. That the Complainant as per the Payment plan raised demands on the following stages:

- On the start of 2nd Floor of Rs. 4,18,387/-
- On the start of 4th Floor of Rs. 9,86,606/-
- On the start of Floor below Top Floor of Rs. 9,86,606/-

- On the start of Brick Work of Rs. 4,18,387/-
- On the start of Top Floor of Rs. 4,18,387/-.

VI. However, no payment was received by the Complainant and the Respondent failed miserably to comply with the Payment Schedule agreed. That since no payment was received by the Complainant even after repeated reminders, the Complainant sent a payment request dated 23.10.2017 requesting the Respondent to clear all outstanding dues amounting to Rs. 37,52,325/-. However, it is pertinent to note that the Respondent completely ignored the various demand requests and reminders and chose not to respond to it. That the Complainant has never adhered to the payment schedule. However, the Complainant was aghast and shocked to know that the Respondent without making any substantial payment after booking the unit along with Mr. Yogesh Rangwani and Ms. Hemlata Rangwani lodged an FIR bearing number 330/2017 under Section 420 and 34 of the Indian penal Code, 1860 with the Karol Bagh Police Station on 24.11.2017 by false making statements against the Complainant just to make more delay in the payments and to harass the Complainant. It is most humbly submitted that the Respondent has booked the unit with malicious intention and has time and again failed to make the payment and to respond to the Complainant.

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

- i. Direct the respondent to pay instalments due along with interest as per the builder buyer agreement from the date when the amount became due for the payment.
- ii. Alternately, to pass an order entitling/ enabling the complainant to cancel the allotment and forfeit the amount paid by the respondent.

B. Reply by the respondent

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

- i. That on 15.2.2012, the respondent has booked a shop in the complainant's project Neo square. The complainant had promised the respondent that the actual physical possession of the shop would be delivered within three years. That vide provisional allotment letter dated 24.5.2012, the unit no. 82 measuring 684 sq. feet at the ground floor in Tower-A was allotted to the respondent.
- ii. That on 10.12.2012, Buyer's Agreement was got signed between the parties wherein unit no. 83 measuring 566 sq. feet at the ground floor in Tower-A was allotted to the respondent and as 5.2 the complainant was to deliver the shop within 36 months i.e. 15.2.2015. That as per clause 5.3 an additional period of six months as grace period after the completion date is provided to give the possession i.e. total 42 months i.e. 15.8.15.
- iii. That as per clause 5.6 of the Buyer's Agreement, if the complainant fails to hand over the possession of the shop, then the respondent would be entitled to receive compensation at the

rate of Rs. 10/- per sq. Feet per month. That vide legal notice dated 10.1.2016, the respondent while pointing out that the complainant was to hand over the possession of the shop by 10.12.2015, had paid a sum of Rs. 20,28,026/- has suffered huge financial loss/mental agony called upon the complainant to deliver the possession of the shop as early as possible.

- iv. That despite sending the legal notice, in February 2016, the respondent visited the project site and found that the construction work of the shop was on its initial stage. The respondent went to the office of the complainant and confronted them that since the work of the construction of project is at its initial stage therefore, they would not be able to deliver the shop within prescribed period and the very purpose of buying the shop would be frustrated. The complainant regularly requested the complainant to deliver the shop but the complainant on one pretext or the other kept on delaying the matter.
- v. That the complainant kept on raising the demand for the payment but at no instance informed the respondent that when it will deliver the possession. Upon receiving the demand letters, the respondent confronted the complainant that the possession of the shop has not been delivered on time and now the respondent is not interested in the plot and requested the complainant to return his payment but the complainant paid deaf ears to it. That after visiting the office of complainant several times but the respondent returned empty hand and on 24.11.2017, the respondent was constrained to get register a FIR bearing no. 330

under section 420/34 in Police Station Karol Bagh against M/s Neo Developers Pvt. Ltd., Krishan Lal Anand Chairman, M/s Neo Developers Pvt. Ltd, Ashish Anana Director, M/s Neo Developers Pvt. Ltd. The case is still pending adjudication. That the complainant is not entitle for any relief rather the respondent has counter claim to direct the complainant to refund the amount Rs. 19,29,026/- with interest from the date of payment till date, paid by the respondent to the complainant because the complainant failed to deliver the possession of the shop within prescribed time.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

C. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

C.I Territorial jurisdiction

8. 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.

C.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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)***

and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

12. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

D. Findings on the relief sought by the complainant/promoter

D. I. Direct the respondent to pay instalments due along with interest as per the builder buyer agreement from the date when the amount became due for the payment.

D.II. Alternately, to pass an order entitling/ enabling the complainant to cancel the allotment and forfeit the amount paid by the respondent.

13. The project detailed above was launched by the complainant/promoter as commercial complex and the respondent/allottee was allotted the subject shop in tower A on 24.05.2012 against basic sale consideration of Rs. 49,80,800/-. It led to execution of builder buyer agreement between the parties on 10.12.2012, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 36 months from the date of execution of this agreement or from the start of construction, whichever is later was allowed to the respondent/allottee for completion of the project and that period has admittedly expired on 15.06.2019. It has come on record that against the basic sale consideration of Rs. 49,80,800/-, the respondent/allottee has paid a sum of Rs. 19,29,026/- to the respondent. In the month of June 2019, the respondent/allottee has made their intention clear to withdraw from the project by filing reply dated 14.06.2019 to the present complaint.

14. As far as contention of the complainant-promoter regarding obligation of the respondent-allottee to take possession is concerned, the authority is of view that no one can be forced to purchase a house but as the respondent himself is at default in making the payment as per the payment schedule and still he intends to withdraw from the project which will amount to the breach of the contract on their part. This has

also been observed by the appellate tribunal in appeal no. 255 of 2019 case titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd, & anr.** wherein it is stated as follows:

32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 100/o of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government".

15. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

"5. AMOUNT OF EARNEST MONEY

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.*

16. Thus, keeping in view of the aforesaid factual and legal provisions, the authority, hereby directs the complainant-promoter to return the amount received by it i.e., Rs. Rs. 19,29,026/- to the respondent-

allottee after deduction of 10% of the sale consideration. The complainant-promoter is further directed to pay an interest on the balance amount at the rate of 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date+2%) as prescribed under rule 15 of the Haryana Real Estate [Regulation and Development) Rules,2017 from the date of surrender/ filing of reply to the present complaint i.e., 14.06.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.A period of 90 days is given to the complainant - builder to comply with the directions given in this order and failing which legal consequences would follow.

H. Directions of the authority

17. 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 complainant-promoter is directed to refund the amount of Rs. 19,29,026/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.75% p.a. on the refundable amount, from the date of surrender/ filling of the reply i.e., 14.06.2019 till the date of realization of payment.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
18. A copy of this order be placed on the connected case file bearing no. CR/3866/2021.
19. The complaints stand disposed of.
20. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.08.2023

HARERA
GURUGRAM