

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

Complaint no.:	831 of 2023
Date of filing:	24.02.2023
Date of pronouncement of order:	26.07.2024

Dilip Kishore Panjwani and Pallavi Panjwani R/o: 04-04, the taipan, 25 Jalan, Hajijah, Singapore - 468721	Complainants
Versus	
Neo Developers Private Limited. Regd. Office: 32B, Pusa Road, New Delhi - 110085	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Mr. Anuj Chauhan (Advocate)	Complainants
Mr. Venkat Rao	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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.	DTCP License no.	102 of 2008 dated 15.05.2008 valid up to 14.05.2024 83 of 2014 valid up to 08.08.2021 25 of 2019 valid up to 24.02.2024
5.	RERA Registration	109 of 2017 dated 24.08.2017 valid up to 22.02.2024
6.	Unit no.	Priority no-90 in restaurant(food court) (Page 31 of complaint)
7.	Unit area admeasuring	500 sq. ft.
8.	Date of execution of apartment agreement (Unregistered)	01.01.2018 (page 27 of complaint)
9.	MOU dated .	01.01.2018 (page 54 of complaint)
10.	Possession clause (clause 3 of MOU)	3. 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. (Emphasis supplied)
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.	MOU assured return clause	<i>The company shall pay a monthly amount of assured return Rs. 45,000/- on the total amount received with effect from ____ until the commencement of first lease on the said unit.</i>
13.	First addendum to lease	24.07.2020 (Page 96 of reply) (It was communicated to complainants on 01.10.2020- it was mentioned in cancellation letter)
14.	Due date of possession	01.07.2021 01.01.2021 +6 months of covid (Calculated from date of execution of agreement) (Inadvertently the due date of possession is mentioned as 15.12.2018 in proceeding dated 05.07.2024, but now the same has been corrected)
15.	Total basic sale consideration	Rs. 42,68,710/- (page 75 of reply)
16.	Amount paid by the complainants	Rs. 24,07,316/- as per statement of account on page 68 of the complaint
17.	Occupation certificate /Completion certificate	Not obtained
18.	Offer of possession	Not obtained
19.	Cancellation Letter	14.11.2022 (page 103 of reply) (as per clause 16 of MOU, in case of breach of any term by the allottee - page 60 of complaint)

20.	Reminder's letter for signing lease assignment form	1.10.2020, 07.12.2021 and 10.12.2020
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B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- i. The complainants believing the promises and assurances, including but not limited to assured return, made by the respondent booked a restaurant space vide booking form dated 01.09.2017 being 'Priority No. 90', food court, third floor, admeasuring super area of 500 sq. ft. and covered area of 250 sq. ft. (50% of Super Area) in commercial complex 'Neo Square' at the rate of Rs. 8,537.42/- per sq. ft. in the said project.
 - ii. The total cost of the said area was Rs. 42,68,710/- and the complainants has paid Rs. 4,71,264/- at the time of booking. The respondent issued welcome letter dated 01.09.2017 to the complainants after successful booking of the said unit. The buyer's agreement ('BBA') was executed between the parties on 01.01.2018 and total sale price was Rs. 51,58,895/-. A memorandum of understanding dated 01.01.2018 was also executed between the parties wherein the respondent committed to pay assured return monthly return of Rs. 45,000/- from 01.01.2018 till commencement of first lease on the said unit and the respondent also acknowledged the payment of Rs. 19,12,389/- as part payment of basic sale price against the said unit in the MOU and as per annexure I of MOU it is evident that the rest of the consideration was to be paid at the time of offer of possession only and no amount was due on their part.

- iii. The complainants received a notice dated 21.10.2021 from the Respondent i.e., Notice subject as 'Notice for BBA/MOU Registration' which stated that the BBA/MOU executed between the parties on 01.01.2018 needs to be registered now after more than 3 years and also called for Registration fee which stated to have included Registration fees, stamp duty, drafting charges, red cross receipt, advocate's service charges, etc.
- iv. The respondent and its erring directors in furtherance of their criminal intentions and to torture the innocent complainants sent Cancellation letter dated 14.11.2022 via email unilaterally cancelling the said unit stating vague and fabricated reasons and illegal forfeiting Rs. 6,84,798/- without adjusting the assured return as agreed in the MOU dated 01.01.2018. .
- v. The Respondent refunded Rs.17,22,518/- on 21.11.2022, out of Rs.24,07,316/- paid for the said unit after illegal and irregular forfeiture of Rs. 6,84,798/-.Hence, the present complaint.

C. Relief sought by the complainants

4. The complainants have filed the present complaint for seeking following relief:
 - i. Direct the respondent to revoke illegal cancellation and reinstate the subject unit.
 - ii. Direct the respondent to handover the possession and pay delayed possession charges.
 - iii. Direct the respondent to penalize respondent for illegally cancelling the unit.
 - iv. Direct the respondent to pay assured return.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 present complaint on the following grounds:

- i. That since the complainants had opted for the investment return plan, a memorandum of understanding dated 01.01.2018 (*hereinafter referred to as "MOU"*) was executed between the parties for receiving returns as per the investment return plan. It is pertinent to mention herein that as per the mutually agreed terms, the returns were to be paid from the 25th month of execution of the MOU i.e 01.01.2020 till the commencement of first lease.
- ii. It is most humbly submitted that as per Clause 4 and Clause 7 of the MOU dated 01.01.2018, which was executed by the Complainants out of his own free will, the obligation of payment of Assured Return by the respondent to the complainants was only till the commencement of the first lease on the Unit. It is further submitted that the First Lease of the premises wherein the Priority Unit No.90 of the complainants is situated has already been executed with M/s Ayan Foods on 24.07.2020. Thereby, the Respondent has duly fulfilled its obligations of execution of the First Lease in terms of the MOU. That after the commencement of the First Lease the Respondent has duly intimated the Complainants vide letter dated 01.10.2020 and various telephonic conversations regarding the same. That, since the complainants did not come forward to sign

the lease assignment, the Respondent further sent a reminder letters dated 10.12.2020 and 07.12.2021 to sign the Lease Assignment Form. However, all these requests and reminders fell on deaf ears of the complainants and the complainants blatantly ignored his obligations.

- iii. Accordingly, as per Clause 16 of the MOU the Respondent exercised its right to terminate the MOU and the Unit of the complainants were cancelled by the Respondent vide a Cancellation Letter dated 14.11.2022, and the same was duly communicated to the Complainant
- iv. Accordingly, upon the request and proposal for settlement of the dispute by the Complainants themselves, the Respondent agreed to refund the amount as per the terms of the Agreements. The Respondent on 21.11.2022, against the sale consideration amounts of Rs. 24,07,316/- paid by the Complainants for the Unit in the Project, refunded an amount of Rs.17,22,518/- after forfeiting an amount of Rs. 6,84,798/- as per terms of the MOU and Buyers Agreement.

7. 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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as 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 Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II. Subject-matter jurisdiction

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

Section 11

.....

(4) 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 as per provisions of section 11(4)(a) of the Act 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

- i. Direct the respondent to revoke illegal cancellation and reinstate the subject unit.
 - ii. Direct the respondent to handover the possession and pay delayed possession charges.
 - iii. Direct the respondent to penalize respondent for illegally cancelling the unit.
12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected
13. In the present complaint, the complainants intend to continue with the project and is seeking set aside of cancellation letter and to restore the originally allotted unit.
14. It is evident from the perusal of the particulars given in the tabular form above that vide buyer agreement dated 01.01.2018, the complainants were allotted Priority no-90 in restaurant(food court) admeasuring area of 500 sq. ft. for total sale consideration of Rs. 42,68,710/-. A buyer's agreement has been executed inter-se parties, however, it has been the version of the respondent-builder that it was constrained to issue a cancellation letter dated 14.11.2022 wherein he was informed that the subject unit shall be treated as cancelled as the complainants are not coming for signing the lease assignment form. On the contrary it was stated by the complainants that it was specifically agreed between the parties via agreement that as per schedule of payment an amount of Rs. 19,12,389/- was to be paid on application for booking and further the balance amount of Rs. 23,56,321/- was to be paid on notice of possession.
15. He has already paid an amount of Rs. 24,07,316/- as per (statement of account) towards sale consideration of subject unit. As per MOU dated

01.01.2018 has been executed inter-se parties, the due date of handing over of possession comes out to be 01.07.2021 as per clause 3 of MOU, 36 months from the date of execution of agreement along with 6 months on the ground of COVID

16. As was mentioned in cancellation letter dated 14.11.2022, the booking/allotment of the subject unit was cancelled due to non-signing of the lease assignment form dated 01.10.2020. The respondent-builder has also stated that they are ready to refund the paid amount.
17. Keeping in view the tangled facts involved, it is relevant to comment upon the validity of cancellation letter dated 14.11.2022. The Authority observes that the alleged cancellation letter dated 14.11.2022 that has been placed on record is sent, as clause 16 of the MOU has been breached. Therefore, the said cancellation letter is valid.
18. Vide proceeding dated 12.04.2024, it was observed that the unit was cancelled on 14.11.2022 and sum of Rs.17,22,518/- was refunded to complainant on 21.11.2022 after deduction of 10% of total consideration.
19. As per the settled law of the land in the various pronouncements of the Hon'ble Apex Court and as per Regulation 11(5) of 2018 known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder), the respondent could have deducted 10% of the sale consideration from the paid-up amount and was bound to return the remaining amount.
20. During proceedings, the relief of assured return has not been pressed upon, hence no direction to this effect can be given.

G. Direction of the Authority

21. 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 cancellation done by the respondent is valid as it was done due to violation of clause 16 of the MOU by the complainant.
- ii) The respondent is directed to refund the balance amount if any after deducting 10% of the sale consideration as forfeiture of earnest money and amount already refunded along with interest at prescribed rate from the date of cancellation till realization of refund amount.
- iii) 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.

22. Complaint stands disposed of.

23. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 26.07.2024