

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

Complaint no. :	1229 of 2023
Date of complaint :	22.03.2023
Date of order :	12.07.2024

Rajeev Malhotra,
R/o: - 1211, Pocket-A,
Sector-A, Vasant Kunj, Delhi-110070.

Complainant

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: 32-B, Pusa Road,
New Delhi-110005.

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Saurabh Jain (Advocate)

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 thereunder or to the allottee 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 complex
4.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
5.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021 plus 6 months of extension due to COVID-19 i.e. 22.02.2024 Registration expired
6.	Date of allotment	02.07.2012 (Page 18 of complaint)
7.	Unit no.	Original unit - 59 (page 18 of complaint) Changed unit - 57 (page 22 of complaint)
8.	Unit area admeasuring	Original unit - 578 sq. ft. (page 18 of complaint) Changed unit - 551 sq. ft. (page 22 of complaint)
9.	Date of execution of agreement	27.10.2012 (Page 20 of complaint)
10.	Possession clause as per agreement	5.2 That the company shall complete the construction of the said building 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. 5.4 That the allottee hereby also grants an additional period of 6 (six) months after the Completion Date as grace period to the Company after the expiry of aforesaid period.
11.	Date of start of construction	15.12.2015 (Page 52 of reply)
12.	Due date of possession	15.06.2019 (calculated from the date of start of construction being later along with 6 months of grace period)
12.	Sale consideration	Rs.49,59,000/- (As per page no. 24 of complaint)
13.	Amount paid by the complainant	Rs. 19,22,056/- (As per SOA at page no. 78 of reply)
14.	Date of surrender	13.08.2018 (page 73 of reply)
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant was provisionally allotted a commercial shop/unit bearing no. 59, Ground Floor in the project of the respondent named "Neo Square" at Sector-109, Gurgaon vide provisional allotment letter dated 02.07.2012. Thereafter, the unit number was shifted from unit no.59 to unit no.57 in Tower A located on the Ground floor, measuring about 551 sq.ft.
- II. That the buyer's agreement was executed by the parties on 27.10.2012 for a basic cost of Rs.49,59,000/- against which the complainant has paid a total sum of Rs.19,22,056/- on different dates

between 2012 and 2015 to the respondent.

- III. That as per clause 5.2 of the buyer's agreement, possession of the unit was to be handed over within 36 months from the date of execution of the buyer's agreement.
- IV. That since the construction of the project was not progressing at a satisfactory pace and the possession of the unit nowhere in sight, the complainant being retired from service, was in need of money and hence, could not wait indefinitely for completion of the construction and accordingly, in the year 2018, the complainant requested the respondent to refund him the money paid by him towards the said unit.
- V. That the respondent agreed to cancel the allotment and refund the entire amount paid by the complainant. Pursuant thereto, the respondent directed the complainant to return all the original documents pertaining to the said unit including the provisional allotment letter, the buyer's agreement as well as payment receipts and other such documents relating to the unit.
- VI. That the Complainant returned all the original documents pertaining to the said unit as demanded by the respondent. The surrender of all original documents was acknowledged by the respondent on 13.08.2018. The Complainant had further signed certain documents which the respondent had made him to sign including affidavit.
- VII. That subsequently, the respondent had issued post dated cheques for an amount totalling to Rs.13,23,154/- out of Rs.19,22,056/- to the complainant in the following manner:
- i. 1st cheque of Rs 4,00,000/- dated 30.10.2019
 - ii. Cheque No. 002114 dated 28.02.2021 for Rs.3,00,000/-

iii. Cheque No. 002115 dated 31.03.2021 for Rs.3,00,000/-

iv. Cheque No. 002116 dated 30.04.2021 for Rs.3,23,154/-

Out of the aforementioned cheques, 1st cheque of Rs.4,00,000/- dated 30.10.2019 was encashed after one year.

- VIII. That thereafter the respondent sent an email dated 28.12.2020 to the complainant and had unilaterally and arbitrarily stated that instead of balance payable amount of Rs.15,22,056/-, they would refund Rs.9,23,154/- and that the balance sum of Rs.5,98,846/- has been adjusted towards the another unit being unit no.21 booked by the complainant on the 1st floor of same project.
- IX. That thereafter, the 2nd cheque of Rs.3,00,000/- was encashed in February 2021.
- X. That the respondent sent an email dated 07.05.2021 to the complainant stating that due to lockdown, the office was closed and requested the complainant not to deposit the cheques till further intimation.
- XI. That thereafter, since the complainant was in need of money, he sent an email dated 08.07.2021 to the respondent informing that since the cheque for March 2021 has expired, it needed replacement and further that since he was in need of money and had no other source of income, he shall be depositing the cheque for the month of April 2021 amounting to Rs.3,23,154/-.
- XII. That the complainant had sent an email dated 05.01.2023 to the respondent requesting refund of the balance amount, however, the respondent chose not to respond to the queries of the complainant.
- XIII. That since the respondent has failed to refund the amount paid to the complainant, the respondent is also liable to pay to the complainant,

pendente lite and future interest @18% p.a., as is being charged by the respondent till the date of the realization, or such higher interest which this Hon'ble Authority may deem fit in the interest of justice.

XIV. That the present complaint is filed under Section 18 read with Section 19 (4) of the Real Estate (Regulation and Development) Act, 2016 in order to seek refund of the money paid towards the unit/shop.

C. Relief sought by the complainant:

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

I. Direct the respondent to refund the balance paid-up amount along with prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondents/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 by filing reply dated 15.12.2023 on the following grounds: -

- i. That the complainant approached the respondent to enquire and to know the specific details of the project i.e., "Neo Square", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project, the complainant decided to opt for the construction link plan and through application form dated 23.05.2012 requested for allotment of a unit in the project.
- ii. That initially, on a provisional basis unit no. 59 was allotted. However, on 27.10.2012 the "buyer agreement" was executed between the parties, whereby a shop bearing no. 57 on Ground Floor in the area designated for retail shopping having super areas of approximately

- 551 sq. ft at Rs.9000/- rate per sq. ft. for a basic sale consideration of Rs.49,59,000/- was finally allotted to the complainant and against the same the complainant had only paid Rs.19,22,056/- to the respondent.
- iii. That in complaint bearing no. 1328 of 2019 titled as "Ram Avtar Nijhawan vs M/s Neo Developers Put Ltd", pertaining to the same project vide order dated 05.09.2019 the Authority has held and observed that the due date of possession will be calculated from the date of start of construction for the instant project and held due date of start of construction for the instant project as 15.12.2015. The Authority has also granted a period of 6 months as grace period. Accordingly, the due date of delivery of possession in the instant case comes out to be 15.06.2019.
- iv. That the complainant miserably failed to comply the payment plan under which the unit was allotted to the complainant and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs.19,22,056/- against the basic sale consideration of Rs.49,59,000/-.
- v. That upon the failure of the complainant to comply with the final notice dated 13.07.2016 issued by the respondent, the complainant approached the respondent for a meeting on 21.07.2018 and requested the respondent to cancel the unit and to refund the amounts paid by the complainant i.e., before the due date of possession i.e., 15.06.2019 due to their own personal reasons and the same has been categorically admitted by the complainant in para 6 and 7 of the complaint filed by the complainant.

- vi. It is to be noted that the complainant vide a notarised affidavit on Rs.100 non-judicial stamp paper bearing no. T 681123, on 10.08.2018, stated that the complainant is seeking the refund of amount paid by complainant against the sale consideration of the unit without any interest and further agreed and undertook not to claim any right, lien, interest, expenses, right of purchase lease, etc. of any kind whatsoever in nature from the respondent and further agreed to keep the respondent harmless against all damages, losses, claims, cost, etc, which the respondent may suffer as a result of cancellation of the unit of the complainant. Further, an indemnity bond dated 10.08.2018 was executed in favour of respondent. Accordingly, the complainant vide its letter dated 13.08.2018 surrendered the original buyer agreement and payment receipts with the respondent for the process of refund.
- vii. That upon the request of the complainant for cancellation of the unit due to his personal reasons as stated, the respondent refunded Rs.7,00,000/- vide cheque dated 30.10.2019 of Rs.4,00,000/- and Rs.3,00,000/- via cheque no. 002114 dated 28.02.2021) to the complainant out of the total amount of Rs.19,22,056/- paid by the complainant. Further, upon the request of the complainant, the respondent adjusted Rs.5,98,846/- towards the outstanding dues of another unit bearing no. 21 booked by the complainant on 1st Floor in the same project.
- viii. That the request for refund by the complainant were before the due date of possession i.e., 15.06.2019, meaning thereby that in the present case the complainant is surrendering his unit. Therefore, in view of Haryana Real Estate Regulatory Authority, Gurugram (forfeiture of Earnest Money by Builder) Regulation, 2018

dated 05.12.2018, the respondent herein is entitled for forfeiture of 10% earnest money. Accordingly, out of the amount paid i.e. Rs.19,22,056/-

- Rs.7,00,000/- refunded vide cheque dated 30.10.2019 of Rs.4,00,000/-and Rs.3,00,000/- via cheque no. 002114 dated 28.02.2021
- Rs.5,98,846/- adjusted against outstanding dues from the complainant against unit bearing no. 21
- Rs.7,03,032/- deducted as earnest money (10% of the total sale consideration) since the complainant sought refund before the due date of handing over of possession. In fact, an amount of Rs.79,822/- is recoverable from the complainant as on date.

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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram

District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainant.

F.I Direct the respondents to refund the balance paid-up amount along with prescribed rate of interest.

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

12. Clause 5.2 of the buyer's agreement dated 27.10.2012 provides the time period of handing over possession and the same is reproduced below:

5.2 "That the company shall complete the construction of the said building 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."

5.4 "That the allottee hereby also grants an additional period of 6 (six) months after the Completion Date as grace period to the Company after the expiry of aforesaid period."

13. **Due date of handing over possession and admissibility of grace period:** As per clause 5.2 and clause 5.4 of the buyer's agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of buyer's agreement i.e., 27.10.2012 or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later plus 6 months of grace period. Therefore, the due date has been calculated as 36 months from the date commencement of construction. Further a grace period of 6 months is allowed to the respondents being unqualified. Thus, the due date of possession come out to be 15.06.2019.

14. The complainant was allotted a shop bearing no. 57, Ground Floor approximately 551 sq. ft in the project of the respondent named "Neo Square" at Sector-109, Gurgaon vide buyer's agreement dated 27.10.2012, for a sale consideration of Rs.49,59,000/- and against the same the complainant had paid a sum of Rs.19,22,056/- to the respondent. As per clause 5.2 of the buyer's agreement, the due date of possession was 15.06.2019. However, the complainant has already withdrawn from the project vide letter dated 13.08.2018 and sought refund of the amount paid by him without any deductions referring to meeting held between them on 21.07.2018. As per record, out of the total amount paid by the complainant against the unit in question i.e., Rs.19,22,056/-, the respondent has refunded a sum of Rs.7,00,000/- through cheques to the complainant and an amount of Rs.5,98,846/- was adjusted towards outstanding payments of another unit bearing no. 21 booked by him on 1st Floor in the same project and hence an amount of Rs.6,23,210/- remained balance to be refunded to the complainant. The respondent has contended that vide a notarised affidavit dated 10.08.2018, the complainant sought refund of amount paid by him without any interest and further agreed and undertook not to claim any right, lien, interest, expenses, right of purchase lease, etc. of any kind whatsoever in nature from the respondent. Further, an indemnity bond dated 10.08.2018 was also executed in favour of respondent. Accordingly, the complainant vide its letter dated 13.08.2018 surrendered the original buyer agreement and payment receipts with the respondent for the process of refund. Moreover, as the request for refund by the complainant was made before the due date of possession i.e., 15.06.2019. Therefore, in view of Haryana Real Estate Regulatory

Authority, Gurugram (Forfeiture of Earnest Money by Builder) Regulation, 2018 dated 05.12.2018, the respondent is entitled for forfeiture of 10% of the sale consideration as earnest money. After considering the documents available on record as well as submissions made by the parties, it is determined that vide letter dated 13.08.2018, the complainant has surrendered the unit in question i.e., before the due date of possession i.e., 15.06.2019. However, the respondent has failed to refund the refundable amount after certain deductions as prescribed under law to the complainant and it has only partially refunded the principal amount to the complainant till date. Thus, after withdrawal from the project before the due date of possession, the respondent could not have retained more than 10% of the sale consideration and was bound to return the remaining. Even the Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928***, ***Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136***, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as ***Jayant Singhal and Anr. Vs. M/s M3M India Ltd.*** decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were

framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 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."***

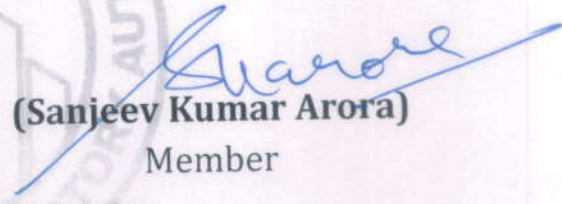
15. So, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and are directed to refund the paid-up amount of Rs.19,22,056/- after deducting 10% of the sale consideration of Rs.49,59,000/- being earnest money and after adjusting the amount already refunded by the respondent along with an interest @10.95% 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 surrender i.e., 13.08.2018 till actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

16. 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 respondents/promoter are directed to refund the paid-up amount of Rs.19,22,056/- after deducting 10% of the sale consideration of Rs.49,59,000/- being earnest money and after adjusting the amount already refunded by the respondent along with an interest @10.95% p.a. on the refundable amount from the date of surrender i.e., 13.08.2018 till its realization.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
17. Complaint stands disposed off.
18. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.07.2024

HARERA
GURUGRAM