

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

Complaint no. : 1827 of 2022  
Date of complaint : 04.05.2022  
Date of decision : 06.02.2024

Mr Mohit Malhotra,  
R/o House No. 5/63, Hiranandani,  
Oceanic, Flat No. 801, 8th floor, OMR,  
Egattur, Kancheepuram,  
Tamil Nadu-603103

**Complainant**

Versus

M/s Neo Developers Private Limited  
Regd.office- 1205, Tower B Signature  
Towers, South City- 1, NH-8 Gurugram- 122001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Shri K.K. Kohli (Advocate)  
Shri Venkat 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 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 and location of the project	"Neo Square", Sector-109, Gurugram
2.	Nature of the project	Commercial
3.	Project area	8.237 acres
4.	DTCP license no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2024
5.	Name of licensee	Shrimaya Bulcon Pvt. Ltd. And 5 others
6.	RERA Registered/ not registered	Part registered vide regd.No.109 of 2017 Dated 24.08.2017 valid upto 23.08.2021
7.	Shop no.	33, Ground Floor, Tower-B (page no. 42 of complaint)
8.	Unit area admeasuring (super area)	565 sq.ft. (page no 42 of complaint)
9.	Allotment letter	24.05.2012 (page no 35 of complaint)
10	Date of builder buyer agreement	20.12.2013 (page no 40 of complaint)

	Possession clause	<b>5.2</b> <i>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.</i>
11.	Due date of possession	20.12.2016 (calculated as per possession clause)
13.	Reminder letters	03.05.2016 (page 86 of reply) 25.05.2016 (page 87 of reply)
14.	Final notice	03.06.2016 (page 64 of complaint)
16.	Total sale consideration	Rs. <b>60,49,422/-</b> (as per payment schedule on page 80 of reply)
17.	Amount paid by the complainants	Rs. <b>15,72,638/-</b> (as alleged by complainant)
18.	Cancellation letter	06.04.2018 (as per page no. 69 of complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
  1. That complainants booked a commercial unit in the project by paying an amount of Rs. 2,00,000/- dated 12.09.2011, drawn on





ICICI Bank Ltd. towards the booking of the retail space no. 33 in NEO Square, ground floor shops located at sector 109, Dwarka Expressway, Gurugram, Haryana having super buildup area admeasuring 610 sq. ft. at the rate of Rs. 9000/- sq. ft. The total cost of the shop was Rs. 54,90,000/- which was to be paid in installments as per the payment schedule.

- II. That the respondent sent an allotment letter dated 24.05.2012 to complainants after having received Rs. 7,50,000/- i.e. approx 15% of the total cost of the shop, confirming the booking the said unit and also mentioning the moonshine reputation of the company and the location of project. The respondent company raised a demand notice for the payment in additional amount of Rs. 3,81,923/- to be paid on or before June 2012. The said payment was based on the construction linked plan. The respondent company continued to commit the delivery of possession of the allotted space by the end of 36+6 months from the date of booking. For the fact there was no mention of any delivery date in the allotment letter. The complainant has once again contacted the respondent company and upon his personal assurance and committed date of delivery within 36 months, the complainant made further payment of Rs. 8,22,628/-.
- III. That a commercial space buyer's agreement was executed between the complainants and respondent on 20.12.2013 wherein it was clearly stipulated vide clause 5.2 that the due date of delivery of possession is expected to be within 36 months i.e. around 20<sup>th</sup> December, 2016. It is pertinent to mention that the BBA was executed after collecting approximately 30% of the total payment.
- IV. As per clause 5.1 of the buyer's agreement respondents agreed to



deliver the possession of the said unit within 36 months along with grace period of 6 months. Therefore, due date of possession comes out to be around 20.12.2016 – 20.06.2017

- V. That it is an acknowledged fact that by the end of 2016, the construction of the project had barely started and the project was going to be indefinitely delayed. While the respondent company was continuously harassing the complainant for more and more installments, the complainant was continuously seeking the refund of his deposits as the project has already lost its perceived value to the complainant. On the 21 June 2016, the respondent company had sent an **email with an enclosed surrender letter draft** wherein mischievously and cunningly, the terms of the surrender of the allotment were diluted to state the refund of the amount "without any interest" instead of "with interest" as agreed over the telephonic conversation (**Annexure C/8**). The complainant, for the obvious reasons, refused to sign the papers and requested the respondent company to honor their words and send him a corrected surrender letter. The respondent company had never sent it.
- VI. That after much coaxing and distress calls, the respondent company responded on the 6 April 2018 by sending out a cancellation-cum-forfeiture letter to the complainant, wherein the respondent company offered to pay Rs. 5,90,075/- as the balance money to the complainant after forfeiting Rs. 9,82,563/- on various accounts including Rs. 3,59,810/- on account of brokerage paid by the respondent company to its authorized brokers.
- VII. The respondents have completely failed to honor their promises and have not provided the services as promised and agreed through





the brochure, BA and the different advertisements released from time to time and also forfeited most of the amount. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

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

4. The complainants have sought following relief(s).
  1. **Direct the respondent to declare the cancellation letter of Unit dated 6<sup>th</sup> April, 2018 as invalid.**
  2. **Direct the respondent to refund the complete amount along with interest till date.**
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 contested the complaint on the following grounds: -
  - i. It is most humbly submitted that the complainant herein is concealing the material facts that he had previously filed a complaint bearing no. 246 of 2018 titled as "**Mohit Malhotra vs M/s Neo Developers Pvt. Ltd.**" before the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as the "**Ld. Authority**"). In the said complaint the complainant had prayed for refund of the total amount paid by him with interest @ 18% and compensation of Rs. 1,00,000/-. That relevant part of the relief sought by the complainant in complaint no. 246 of 2018 is reproduced hereinbelow for the convenience of the Ld. Authority;



- i. *"Urgent stay on any cancellation or creation of third party rights on the property/shop allotted to the petitioner vide Application Form dated 12.09.2011.*
  - ii. *Refund of the Petitioner's entire money along with the compounding interest rate @ 18% p.a. till the actual date of payment of refunds by the respondent company.*
  - iii. *Compensation of Rs. 1,00,000/- should be awarded as reimbursement of expenses in fighting for this relief.*
- ii. That during the course of hearing in the said matter 246 of 2018, the respondent duly apprised the authority that the respondent company is willing to refund the amount paid by the complainant after deducting earnest money and the brokerage as agreed in the builder buyer agreement dated 20.12.2013 (hereinafter referred to as the "BBA"). It is to be noted that after hearing the arguments of both the parties the Authority vide order dated 12.07.2018 disposed of the matter and directed the respondent company to hand over a cheque of Rs. 5,90,075.26/- to the complainant. The relevant portion of the order dated 12.07.2018 is reproduced hereinbelow for ready reference:

*"Arguments advanced by the learned counsel for both the parties have been heard. The learned counsel for the respondent has stated that the respondent is ready to refund the amount to the complainant. He has also ready to hand over the Cheque of Rs. 5,90,075.26 to the complainant. The learned counsel for the respondent is directed to send the Cheque of the aforesaid amount to the complainant within a week. Therefore the complaint is disposed of. Detail order will follow. File be consigned to the registry..*





- iii. That after the order dated 12.07.2018, the complainant filed an application for modification of order dated 12.07.2018. The said application was duly contested by the respondent on the grounds that the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERA Act, 2016") does not empower the Ld. Authority to review its own order. That after hearing the arguments made by the respondent company the Authority vide its order dated 10.01.2019 dismissed the application for modification of order dated 12.07.2018 and advised the complainant to file an appeal against the order of the authority, if they so desire. That order dated 10.01.2019 is reproduced hereinbelow for the convenience of the Hon'ble Authority;

*"Project is registered with the authority.*

*Since there is no provision under the Real Estate (Regulation and Development) Act, 2016, for filling review application and the authority has no power to review its own orders, as such, review application dated 24.07.2017 for review of order dated 12.07.2018 filed by the complaint does not lie. However, the complainant is advised to file an appeal against the order of the authority."*

- iv. That the Authority on the same date i.e., 10.01.2019, even after dismissing the application for modification of order dated 12.07.2018 filed by the complainant, had passed a subsequent order which was uploaded on the website of the Ld. Authority on 12.02.2019 wherein the Authority had completely reviewed the order dated 12.07.2018 and totally new reliefs were awarded in favour of the complainant/allottee.
- v. That vide the subsequent order the Ld. Authority completely reviewed the substantive part of the order dated 12.07.2018 and directed the respondent to refund Rs. 9,76,696/- with interest @ 10.75 %. That the





relevant part of the other subsequent order passed on 10.01.2019 which was uploaded on the website of the Ld. Authority on 12.02.2019 is reproduced herein for the convenience of the Hon'ble Authority;

- (i) *The respondent is directed to refund Rs. 9,76,696/- which comes after deducting 10% of sales consideration towards the earnest money.*
- (ii) *The respondent is also liable to pay interest at prescribed rate of 10.75% p.a. on the said amount of Rs. 9,67,696/- from the date of cancellation i.e. 08.07.2016 till actual date of payment*

- vi. That being aggrieved by the subsequent order dated 10.01.2019 which was uploaded on the website of the Ld. Authority on 12.02.2019, the respondent herein has preferred an appeal bearing no. 190 of 2020 titled as "M/s Neo Developers Pvt. Ltd. vs Mr. Mohit Malhotra" before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh (hereinafter referred to as the "Hon'ble Appellate Tribunal") for setting aside the impugned order dated 10.01.2019.
- vii. That during the course of the proceedings before the Hon'ble Appellate Tribunal, the Ld. Counsel of complainant herein duly apprised the Hon'ble Appellate Tribunal that the subsequent order dated 10.01.2019 cannot be supported, which was contradictory to the earlier order dated 10.01.2019 wherein the Ld. Authority has dismissed the Application for review of order dated 12.07.2018.
- viii. That after considering the arguments and submissions made by both the parties, the Hon'ble Appellate Tribunal vide its order dated 28.04.2021 set aside the order dated 10.01.2019 and 12.07.2018 and remitted the case back to Ld. Authority at Gurugram. Further, since it was an admitted fact that the refundable amount to the complainant is Rs. 5,90,075.26/-, the Hon'ble Appellate Tribunal directed that the said amount of Rs. 5,90,075.26/-, may be paid to the complainant out of the



total amount deposited by the respondent. That the relevant portion of the order dated 28.04.2021 is reproduced herein;

*"11. Thus, in view of the consensus arrived at between the ld. Counsel for the parties and in view of our observations above, the present appeal is hereby allowed. The impugned order dated 10.01.2019 as well as the previous order dated 12.07.2018 are set aside. The case is remitted back to the Ld. Authority for fresh decision on the complaint filed by the respondent/allottee afresh in accordance with law. The appellant/promoter has deposited a sum of Rs. 13,97,527.75/- with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act. Out of that a sum of Rs. 5,90,075.26/- be paid to the respondent/allottee)*

- ix. Thereafter, the Hon'ble Appellate Tribunal vide its letter dated 25.05.2021 directed the branch manager of Punjab National Bank, Chandigarh to pay Rs. 5,90,075.26/- to the complainant herein. Accordingly, an amount of Rs. 5,90,075/- was transferred to the complainant.
- x. It is most humbly submitted that a mere perusal of the present complaint filed by the complainant it is abundantly clear that the aforementioned facts and circumstances have not been duly disclosed by the complainant. It is further submitted that the complainant throughout the entire complaint have concealed the fact that he has already received the refund amount of Rs. 5,90,075.26/- . This clearly is misleading the Ld. Authority with the malafide intention of extracting unjust enrichment from the respondent.
- xi. It is pertinent to mention here that the complainant has only paid an amount of **Rs. 15,72,638/-** which is including brokerage, applicable taxes etc. Whereas, only the basic sale price of the unit was Rs.



50,85,000/- excluding GST, EDC/IDC, VAT, Taxes, Interest etc. that stands due and payable on part of the complainant as and when to be raised.

5. All other averments made in the complaints were denied in toto.
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 submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

7. 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**

8. 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.*

9. 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.

**F. Findings on the relief sought by the complainants.**

1. **Direct the respondent to declare the cancellation letter of Unit dated 6<sup>th</sup> April, 2018 as invalid.**
  2. **Direct the respondent to refund the complete amount along with interest till date.**
10. The above mentioned reliefs no. F.1 & F.2 as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
11. The complainant was allotted a unit bearing no. 33, ground floor, Tower-B in the project namely "Neo Square" at sector 109, Gurugram for a total consideration of Rs. 60,49,422/- against which the complainant paid a sum of Rs. 15,72,638/-.
12. The complainant took a plea that the due date of possession comes out to be 20.12.2016. By the end of 2016, the construction of the project had barely started. In June 2016, a demand notice was sent to the complainant wherein the respondent threatened the complainant to terminate the allotment and forfeit all the deposits made by the complainant. Thereafter, the complainant contacted the managing





- director of the respondent wherein the managing director agreed to refund the entire amount with interest to the complainant.
13. On the contrary, the respondent-builder states that the complainant concealing the fact that the complainant had earlier filed a complaint bearing no. 246 of 2018 titled as '**Mohit Malhotra V/s Neo Developers Pvt. Ltd**'. In the said complaint, the complainant had prayed for refund of the amount paid by him along with prescribed rate of interest. During the course of hearing, the respondent-builder willingly agreed to refund the amount paid by the complainant after deduction of earnest money and brokerages as agreed in the buyer agreement dated 20.12.2013. After hearing both the parties, the Authority vide order dated 12.07.2018 disposed of the matter and directed the respondent to handover a cheque of Rs. 5,90,075/- to the complainant.
  14. After the order dated 12.07.2018, the complainant filed an application for modification of order dated 12.07.2018, the authority vide its order dated 10.01.2019 dismissed the application for modification and advised the complainant to file an appeal against the order, if they so desire. However, the authority on the same date i.e. 10.01.2019, even after dismissing the application for modification of order dated 12.07.2018 filed by the complainant, had passed a subsequent order which was uploaded on the website on 12.07.2019 and directed the respondent to refund the amount of RS. 9,76,696/- with interest 10.75% from the date of cancellation i.e. 08.07.2018 till the actual date of payment.
  15. The respondent-builder filed an appeal bearing no. 190 of 2020 titled as '**Neo Developers Pvt. Ltd. V/s Mohit Malhotra**' against the order dated 10.01.2019, after considering the arguments made by the parties, the Appellate Tribunal vide its order dated 28.04.2021 set aside the



order dated 10.01.2019 and 12.07.2018 and remitted the case back to the authority. Thereafter, Hon'ble Tribunal vide its order dated 25.05.2021 directed the branch manager of PNB, Chandigarh to pay Rs. 5,90,075/- to the complainant. Accordingly, an amount of Rs. ~~5,90,075/-~~ 5,90,075/- was transferred to the complainant. 12  
5,90,075/=

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 buyers agreement, the complainant has paid Rs.15,72,638/- against the total sale consideration of Rs.60,49,422/-. The respondent/builder sent various reminders letters dated 03.03.2016, 03.05.2016 and 25.05.2016 asking the allottee to make payment of the amount but having no positive results, the respondent cancelled the unit vide letter dated 06.04.2018. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottee is under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The complainant continued with his default even after of various reminder letters, which led to cancellation of his unit. The authority is of considered view that the cancellation done by respondent is valid in the eyes of law. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of *Maula Bux vs Union of India 1969(2) SCC 554* and where in it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act,1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory





Authority Gurugram (Forfeiture of earnest money by the builder)  
Regulations, 11(5) of 2018, providing 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."*

17. So keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.15,72,638/- after deducting 10% of the sale consideration being earnest money along with an interest @10.85% (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., 06.04.2018 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount of Rs. 5,90,075 already refunded by the respondent shall be deducted from the amount so assessed.

**H. Directions of the Authority:**

18. 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 is directed to refund the amount of Rs. 15,72,638 deposited by the complainant, after deduction of 10% of the sale

consideration being earnest money, along with interest @10.85% on the refundable amount from the date of cancellation ie, 06.04.2018, till the date of realization of payment. The amount of Rs. 5,90,075 already refunded by the respondent shall be deducted from the amount so assessed.

- 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.
19. Complaint stands disposed of.
20. File be consigned to the registry.

  
**Sanjeev Kumar Arora**  
Member

  
**Ashok Sangwan**  
Member

  
**Vijay Kumar Goyal**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.02.2024