BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**CR/ 1425 of 2022 clubbed with CR/534/2019**
Date of filing of complaint	**07.04.2022**
Date of decision	**09.01.2024**

	Harish Parmeshwar **R/O**: E-22, Greater Kailash-1, New Delhi-110048	**Complainant**
	Versus	
	Neo Developers Pvt. Ltd **Regd. Office**: 32-B, Pusa Road, Delhi-110005.	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Aditya Malhotra (Advocate)	**Complainants**
Sh. Venket Rao (Advocate)	**Respondent**

ORDER

1. The complaint bearing no. 1425 of 2022 was filed by the complainant-allottee namely Harish Parmeshwar against the respondent-promoter 'Neo Developers Pvt. Ltd.' on 07.04.2022 under section 31 read with sections 35,

36, 37 and 38 of the Real Estate (Regulation and Development) Act, 2016 seeking refund of the entire amount paid by the complainant along with interest at prescribed rate. It is pertinent to mention here that Cr No. 534-2019 was filed on 04.02.2019 by the promoter 'Neo Developers Pvt. Ltd' against the allottee 'Harish Parmeshwar' seeking direction against the allottee to clear the outstanding dues failing which complainant-promoter to cancel the allotment of respondent-allottee.

2. The complaint bearing no. 1425 of 2022 was clubbed with complaint bearing no. 534 of 2019 by the authority vide orders dated 18.07.2023 being counter complaint. Thus, the present order shall dispose of both the aforesaid complaints.

A. Unit and project related details

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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 complex
4	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid upto 14.05.2024
5	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid upto 23.08.2021 plus 6 months of extension due to COVID-19 = 23.02.2022

6	Unit no.	601-D, 6th floor
7	Unit area admeasuring	1344 sq. ft.
8	Allotment letter	21.05.2012 (Page 34 of the complaint)
9	Date of execution of agreement to sell	02.05.2013 (Page 36 of the complaint)
10	Possession clause	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 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. 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.
11	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. CR/1329/2019. It was admitted by the respondent in his reply that the construction was started in the month of December 2015.

12	Due date of possession	15.06.2019 (Calculated from date of start of construction)
13	Grace period utilization	Grace period of 6 months is allowed as been decided in CR/1329/2019
14	Total sale consideration	Rs. 93,74,643/- (As per payment schedule at page no. 57 of the complaint)
15	Amount paid by the complainant	Rs. 41,18,375/- (as stated by the complainant)
16	Occupation certificate /Completion certificate	Not yet obtained
17	Offer of possession	No offer made
18	Cancellation notice	08.07.2016 and 09.04.2021

B. Facts of the complaint bearing no. 534-2019 titled as M/s Neo Developers Pvt. Ltd. V/s Mr. Harish Parmeshwar :

4. That the respondent-allottee jointly made an application for booking an office/retail space in the complainant-promoter's project, subject to other terms and conditions including the 'payment schedule' thereof for basic sale price of Rs.40,88,000/- and made a payment of Rs. 2,00,000/- as booking amount through a cheque dated 01.09.2011 whereas respondent-allottee had to pay Rs. 4,08,800/-(10% of BSP) at the time of booking as per the payment schedule. The complainant-promoter issued an

acknowledgement receipt dated 12.09.2011 against the payment of Rs. 2,00,000/- The respondent-allottee was provisionally allotted unit no. 622, admeasuring super area 1022 sq. ft.

5. That the complainant-promoter issued allotment letter dated 14.11.2011. Thereby respondent-allottee was allotted unit no. B-618, in SIGNIA 109 (*sic* 'Neo Square') in the project. It is pertinent to mention that the allotment of the unit was provisional and was subject to change in future.

6. That on 30.01.2012, complainant-promoter received a payment of Rs. 1,81,825/- against the booking amount of the unit. Thereafter, the complainant-promoter issued a revised allotment letter dated 21.05.2012 It is submitted that respondent-allottee made a payment of Rs. 95,775/-, against the booking amount of the unit on 08.06.2012.

7. That vide letter dated 15.10.2012, the complainant-promoter requested respondent-allotee to visit the office of the complainant-promoter to complete the formalities of signing of the buyer agreement. However, respondent-allottee did not come to the office of the complainant-promoter. Thereafter, the complainant-promoter, issued a reminder letter to the respondent-allottee dated 20.11.2012 requesting respondent-allottee to clear outstanding due of Rs. 78,66,96/- and to complete the formalities of execution of buyer agreement within seven working days. However, respondent-allottee did not give any heed to the requests of the respondents.

8. That when the respondent-allottee failed to make the payment against various demands raised by the complainant-promoter, it issued final notice vide dated 03.06.2016, calling them to clear the dues of Rs.

10,15,541/- on or before 10.06.2016, respondent-allottee was informed by the same letter that if they fail to make the payment within stipulated time, the complainant-promoter will be constrained to terminate/cancel the allotment.

9. That when the respondent-allottee failed to make the payment of due instalments despite repeated demands and reminders, the complainant-promoter issued cancellation letter dated 08.07.2016, thereby cancelled the allotment of the unit allotted to the respondent-allottee. Thereafter, respondent-allottee issued a letter dated 09.08.2016, thereby requesting complainant-promoter to change the payment schedule.

10. That the respondent-allottee issued a cheque of Rs. 13,58,852/-, dated 16.08.2016 against which the complainant-promoter issued acknowledgement receipt dated 17.08.2016.

11. That the complainant-promoter raised a demand of Rs. 5,39,003/- on completion of the sixth floor vide letter dated 27.05.2017, requesting the respondent-allottee to pay the instalment on or before 20.06.2017. However, the respondent-allottee had failed to make the payment of within stipulated time. The complainant-promoter issued reminder vide letter dated 28.06.2017, thereby requesting them to clear the dues. It is submitted that despite reminder dated 28.06.2017, respondent-allottee again failed to make the payment of Rs. 5,39,003/-, therefore, complainant-promoter again issued a reminder vide letter dated 17.07.2017 calling them to make the payment of due instalment. However, the respondent-allottee's deed not give any heed to the demand letter and reminder and chose not to pay the due instalment. When the respondent-allottee failed to make the payment of demand raised vide letter dated 27.05.2017 despite repeated

reminder, the complainant-promoter issued final notice to the respondent-allottee vide letter dated 02.08.2017, thereby calling them to clear the overdue instalments on or before 12.08.2017 failing which company will issue termination notice. However, the respondent-allottee failed to make the payment of due instalment. It is further submitted that the respondent-allottee had not paid any single penny after they made payment of Rs. 13,58,852/- vide cheque dated 16.08.2016.

12. That the respondent-allottee despite repeated reminders and notices, failed to make the payment of instalment/ demand raised by the complainant as per the payment schedule duly agreed upon by the respondents.

C. Reliefs Sought by the complainant-promoter:

a) Direct the respondent-allottee to pay the due instalment along with interest as per the buyer agreement, from the date of amounts became due for payment till the date of actual payment.

b) Alternatively, to pass an order entitling/ enabling the complainant to cancel the allotment and forfeit the amount paid by the respondent-allottee as per terms of buyers agreement.

D. Reply by the respondent-allottee:

13. The complainant-promoter has concealed the material facts from the respondent-allottee herein and also from this Hon'ble Authority and is liable to be prosecuted for perjury and for misleading this Hon'ble Authority. It is submitted that the complainant-promoter has concealed the fact that the license annexed with the complaint as Annexure C1 for the

project bearing No. 102 of 2008 was granted on 16.05.2008 and was valid only upto 14.05.2010.

14. That the complainant-promoter has further tried to mislead this Authority as to when the said license was not renewed by the complainant-promoter. It is submitted that as per the averments made in para 13 of the complaint and Annexure C/13, the said license got renewed only on 08.05.2017. It is submitted that bare perusal of the said renewal of the license would reveal that the application for renewal of license was made only on 22.07.2016, 18.08.2016, 30.11.2016 and lastly on 06.03.2017. Therefore it is unambiguously evident that from 14.05.2010 till 08.05.2017, the complainant-promoter did not even have a valid license and despite this, the complainant-promoter brazenly went ahead to enter into builder buyer agreement and demanding payments from the innocent buyers without having valid license, in blatant violation of the laws pertaining to licenses.

15. That it is submitted the first payment obtained from the answering respondent-allottee was on 08.09.2011 (Rs. 2,00,000/-), 12.10.2011 and 28.12.2011 (Rs. 6,11,339/- and Rs. 8,27,288/-respectively) and the various demands dated 21.05.2012, 15.10.2012, 20.11.2012, 01.12.2015, 03.03.2016, 03.05.2016, 25.05.2016 and 03.06.2016 etc. were raised from the answering respondent-allottee before 08.05.2017. It is submitted that the above-said period pertains to "After 14.05.2010 and before 08.05.2017" i.e. the period during which, the said license number 102 of 2008 had remained expired and the date on which it was subsequently renewed as per the own admission of the complainant-promoter herein. It is further submitted that the above-stated entire amount was demanded or collected

by the complainant-promoter herein regarding the allotment of the said unit no. 601, Neo Square, after the expiry of the licence issued to the complainant-promoter and before the renewal of the said License No. 102 of 2008 i.e. in the year May 2017.

16. That it is evident that the complainant-promoter is deliberately trying to conceal the material facts from this Honorable authority and is misleading authority by filing this false and frivolous complaint in order to arm-twist the respondent-allottee herein.

17. That it is pertinent to mention here that the buyer agreement was entered into between the parties only on 2nd May 2013 i.e. much after the expiry of the License No. 102 of 2008, issued to the complainant and much before the said license was allegedly subsequently renewed by the DTCP, Haryana i.e. on 08.05.2017 in clear violation of the provisions of the Haryana Development And Regulation of Urban Areas Act, 1975.

18. That since the aforesaid payments were collected after the expiry of the said license i.e. 14.05.2010 and prior to the date of renewal of the said license i.e. 08.05.2017, hence it violates the provisions of section 7(i) of Act no. 8 of 1975 and the said payments stand collected without obtaining License under section 3 of the Act ibid. Therefore it can safely be established that the complainant-promoter collected the said amount without obtaining license and approval of building plans from the DTCP, Haryana and is liable to be prosecuted for the same and heavy penalties to be imposed upon the complainant-promoter .

19. That the license as required under section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975, from Director- General, Town &

Country Planning, Haryana has not been obtained in the present case. Hence these alleged act of the complainant-promoter is in violation of section 7 (i) of the act and is punishable under the provision of section 10 of the Act ibid.

20. That it is submitted that it is only after repeated inquiry and due diligence of the respondent-allottee herein, he came to know about the said offences committed by the complainant only recently and the complainant-promoter was cheating the innocent buyers all along and is also misleading the authority and various government authorities too.

21. That as per the demand letters sent and the clear averments of the complainant-promoter in the present complaint, It is clear beyond doubt that the complainant-promoter was allegedly carrying on the construction of the said project without necessary approvals from the government departments and more importantly without any valid license for which the complainant-promoter is liable to be prosecuted under Haryana Development And Regulation of Urban Areas Act, 1975 and for perjury and for making false statement on oath before the Authority.

22. That the complainant-promoter is also liable to be prosecuted for concealment of facts and the present complaint is liable to be dismissed on this ground alone along with heavy costs.

23. That the answering respondent-allottee stopped making the payment to the complainant-promoter herein only when the complainant-promoter refused to share the details of the necessary approvals and license issued by the DTCP Haryana, and the said non- payment to the complainant-promoter of the illegal demands raised by the complainant-promoter in the

absence of valid license cannot be held to be defaults on the part of the answering respondent-allottee.

24. That even as per clause 5.2 of the builder buyer agreement, the complainant-promoter was bound to complete the construction of the said building/complex within 36 months from the date of execution of this agreement or from the start of construction, whichever is later i.e. 36 months from 02.05.2013 or start of construction. As per clause 5.4 the complainant-promoter further made himself entitled for a further period of 6 months after the completion date as stated in clause 5.2 as grace period to the company after the expiry of the afore-said period.

25. Therefore it is abundantly clear that the complainant-promoter had to complete the construction by August 2016. It is submitted that though the complainant-promoter had entered into the buyer agreement with the answering respondent illegally, however, even as per the builder buyer agreement, it is the complainant-promoter who is liable for default of the above stated provisions regarding the possession of the said project. Therefore it does not lie in the mouth of the complainant-promoter to allege defaults on the part of the answering respondent-allottee.

26. All other averments were denied in total.

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

E. Facts of the complaint bearing no. 1425 of 2022 titled as Harish Parmeshwar V/s M/s Neo Developers Pvt. Ltd.

28. That in the year 2011 the officials/representatives of M/s Neo Developers approached the complainant herein that they are constructing a project namely Neo Square which will have world class amenities and luxurious apartment. It was further represented that the respondent has all the approvals in place and the possession of the unit will be offered within 36 months.

29. That solely based on the representations made by the respondent herein, the complainant made an application for booking of an office/retail space for a total sale consideration of Rs. 69,88,800/-It is pertinent to point out that no payment schedule whatsoever was disclosed to the complainant herein at that time. The respondent herein got signed an application form from the complainants herein and it was informed that it is the standard application form of the respondent with pre-written terms which though not applicable to the complainants cannot be changed. It was also assured that it's an interim booking application and a fresh booking application would soon be executed containing detailed terms and condition however the same was never executed.

30. That the respondent accordingly provisionally allotted unit no. 601-A, admeasuring super area 1344 sq. ft. of the project to the complainant. The complainant made a payment of Rs.6,11,339/- & Rs. 8,27,288/- respectively on 12.10.2011 & 28.12.2011 respectively to the respondent against the sale consideration of the unit.

31. That the respondent issued allotment letter dated 21.05.2012, thereby complainant was allotted unit no. **601-D, on 6th** floor in the respondent's project 'Neo Square'.

32. That the complainant was diligently making payment on verbal requests of the respondent as and when demanded. In pursuance of the same the complainant made a payment of Rs. 2,81,529/- on 22.07.2012. It is pertinent to reiterate that no payment schedule was ever provided to the complainant herein by the respondent and the respondent was raising the demands out of its own whims and fancies.

33. That it is apposite to mention that the complainant herein frequently visited office of the respondent to enquire about status of the project and to make request for execution of the builder buyer's agreement. The respondent kept on giving verbal and written assurances however the respondent deliberately for one reason or the other kept on delaying the execution of buyer agreement.

34. That on repeated insistence and requests from the complainant, respondent agreed to execute the builder buyer agreement (hereinafter referred as "**Agreement**") and the said agreement was executed between the complainant and respondent on 02.05.2013. It is important to note that the agreement was executed only after receiving hefty and substantial amount of Rs. 19,20,156/-. It is also relevant to point out that the respondent surreptitiously inserted payment schedule at the time of entering the agreements for which the payment had already been received.

35. Thereafter the complainant herein repeatedly and numerous occasions kept on enquiring about the status of project however the respondent paid no heed to the requests of the complainant and kept on making misrepresentations and giving false assurances. It is apposite to mention that the complainant made it clear to the respondent that further payment

will only be made if the respondent produces requisite valid approvals of the authorities.

36. That despite not having a valid DTCP license the respondent kept on raising illegal demands on the complainant for payments. It is submitted that the complainants herein was not liable to pay the said demands as the same were illegally raised and accordingly the complainants did not comply with the illegal demand letters raised by the respondent. It is apposite to mention that on making such enquiries and requests by the complainants, the respondent threatened that in case the demand as raised is not paid, the allotment of the complainants shall be cancelled and the entire deposited amount of Rs. 19,20,156/- shall be forfeited.

37. That to the utter shock and surprise of the respondent herein vide cancellation letter dated 08.07.2016 cancelled the allotment of the unit allotted to the complainant. It is pertinent to mention that similar letters were issued to other identically situated allottees who protested against malpractices of the respondent herein.

38. That on 10.08.2016 the respondent placing the complainants under immediate threat of cancellation of allotment forced the complainants herein to sign a paper with the Mark "X", where the complainants as well as other protesting allottees were made to sign by the respondent. It is submitted that said letter was a prewritten draft that is used by the respondent as a modus operandi and evil design to coerce the allottees to agree to unacceptable terms under the threat of cancellation. That one such instance is issuance of an identical letter 09.08.2016 which the Respondent by coercion got signed by Mr. Sunil Malik.

39. That on 25.08.2016 under threat of cancellation the complainants made another payment of Rs. 19,56,949/- . It is pertinent to mention that the total amount of Rs. 38,77,105/- has already been paid by the complainants herein to the respondent.

40. That the respondent kept on raising illegal demand in contravention of the builder buyer agreement and without adhering to status of construction as per the payment schedule which the respondent itself coerced the complainants herein to sign.

41. That thereafter the respondent with the intention to further arm twist the complainant herein, filed complaint No. **534 of 2019** titled "**M/s Neo Developers Pvt. Ltd. Vs. Rashi Arora and Anr**" before the Ld. Authority inter-alia seeking direction upon the complainants herein to the payment of due instalment along with interest or in the alternate enable the respondent to cancel the allotment of complainants herein and forfeit the amount paid by the complainants.

42. That the Ld. Authority vide its order dated 05.03.2021 disposing of the complaint no. 534 of 2019 directed the complainants herein to make payment to the respondent within three weeks failing which the allotment of unit of the complainants shall be treated as cancelled.

43. That the complainants filed an appeal bearing appeal no. 128/2021 challenging the order dated 05.03.2021 before the Hon'ble Appellate Authority, Chandigarh. The Hon'ble Appellate Authority vide its order dated 22.06.2021 was pleased to issue notice. That in furtherance of the impugned order dated 05.03.2021 of the Ld. Adjudicating Authority the respondent issued cancellation letter dated 08.03.2021 calling upon the

complainant to make payment of Rs. 71,36,233/- failing which the allotment of the unit will be cancelled.

F. Relief sought by the complainant:

44. The complainant has sought the following relief:

a) Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

G. Reply by respondent:

45. It is reiterated herein that the complainant despite being bound to adhere to the payment plan, has defaulted in making timely payment from the very first stage of payment i.e., on application. That the complainant had paid an amount of Rs. 2,00,000/- as a booking amount at the time of submitting application for allotment of a unit, whereas, as per the agreed payment schedule the complainant was liable to make payment of Rs. 6,20,880/- i.e., 10% of Basic Sale Price. It is noted herein that the balance of the first instalment i.e., application money was received on 12.10.2011, 28.12.2011 and 12.07.2012 with a **delay of 227 days**.

46. It is important to bring it to the knowledge of the Ld. Authority that despite receiving the aforementioned demand/reminder letters the complainants miserably failed to make the payment of the outstanding instalments. That left with no other option, the respondent was constrained to issue a cancellation letter dated 08.07.2016, thereby cancelling the allotment of the unit in question.

47. It is noteworthy to mention herein that the upon receipt of the cancellation letter dated 08.07.2016, the complainants *vide* a letter dated 10.08.2016

requested the respondent to change the payment schedule and also made a payment of Rs. 19,56,949/- on 25.08.2016 against the outstanding dues to the respondent. It is further pertinent to mention herein that the said payment included the demand raised on 01.12.2015 which was received with a **delay of 254 days** and demand raised on 03.03.2016 which was received with a **delay of 175 days.**

48. That believing the *bonfide* intentions of the complainant the respondent did not pursue with the cancellation of the unit and reinstated the cancelled unit back to the complainants.

49. That even after reinstatement of the allotment of the unit and modification of the payment plan the complainant once again started defaulting in making timely payment against the total sale consideration of the allotted unit.

50. It is noted that after reinstalment of the allotment respondent vide demand letter dated 27.05.2017 raised a demand of Rs. 8,82,741/- as per the payment schedule, requesting the complainant to pay the instalment on or before 20.06.2017. However, the complainants failed to make the payment with the stipulated time period. Thereafter, the respondent was constrained to issue first reminder letter on 28.06.2017, second reminder on 17.07.2017 and final reminder on 02.08.2017 calling the respondent to clear the dues on or before 12.08.2017, failing which respondent would issue termination notice.

51. That upon not receiving a single penny from the complainants against the demand letter dated 27.05.2017 and subsequent reminder letters, the respondent was constrained to issue a **letter dated 31.10.2017** for a

demand of Rs. 36,74,610/- towards total sale consideration and previous dues to be paid **on or before 20.11.2017.** However, the complainant miserably failed to make the said payment.

52. It is noteworthy to mention herein that upon failure of the complainants in paying the timely instalments the respondent had filed a **Complaint bearing no. 534 of 2019** before the Ld. Authority. That via the said complaint the respondent prayed before the ld. authority to direct the complainants herein (the Allottees) to pay the instalment due along with interest as per the BBA or alternatively, to pass an order enabling the Respondent herein to cancel the allotment.

53. That the respondent herein after the passing of the order dated 05.03.2021, had sent a **demand letter dated 08.03.2021**, which was to be payable within 3 weeks from the date of the said demand letter. However, the complainants preferred to ignore the said demand letter and failed to pay a single penny to the respondent. Therefore, the respondent had no other option and in compliance of the order dated 05.03.2021 had sent a **cancellation letter dated 09.04.2021** wherein the allotment of the complainant was cancelled as per the direction of the Ld. Authority.

54. That the complainants filed an **appeal bearing no. 128 of 2021** against the order dated 05.03.2021 on the grounds that the said order was non-speaking and factually incorrect. That the Hon'ble Appellate Tribunal vide **order dated 09.08.2022** set aside the impugned order dated 05.03.2021 and remitted the case to the Ld. Authority for fresh adjudication of the complaint filed by the respondent herein.

55. It is important to mention herein that the present complaint seeking refund is filed by the complainants during the pendency of the appeal bearing no. 128 of 2021. It is most humbly submitted that the subject of both the complaints i.e., complaint bearing nos. 534 of 2019 and 1425 of 2022 are same. That the complainants had filed the appeal bearing no. 128 of 2021 against the order dated 05.03.2021 praying for setting aside of the said order. That the Hon'ble Appellate Tribunal accepting the appeal filed by the complainants herein has remitted the complaint No. 534 of 2019 to the Ld. Authority for fresh adjudication on merits.

56. It is most humbly submitted that as per the direction of the Hon'ble Appellate Tribunal the **complaint bearing no. 534 of 2019** preferred by the Respondent herein is still pending final adjudication after being remanded back, filling of this instant complaint by the complainants is merely an after-thought to disguise his own default of non-payment of dues. Since, the Hon'ble Appellate Tribunal vide Order dated 09.08.2022 has already directed the Ld. Authority to hear the complaint filed by the respondent afresh in accordance with law on its own merits, therefore, filing of the present complaint is only an abuse of the process of law. That for these vey reasons the present complaint ought to be dismissed.

57. All other averments were denied in total.

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

H. Jurisdiction of the authority:

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

H. I Territorial jurisdiction

60. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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.

H. II Subject matter jurisdiction

61. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

62. 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.

63. 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. 2020-2021 (1) RCR (c) 357 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."*

64. 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.

I. Entitlement of the complainant-allottee for refund in Cr No. 1425 of 2022:

I.I To direct the respondent to refund the amount paid by the complainant-allottee alongwith prescribed rate of interest.

65. The present complaint bearing No. 1425 of 2022 filed by the complainant seeking refund and the complaint filed by the respondent in year 2019 bearing no. 534 of 2019 being taken together as both the cases are interconnected.

66. The complainant was allotted unit no 601D-6th floor, in the project "Neo Square" by the respondent builder for a total consideration of Rs. 93,74,643/- against which the complainant paid a sum of Rs. 41,18,375/-. The respondent had sent reminder letters dated 01.12.2015, 03.03.2016, and final reminder latter dated 25.05.2016 to make payment of the outstanding dues. The complainant statedly continued with their default and again failed to make payment even after receipt of final reminder letter.

67. The complainant received cancellation notice dated 08.07.2016. Upon receiving the cancellation letter, the complainant vide letter dated 10.08.2016 requested a change in the payment schedule and made a payment of Rs. 19,56,949 on 25.08.2016. Thereafter, despite the reinstatement of the allotment and modification of the payment plan, the complainant statedly failed to clear the outstanding dues.

68. It is pertinent to mention here that prior to this present complaint, the respondent builder in year 2019 filed a complaint bearing no. 534 of 2019

titled ***M/s Neo Developers Pvt. Ltd. Vs. Harish Parmeshwar and Anr.*** for seeking direction upon the complainant to clear the outstanding dues failing which respondent to cancel the allotment of complainants. The authority vide its order dated 05.03.2021 disposing of the said complaint with a direction that the complainant to make the payment within 3 weeks failing which the allotment of unit shall be treated as cancelled. The respondent builder issued cancellation cum demand letter dated 08.03.2021, to make the payment of Rs. 71,36,233/- failing which the allotment of the unit will be cancelled but complainant did not pay outstanding amount due to the respondent. The respondent-builder in compliance of order dated 05.03.2021 had sent a letter dated 09.04.2021 cancelling the unit. But till date, after said cancellation no amount is refunded to the complainant-allottee.

69. Thereafter, the complainant filed an appeal bearing no. 128/2021 challenging the order dated 05.03.2021 before the Appellate Authority. The Appellate Authority vide its order dated 09.08.2022, accepted the appeal filed by the complainant and set aside the order dated 05.03.2021 passed by the authority, which is reproduced as below:

> *Thus, in view of the aforesaid discussion, all the three appeals are accepted. The impugned orders passed by the learned Authority are set aside and all the three cases are remitted to the learned Authority to decide and dispose of the complaints preferred by the respondent-promoter afresh in accordance with law on its own merits. Needless to say, the learned Authority would pass speaking order referring to the pleadings of the parties and recording the submissions made on behalf of the respective parties without being prejudice to any observation made in this order.*

70. After consideration of all the facts and circumstances, the authority is view of that the Appellate Authority vide its order dated 09.08.2022 set aside the order dated 05.03.2021 of this authority. Hence, the cancellation of the unit in respect of the order which has been set aside by the appellate tribunal also becomes invalid.

71. **Admissibility of refund along with prescribed rate of interest:** the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established as the due date of possession comes out to be 15.06.2019 and till date the occupation certificate of the subject unit is not yet obtained and no offer of possession has been made to the complainant. As such, the complainant who wishes to withdraw from the project is entitled to refund of the entire amount paid by him at the prescribed rate of interest from the date each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

72. The prescribed rate as provided 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.*

73. 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.

74. 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., 09.01.2024 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

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

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

76. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established as till date the occupation certificate of the subject unit is not yet obtained and no offer of possession has been made to the complainant. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 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 from the date filling of complaint till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

77. In Cr No. 534/2019, the respondent states the complainant-allottee failed to make the outstanding dues as per the payment plan opted by the complainant but it is important to note that the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

> *"" ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

78. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. it was observed

> 25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is*

in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

79. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

80. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 41,18,375/- with interest at the rate of 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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

J. Directions of the Authority:

81. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs. 41,18,375/- received by it from the complainant along with an interest @10.85% p.a. as prescribed under rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.

ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants

82. Complaint stands disposed of.

83. File be consigned to the registry.

(Sanjeev Kumar Arora) Member | **(Ashok Sangwan)** Member | **(Vijay Kumar Goyal)** Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2024