

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

Order pronounced on: 11.09.2024

Name of the Builder		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/4896/2023	Hemlata Rangwani V/s M/s Neo Developers Pvt. Ltd. & Ors.	Manish Sharma (Complainant) Gunjan Kumar (Respondent)
2.	CR/4903/2023	Yogesh Rangwani V/s M/s Neo Developers Pvt. Ltd. & Ors.	Manish Sharma (Complainant) Gunjan Kumar (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Neo Square**" being developed by the same respondent/promoter i.e., **NEO Developers Private Limited**. The terms and conditions of the

builder buyer's agreements fulcrum of the issue involved in all these cases pertains to allotment and possession of the units in question along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram

5. Construction & 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. The Company on grant of Occupancy/Completion certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.

Clause 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."

1. Completion certificate- Not yet obtained

2. DTCP License no. 102 of 2008 dated 15.05.2008 valid upto 14.05.2025 - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.

3. Nature of Project- Commercial Colony

4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring	Date of execution of agreement for sale, Cancellation letter, Refund Request	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/4896/2023 Hemlata Rangwani Vs NEO Developers Private Limited & Ors. DOF-06.11.2023	Reply received on 14.03.2024	Shop no.43, Ground Floor, Tower-B, 565 sq. ft. (super area) (As on page no. 38 of complaint)	27.08.2013 (As on page no. 36 of complaint) Cancellation letter- 16.06.2017 (page 65 of complaint) Refund Request- 18.10.2022 (As on page 68 of complaint)	Due date- 15.06.2019 (Calculated from the date of start of construction) (inadvertently mentioned as 27.08.2016 on proceedings dated 07.08.2024) Offer of possession- Not offered	TSC: Rs.69,30,602.16/- (As per payment schedule on page no. 33 of complaint) AP: Rs.28,41,128/- (As on page no. 67 of complaint)	Allotment and possession of the unit along with delayed possession charges.
2.	CR/4903/2023 Yogesh Rangwani Vs NEO Developers Private Limited & Ors. DOF-06.11.2023	Reply received on 14.03.2023	Shop no.61, Floor-Ground Floor, Tower-3 (As on page no. 38 of complaint)	12.12.2012 (As on page no. 36 of complaint) Cancellation letter- 16.06.2017 (page 66 of complaint) Refund Request- 18.10.2022 (As on page 69 of complaint)	Due date- 15.06.2019 (Calculated from the date of start of construction) (inadvertently mentioned as 27.08.2016 on proceedings dated 07.08.2024) Offer of possession- Not offered	TSC: Rs.69,30,602.16/- (As per payment schedule on page no. 33 of complaint) AP: Rs.28,41,128/- (As on page no. 68 of complaint)	Allotment and possession of the unit along with delayed possession charges.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form

DOF- Date of filing complaint
 TSC- Total Sale consideration
 AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/4896/2023 titled as Hemlata Rangwani V/s Neo Developers Pvt. Ltd.*** are being taken into consideration for determining the reliefs of the allottee(s) qua allotment and possession of the unit in question along with delayed possession charges.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/4896/2023 titled as Hemlata Rangwani V/s Neo Developers Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Neo-Square", Sector-109, Gurugram, Haryana.
2.	Project area	8.237 acres
3.	Nature of project	Commercial Colony
4.	RERA registered	109 of 2017 dated 24.08.2017, valid upto 22.02.2024
5.	DTCP licence	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Allotment letter	24.05.2012 (As on page no. 56 of complaint)



7.	Builder Buyer Agreement	27.08.2013 (As on page no. 36 of complaint)
8.	Unit no.	Shop no.-43, Floor-Ground Floor, Tower-B (As on page no. 38 of complaint)
9.	Unit area	565 sq.ft. [Super-Area] (As on page no. 40 of complaint)
10.	Possession clause	Clause-5.2 <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 completion/Occupancy Certificate. The Company on grant of Occupancy/Completion Certificate. The Company on grant of Occupancy/Completion certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues.</i> 5.4 <i>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.</i>
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. In 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 i.e. 15.12.2015 being

		later + Grace period of 6 months is allowed being unqualified)
12.	Total sales consideration	Rs.69,30,602.16/- (As per payment schedule on page no. 33 of complaint)
13.	Amount paid by the complainant	Rs.28,41,128/- (As on page no. 67 of complaint)
14.	Cancellation letter	16.06.2017 (As on page no. 65 of complaint)
15.	E-mail by complainant seeking refund	18.10.2022 (As on page no. 68 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the complainant was allotted a unit bearing no.43, Tower B, Ground Floor in the project of the respondent named "Neo Square", Sector-109, Gurugram vide buyer's agreement dated 27.08.2013 for a total sale consideration of Rs.48,80,800/- against which the complainant has made a total payment of Rs.28,41,128/- towards the aforesaid unit.
- II. That the complainant always made the payment to the respondent as per the payment schedule in the hope that the aforesaid unit will be delivered on time by the respondent, but all the efforts are in vain.
- III. That the complainant has always been very cooperative with the respondent and has made the payments for the booking of the aforesaid unit, however, the respondent has miserably failed to deliver the possession within 36 months as per the agreed time, and even now no work is being done and carried at the site.

- IV. That the complainant, after waiting for such a long period and without getting a proper and satisfactory reply from the respondent issued a legal notice dated 16.01.2017 through her lawyer to the respondent, wherein requested the respondent to immediately hand over the physical and vacant possession of the unit. The respondent never responded to the legal notice issued by the complainant.
- V. That finding no alternative, the complainant filed the consumer complaint case before the Hon'ble State Commission, Delhi against the respondent, however, the forum opined that since the units are shops as such the forum does not have the jurisdiction.
- VI. That in June 2017, the representative of the respondent handed over a letter dated 16.06.2017, whereby it was informed to the complainant that their unit has been cancelled. After receiving the letter, the complainant approached Mr. Ashish Anand (Managing Director) and raised her grievance regarding the cancellation of the aforesaid unit upon which Ashish Anand assured and promise that he will look into the matter and do the needful. Thereafter, the complainant followed the matter with the company, but no action ever been taken. Finding no alternative, the complainant finally made a police complaint to the SHO Karol Bagh and the same resulted in FIR No. 330/2017 P.S. Karol Bagh. After the registration of the FIR, the complainant had been called by the IO of the case to the police station on many occasions for joining the police investigation, there the complainant also meets Mr. Ashish Anand during their visits to the police station. During visits, Ashish Anand showed his intention to settle the matter amicably.
- VII. That in February 2020, the complainant meets Ashish Anand at the police station whereby he offered to settle the dispute amicably and

said the respondent company is ready to return the amount received along with the penalty as mentioned in the builder-buyer agreement. Mr. Ashish Anand further informed the complainant that now the company is not in the position to hand over the possession of the aforesaid units and he further requested 10 days to provide the statement of account/ledger account for the aforesaid units. Accordingly, the complainant agreed to the same.

VIII. That in February-March 2020, Ashish Anand and the complainant meet in the police station where Ashish Anand handed over the undated ledger accounts of complainant and her husband. As per the ledger accounts, the respondent company admitted the liability of Rs.18,00,057/- approx., after receiving the statement, the complainant asked the respondent as to how this figure has arrived, upon which Ashish Anand refused to share any details of the complainant and her husband. However, Ashish Anand said that the company only can refund the amount as per the statement/ledger provided to the complainant. The complainant strongly objected to the same and said that he needed the complete due amount along with the penalty as per the builder-buyer agreement.

IX. That finding no alternative, the complainant sent an email to the respondent on 18.10.2022 and demanded their money of Rs.68,68,756/- collectively alongwith Rs.10 sq. ft. penalty from 2012 till today. Following the aforementioned email, in January 2023, during the proceedings at Tis Hazari Courts, Mr. Ashish Anand once again approached the complainant. He expressed his intention to settle the entire dispute and stated that he would hand over possession by the end of August 2023. Furthermore, he mentioned sharing a settlement draft and requested the complainant to contact

him after August 2023. However, in August 2023, the complainant attempted to contact the respondent, but received no response from their side. Subsequently, the complainant approached the Hon'ble forum by filing the present petition. That the total amount due and payable by the respondent is Rs.36,37,778/- till filing of the present petition. However, the complainant is agreeable to still buy the aforesaid property and ready to make the balance payment after adjusting the aforesaid amount as per the buyer agreement.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondent to handover and allot the unit in question along with delayed possession charges.
10. 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

11. The respondent has contested the complaint on the following grounds:
 - i. That the complainant and her husband had previously filed complaints bearing complaint no. 633/2017 & 634/2017 before the Hon'ble State Consumer Dispute Redressal Commission, New Delhi for seeking refund of amounts paid against the same units along with interest, for which the present complaint has been filed. It is imperative to bring to the kind attention of the Authority that the said complaints were dismissed by the Hon'ble State Commission.
 - ii. That the Act, 2016 came into force on 01.05.2017 and that the complainant herein was well aware of the fact that for regulating the real sector and protecting the interest of homebuyers and developers, the RERA Act, 2016 was enacted. However, the complainant consciously chooses to continue with their complaints

before the Hon'ble State Commission, Delhi rather than seeking redressal of her grievances through Authorities established under the RERA Act, 2016. Therefore, the present complaint should be dismissed solely on the ground that the complainant is doing forum shopping.

- iii. That the parties are bound by the principle of res judicata as it seeks to promote fair administration of justice and honesty and to prevent the law from abuse. It is humbly submitted that the previous complaints filed before the Hon'ble SCDRC, New Delhi were on the same cause of action and the Hon'ble State Commission while dismissing the said complaints did not grant any liberty to the complainants to approach any other competent authority.
- iv. That the Authority in complaint bearing no. 1328 of 2019 titled as "Ram Avtar Nijhawan vs M/s Neo Developers Pvt Ltd", pertaining to the same project i.e., 'NEO Square' vide order dated 05.09.2019 held that the due date of start of construction for the instant project was 15.12.2015. The Authority also granted a period of 6 months as grace period. Accordingly, the due date of delivery of possession in the present case comes out to be 15.06.2019.
- v. That the respondent no. 1 from time-to-time issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant delayed the same for one or the other reasons. It is to be noted that the complainant miserably failed to comply the payment plan and failed to remit the outstanding dues on time as and when demanded by the respondent no. 1. It is submitted that the respondent no. 1 had not received a single amount from the complainant since 2016 despite of repeated reminders, the complainant deliberately failed to clear the



outstanding dues. That in terms of the agreement, the respondent no. 1 was constrained to cancel the unit allotted to complainant due to her failure to clear the outstanding dues vide cancellation letter dated 16.06.2017.

- vi. That since the cancellation was done prior to the due date of possession and due to the default of the complainant, the respondent is obligated under clause 4.5 of the buyer's agreement to deduct earnest money, brokerage, interest on delayed payment and all statutory dues/taxes already paid to the competent authorities.
- vii. That post cancellation of the unit, the respondent no. 1 vide letter dated 23.10.2017 requested the complainant to submit the original documents within the period of 15 days such as provisional allotment letter, builder buyer agreement, payment receipts for the purposes of carrying out refund proceedings. It was further informed to the complainant that delay on her part in completing the above stated formalities would result in delay in processing their payments.
- viii. That the respondent no. 2 and respondent no. 3 are directors of respondent no. 1. The respondent no. 2 and respondent no. 3 are not a necessary or proper party in the present complaint. It is pertinent to note that the respondent no. 2 and respondent no. 3, cannot be held liable for the respondent no. 1 because of their key managerial roles.
- ix. That the respondent no. 2 and respondent no. 3, being the directors of the respondent no. 1 cannot be held liable, unless and until there are specific reliefs sought against them, which in the present complaint is not the case. Further, there is no privity of contract between the complainant and the respondent no. 2 and respondent

no. 3, therefore, in the interest of justice the respondent no. 2 and respondent no.3, may not be arrayed as parties and be deleted from the present complaint.

12. 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 submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

14. 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

15. 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.

16. 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 objections raised by the respondent:

F.I Objection regarding complaint being barred by res-judicata.

17. The respondent no.1 has taken a stand that the present complaint is not maintainable as the complainant and her husband had previously filed complaints bearing complaint no. 633/2017 & 634/2017 before the Hon'ble State Consumer Dispute Redressal Commission, New Delhi for seeking refund of amounts paid against the same units along with interest, for which the present complaint has been filed and the said complaints were dismissed by the Hon'ble State Commission vide order dated 05.05.2017. Further, the Hon'ble State Commission while dismissing the said complaints did not grant any liberty to the complainant to approach any other competent authority. Moreover, the Act, 2016 came into force on 01.05.2017 and that the complainant was well aware of the fact that for regulating the real sector and protecting the interest of homebuyers and developers, the RERA Act, 2016 was enacted. However, the complainant consciously chooses to continue with their complaints before the Hon'ble State Commission, Delhi rather than seeking redressal of her grievances through Authorities established under the RERA Act, 2016.
18. After careful perusal of the order dated 05.05.2017, it is determined that firstly the said complaint was filed before coming into force of the Act, 2016.

Secondly, the relief sought by the complainant in the said complaint was different from the reliefs being sought in the present complaint and hence the doctrine of res-judicata is not attracted by the present complaint. Moreover, the said complaint was dismissed being not maintainable under the provisions of Consumer Protection Act, 1986 which does not mean that the said complaint is not maintainable under any law of the land and after coming into force of the Act, 2016, the complainant/allottee is well within her right to seek redressal of her grievance from the Authority. Thus, the contention of promoter that the present complaint is not maintainable and barred by res-judicata stands rejected.

F.II Objection regarding maintainability of complaint against respondent no. 2 & 3.

19. The respondent no.1 has further submitted that the respondent no. 2 and respondent no. 3 are not a necessary or proper party in the present complaint and cannot be held liable for the respondent no. 1 because of their key managerial roles. After going through the documents available on record as well as submissions made by the parties, the Authority is satisfied that in the directors of the promoter cannot be held personally liable in their individual capacity except in case of tort, fraud or breach of duty which is not a case in the instant matter. Further, all the demands against the unit in question were demanded by respondent no.1 and were paid to it as well and there is no privity of contract between the complainant and the respondent no. 2 and respondent no. 3. Moreover, the complainant in the present complaint has not sought any relief against the respondent no.2 & 3. In view of the above, the respondent no.2 & 3 is hereby deleted from the array of parties.

G. Findings on the relief sought by the complainant:

- G. I Direct the respondent to handover and allot the unit in question along with delayed possession charges.**



20. The complainant was allotted a commercial shop bearing no.43, admeasuring 565 sq. ft., Tower B, Ground Floor in the project of the respondent named "Neo Square", Sector-109, Gurugram vide buyer's agreement dated 27.08.2013 for a total sale consideration of Rs.69,30,602.16/- against which the complainant has made a sum of Rs.28,41,128/- in all. As per clause 5.2 and 5.4 of the agreement dated 27.08.2013, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of the agreement or from the date of start of construction, whichever is later plus 6 months of grace period. The authority vide order dated 05.09.2019 in the matter of "Ram Avtar Nijhawan Vs. Neo Developers Pvt. Ltd.", held that the date of starting of construction would be 15.12.2015 for this project. Given the fact that the grace period was unqualified, the same is allowed. Accordingly, in the present case, the due date of possession comes out to be 15.06.2019.
21. The respondent/promoter has submitted that from time-to-time it has issued demand request/reminders to the complainant to clear the outstanding dues against the booked unit. However, the complainant miserably failed to comply the payment plan and failed to remit the outstanding dues on time as and when demanded by the respondent and since 2016 despite of repeated reminders, the complainant deliberately failed to clear the outstanding dues. Accordingly, in terms of the agreement, the respondent no. 1 was constrained to cancel the unit allotted to complainant due to her failure to clear the outstanding dues vide cancellation letter dated 16.06.2017. The complainant has submitted that the respondent has miserably failed to deliver the possession within 36 months as per the agreed time, and even now no work is being done and carried at the site. After waiting for such a long period and without getting a proper and satisfactory reply from the respondent, the complainant issued

a legal notice dated 16.01.2017 through her lawyer to the respondent, wherein she requested the respondent to immediately hand over the physical and vacant possession of the unit. However, the respondent never responded to the said legal notice. Finding no alternative, the complainant filed the consumer complaint before the State Commission, Delhi against the respondent, however, the forum opined that since the units are shops as such the forum does not have the jurisdiction. Thereafter, the respondent cancelled the allotment vide cancellation letter dated 16.06.2017. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 16.06.2017 is valid or not.

22. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs.28,41,128/- against the sale consideration of Rs.69,30,602.16/- and no payment was made by the complainant after October 2016. The respondent/builder has sent several demand/reminder letters to the complainant to comply with her obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 16.06.2017. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement is held to be valid. Therefore, after considering the factual as well as legal circumstances of this case, only refund can be granted to the complainant after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent is 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, (1970) 1 SCR 928 and Sirdar K.B.***

Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in **CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in **CC/2766/2017** in case titled as **Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed 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."

23. Keeping in view the aforesaid factual and legal provisions, the respondent/promoter is directed to refund the paid-up amount of Rs.28,41,128/- after deducting 10% of the sale consideration of Rs.69,30,602.16/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 16.06.2017 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.28,41,128/- after deducting 10% of the sale consideration of Rs.69,30,602.16/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 16.06.2017 till its realization
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.



HARERA
GURUGRAM

Complaint no. 4896 of 2023 and 1 other

26. The complaints stand disposed of.
27. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2024



HARERA
GURUGRAM