

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

**Complaint no. :** 6068 of 2022  
**Date of complaint :** 05.09.2022  
**Date of decision :** 03.01.2024

Ravi Kant Ajmera  
R/o: -A-11, A Block,  
Dharampura, New Delhi.

**Complainant**

Versus

M/s Neo Developers Private Limited  
**Regd. Office At:**1205, Signature Towers,  
South City-1, Gurugram-122001.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Sukhbir Yadav (Advocate)  
Venket Rao (Advocate)

**Complainant  
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.	Unit no.	Shop no. 64, Tower-B, Ground floor
5.	Unit area admeasuring	282 sq. ft.
6.	Date of execution of apartment buyer's agreement	07.11.2012 (page 20 of complaint)
7.	Endorsement dated	17.08.2016 (page 49 of reply)
8.	Possession clause	<p>5.1 That the company shall complete the construction of the said building/complex within which the said space is located within <b>36 months from the date of execution of this agreement or from the start of construction whichever is later</b> and apply for grant of completion/occupancy certificate. The company on grant of occupancy/completion certificate shall issue final letters to the allottee who shall within 30 days, thereof remit all dues.</p> <p>5.4 That the allottee hereby also grants an additional period of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period.</p> <p><b>(Emphasis supplied)</b></p>



9	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. CR/1329/2019 It was admitted by the respondent in his reply that the construction was started in the month of December 2015.
10	Due date of possession	15.06.2019 (Calculated from date of start of construction)
11	Total sale consideration	Rs.66,54,656/- (As per payment schedule on page 41 of complaint)
12	Amount paid by the complainant	Rs.44,38,039/- (As per statement of account on page 52 of the reply )
13	Occupation certificate /Completion certificate	Not obtained
14	Offer of possession	Not obtained
15	Reminder's letter	09.09.2017, 04.10.2017, 23.10.2017, 08.11.2017, 01.12.2017, 26.12.2017, 05.03.2018, 27.03.2018, 26.06.2018 and 05.12.2018
16	Final Notice	25.03.2019 (As on page no. 88 of reply)
17.	Cancellation Letter	06.04.2019 (As on page no. 50 of reply)

**B. Facts of the complaint**

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

- I. That, the complainant booked a shop on the ground floor bearing unit no.64, Neo Square, Sector-109, Gurugram, Haryana with the respondent vide builder buyer agreement dated 07.11.2012. The builder buyer's agreement was executed on 07.11.2012 between the



erstwhile allottee and the respondent. The basic sale price of the said unit was Rs.52,26,250/-.

- II. That the complainant got the unit transferred in his name, which was acknowledged by the respondent via endorsement letter dated 17.08.2016. Along with the said letter the respondent further admitted to the payment of accounts which were transferred in the name of the complainant and stated that Rs.25,61,565/- was paid till 17.08.2016. Thus the complainant assumed the roles and liabilities of Mr. Surendra Bhattoa (erstwhile allottee) after the said assignment.
- III. That the present complaint is being preferred against the respondent on account of violation of the buyers agreement, according to which the possession had to be handed over by 07.12.2015 and had a grace period of 6 months, which expired on 07.06.2016.
- IV. That the complainant is aggrieved by the unilateral decision and the misplaced reliance of the respondent upon the cancellation letter dated 20.06.2017. That it is pertinent to mention that the respondent continued to accept the payments from the complainant post the cancellation of the unit. Clearly, the said unit was never cancelled and the cancellation letter was sent to create pressure and extort money from the complainant. That the respondent despite accepting payments and reaping benefits out of the money of the complainant, now has fraudulently attempted to usurp the money by stating that the unit was cancelled way back in 2017 whereas the respondent was raising regular demands and accepting payments till 2022 meaning, the alleged cancellation letter was never intended and acted upon and is bad in law.



- V. That the respondent continued to raise demands for payment through letters and mails and the same were timely met by the complainant despite major lapses on the part of the respondent. The complainant invested his hard earned money in the project was shocked to know that the respondent was unable to even get the project registered with the authority. That the project is grossly delayed and the complainant has suffered immensely due to the conduct of the respondent.
- VI. That, covid brought in huge hardships for the complainant and he constantly enquired about the status of the delivery of possession as well as the occupancy certificate. The respondent was intending to create pressure on the complainant although the complainant had paid the dues to the respondent, which the respondent have accepted, despite the issuance of cancellation letter.
- VII. That thereafter, the complainant on various occasions sought occupancy certificate from the respondent but the respondent was never able to produce it, to the satisfaction of the complainant.
- VIII. That the complainant raised a query for the pending amount to be paid in respect of the said unit. That the complainant visited the respondent office and asked for the due amount to be paid. The complainant on inquiring was informed by the respondent that the allotted unit stands cancelled as per the cancellation letter dated 20/06/2017.
- IX. That the complainant on 08/03/ 2022 further made a payment of Rs. 50,000/- which was duly accepted by the respondent in lieu of balance amount.



- X. The respondent had promised that the project will have state of the art facilities such as green areas, shopping complexes, security services, gated community, parking spaces, open areas, landscapes, sports facilities, kids play area, health centres and direct connectivity to Dwarka Expressway among others. The respondent had siphoned off monies of one project to other project and ultimately to themselves in a complex web of transactions and the entire game plan was to cheat gullible and innocent persons.
- XI. That the complainant herein has also become aware of the fact that the said project has neither been developed as per the plan at the site nor any approval from the competent authorities have been received yet. The respondent's intention is to usurp the hard earned money of the investors, who makes investment to buy a home for them by investing their life time savings in the project.
- XII. That till date no offer of possession has been made by the respondent to the complainant. No amount has been remitted to the complainant in relation to the delay in handing over of possession. The complainant has lost all faith in the representation made by the respondent and approached this authority.
- XIII. That the complainant has paid an total sum of Rs.44,38,069/- and is suffering because of the false representations made by the respondent. The amount paid by the complainant till date accounts for more than 84% of the total consideration agreed towards the unit.
- XIV. That the complainant recently came to know that the respondent has not registered the project with the authority which is a contravention of the Act and calls for a penalty to be imposed on the



respondent. Also, the respondent is in contravention of the Sanction/Layout Plan License.

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

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

I. The respondent be directed to handover vacant and free possession of the unit and pay interest for delay possession.

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 vide its reply dated 17.05.2023 on the following grounds: -

I. That the unit no. 64 in Tower- B on the ground floor in the project "neo square" situated in sector-109, Gurugram, Haryana was originally allotted to Mr. Surendra Bhatao vide builder buyer agreement dated 07.11.2012. Thereafter, the respondent upon the request of the original allottee endorsed the said unit in the name of complainant i.e., 'Ravi Kant Ajmera' on 17.08.2016, subject to fulfilment of the requisite terms and conditions required for transfer of the said unit including payment of all dues. Therefore, for all practical purposes the complainant became allottee only from 17.08.2016 and agreed to abide by the terms and conditions mentioned in builder buyer agreement.

II. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and he has not approached the authority with clean hands and is suppressing material facts



which are relevant for the adjudication of the matter. The present complaint is hopelessly barred by limitation. The complainant purposely slept over his rights and has chosen to file his complaint after a gross delay just with the intention to claim unjust enrichment from the respondent. The unit in question was cancelled vide cancellation letter dated 06.04.2019 itself due to the persistent defaults by the complainant in making due payments as per the builder buyer agreement. It is clear that the present complaint has only been filed as an afterthought without any basis and with a malafide intent on behalf of the complainant to take undue advantage at the expense of the respondent and is liable to be dismissed being an abuse of the process of law.

- III. The construction of the project was to be completed within 36 months from the date of the execution of the builder buyer agreement or from the start of construction, whichever is later and thereafter the application for grant of occupation certificate was to be made and on the receipt of the occupation certificate, offer of possession was to be given to the allottees. Further, an additional period of 6 months would be granted as a grace period after the completion date and further force majeure conditions beyond the control of the respondent. It is noteworthy to mention that as per the authority complaint bearing no. 1328/2019, titled as "**Ram Avtar Nijhawan vs M/s NEO Developers Pvt Ltd**", the authority decided and declared "15.12.2015" as the date of start of construction for the project "neo square" and hence as per the construction date i.e., 15.12.2015 the due date for handing over of





the possession was calculated to be 15.06.2019. The relevant paragraphs are reiterated for ready reference:

*" 19 ii. With respect to the third issue raised by the complainant, as per clause 5.2 read with 5.4 of buyers agreement dated 12.02.2013, 'the possession of the unit was to be handed over within 36 months + 6 months grace period from the date of execution of agreement or date of start of construction whichever is later. The construction started on 15.12.2015. Therefore, the due date of handing over the possession shall be computed from 15.12.2105. Accordingly, the due date of possession was 15.06.2019."*

- IV. That it is a matter of fact, time is always an essence in respect to the allottee obligation for making payment with respect to the allotted unit. That under the said builder buyer agreement the complainant was bound to make timely payment of instalments in accordance with the demands raised by the respondent. The complainant has only paid Rs.44,38,039/- against the dues of Rs.83,08,944/- including of interest on delayed payment which is why the respondent was constrained to cancel the unit of the complainant on 09.04.2019 after making repetitive reminders to the complainant and the same can be perused from a plain reading of the Statement of Accounts. He has failed to pay the due instalments on time against the sale consideration despite multiple reminders sent to him in this regard. It is pertinent to mention herein that the complainant has opted for construction linked plan and the respondent accordingly raised their demands on achievement of relevant milestones. However, not a single instalment has been paid on time after the unit was endorsed to the complainant. Further, from 04.11.2017 the payments have been completely stopped. Therefore, the respondent had to incur the entire



expenditure/ cost of development and completing the unit allotted to the complainant from its own fund and resources. For this very reason, the respondent had to suffered huge loss and thereby the project development was hampered.

- V. That after the respondent issued the cancellation letter, the complainant approached the respondent and requested for re-instatement of the unit no. 64 on ground floor, which was cancelled vide letter dated 20.06.2017 and the complainant further assured the respondent that he will strictly adhere to the payment plan, terms and conditions of the agreement and will not default in future in remittance of the instalments. It is upon the request and assurance of the complainant, the respondent re-instated the unit cancelled. It is also pertinent to mention herein that after 20.06.2017, the complainant merely paid an amount of Rs.18,76,504/- against the then dues of Rs. 35,49,535/-. However, the respondent falling for the false assurances and promises of the complainant to make timely payment, continued with the allotment. It is submitted that since the very beginning the respondent was committed to complete the construction of the project and has invested each and every amount so received towards the construction in the project. However, the complainant herein again failed to comply with the payment schedule and started defaulting in making timely payments of the instalments. Despite, unconditional undertaking given by the complainant, he failed and deliberately neglected the obligation to make the timely payment despite of various communications and reminders sent by the respondent to clear the outstanding dues. Accordingly, the



respondent issued final notice on 25.03.2019 and demanded the complainant to remit the dues of Rs. 23,08,110/- on or before 04.04.2019, failing which the respondent would be constrained to serve the complainant with the "Notice of Termination" and the provisional allotment of the aforementioned unit would then automatically stands terminated/cancelled without any further notice.

- VI. However, the complainant failed to comply with the final notice and did not make any payments till 04.04.2019. Since, the complainant did not pay the outstanding dues and the respondent was constrained to issue cancellation letter dated 06.04.2019. It is also pertinent to mention that the cancellation of the unit was done on 06.04.2019 which is much before the due date of handing over of possession as determined by authority for this project i.e 15.06.2019. Therefore, as per the agreed terms of the agreement, the complainant is liable to pay the earnest money along with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature including brokerage paid by the respondent to the broker and get the remaining amount as refund.
- VII. It is noteworthy to mention that the complainant was very well aware of the final notice dated 25.03.2019 and the deadline mention therein for the payment of outstanding dues. This can be confirmed from the e-mail dated 05.04.2019 of the complainant wherein he categorically admits his default.
- VIII. It is submitted that post cancellation of the unit, the respondent requested the complainant to handover the original documents pertaining to the unit to the respondent and collect the refund



amount subject to necessary deduction adjustments as per the terms and conditions of the agreement. However, the complainants never paid heed to the said request of the respondent and further did not come forward to handover the original documents to the respondents and collect the refund amount.

IX. That the complainant with a fraudulent and malafide intention to initiate the present complaint made a payment of Rs.50,000/- through NEFT on 08.03.2022 in account no. 50200002277092 in the name of "neo developers pvt ltd.", without prior intimation or consent of the respondent. Since the unit was cancelled by the respondent, the respondent duly returned the above said payment of Rs. 50,000/- by depositing a cheque bearing no. 005130 dated 31.10.2022 in the account of the complainant.

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 these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

9. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

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 complainant at a later stage.

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

#### **F.I Direct the respondent to give possession of the unit in question**

12. The complainant booked a unit having super area of approximately 565 sq.ft. in the project named "Neo Square" at Sector-109, Gurugram, Haryana and was provisionally allotted a unit bearing no. 64 in tower-B on ground floor. The Builder buyer's Agreement was executed on 07.11.2012 between the original allottee and the respondent, and later endorsed to the complainant vide endorsement letter dated 17.08.2016. Alongwith the endorsement letter, the respondent



admitted to the payment of accounts which were transferred in the name of the complainant. As per the Builder buyer agreement, the due date of handing over of the possession was within 36 months from the date of execution of agreement or from the start of construction whichever is later. The authority vide judgement dated 05.09.2019 in the matter of "*Ram Avtar Nijhawan Vs. Neo Developers Pvt. Ltd.*", held that the date of starting of construction would be 15.12.2015 for this project and thus, the due date for handing over of the possession was 15.06.2019.

13. The complainant started defaulting in making payments of the instalments after the unit was endorsed to the complainant and the respondent has sent multiple reminders to the complainant in this regard from 10.10.2016 to 30.03.2017. Thereafter, the respondent cancelled the unit and issued a cancellation letter to the complainant on 20.06.2017.
14. Thereafter, the complainant approached the respondent and the unit was re-instated to the complainant. On 09.09.2017, the respondent issued payment demand to the complainant which was not complied by the complainant. From 09.09.2017 to 05.12.2018 various payment demands and reminders were sent to the complainant. The complainant failed his obligation in making timely payment despite of various reminders sent by the respondent.
15. The respondent issued a final notice to the complainant on 25.03.2019 and demanded remission of dues, on or before 04.04.2019, failing which the respondent would be constrained to serve the complainant with the "Notice of Termination" of the agreement and the then the unit shall automatically stands



terminated/cancelled without any further notice. The complainant failed to comply with the final notice and did not make any payments till 04.04.2019. Thus, the respondent issued cancellation letter on 06.04.2019 and the unit was cancelled. Thereafter, the complainant paid an amount of Rs.50,000/- on 28.03.2022, without prior intimation or consent of the respondent. Since the unit was cancelled by the respondent, the respondent duly returned the above said payment of Rs. 50,000/- by depositing a cheque bearing no. 005130 dated 31.10.2022 in the account of the complainant.

16. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant had paid Rs.44,38,039 /- against the total sale consideration of Rs.66,54,656/-. The respondent/builder issued several reminders for payment of outstanding dues. Thereafter, a final demand letter dated 25.03.2019 was issued to the complainant. However, having no positive results the unit of the complainant was cancelled vide letter dated 06.04.2019. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the builder buyer's agreement is held to be valid. Therefore, in this case only refund can be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

**"5. AMOUNT OF EARNEST MONEY**

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*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."*

**G.** Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.44,38,039/- after deducting 10% of the sale consideration of Rs.66,54,656 /- being earnest money along with an interest @10.85% 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 on the refundable amount, from the date of cancellation i.e., 06.04.2019 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017

**H. Directions of the Authority:**


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/builder is directed to refund the paid-up amount of Rs.44,38,039/- after deducting 10% of the sale consideration of Rs.66,54,656/- being earnest money along with an interest @10.85% p.a. on the refundable amount, from the date of cancellation i.e., 06.04.2019 till its realization.
- 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.

17. Complaint stands disposed of.

18. File be consigned to the registry.

  
(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.01.2024