

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

Complaint no.	3491 of 2021
Date of filing of complaint	08.09.2021
Date of decision	13.08.2024

Renu Goel R/O: 71, Karuna Kunj. Dwarka, Plot No. 28, Sector-3, Delhi-110059	Complainant
Versus	
Neo Developers Private Limited Regd. Office: 32 b, Pusa Road, Delhi-110005.	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Dharmender Sehrawat (Advocate)	Complainant
Sh. Venkat Rao (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Neo Square", Sector-109, Gurugram
2.	Nature of the project	Commercial
3.	Project area	3.089 acres
4.	DTCP license no.	102 of 2008 dated 15.05.2008
5.	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid upto 23.08.2021 plus 6 months extension due to covid-19 = 23.02.2022
6.	Shop no.	Shop no-62, ground floor, tower-b (as on page 21-A of complaint)
7.	Unit area admeasuring (super area)	565 sq.ft (as on page 21-A of complaint)
8.	Date of builder buyer agreement	19.11.2012 (as on page 19-A of the complaint)
9.	Possession clause	Clause-5.2 <i>That the company shall complete the construction of the said Building/Complex,</i>

		<i>within which the said space is located within 36 months from the due 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 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>
10.	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 that the construction started in December 2015.
12.	Due date of possession	15.06.2019 (Calculated from the date of commencement of construction)
12.	Total sale consideration	Rs.59,32,500/- (basic sale price) (Annexure P1 at page no 21-A of complaint) Rs.74,56,370/- (As per payment schedule at page no-30 of the complaint)
13.	Amount paid by the complainant	Rs.49,56,408/- (As per SoA dated 27.08.2021 annexed at page 49 of reply)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Final notice	25.03.2019
17.	Cancellation letter	10.06.2019

		(Annexure P4 at page no. 41 of the complaint)
18.	Grace period utilization	Grace period of 6 months is allowed as decided in CR/1329/2019

B. Facts of the complaint:

3. That the representatives of the respondent company approached the complainant and represented that a commercial project by the name of "NEO SQUARE" situated at Sector-109, Gurgaon, Haryana is being developed and constructed by the respondent. Thereafter, the respondent company convinced the complainant with their marketing tactics to book a commercial unit in the project. The complainant to book a shop in the project with a basic sale price of Rs. 59,32,500/-.
4. That on the pretext of false representations made by the officials of the respondent, the complainant submitted the application form dated 17.09.2012 for allotment of a shop in the said project and also paid a sum of Rs. 5,93,250/- as the booking amount.
5. That a provisional allotment letter as per the standard format was issued by the respondent and the shop no. 62 in tower -b, on the ground floor, having a super area of 565 Sq. Ft. was allotted to the complainant. That thereafter, a Buyer's Agreement was executed between the Respondent and the complainant on. 19.11.2012 wherein Clause 5.2 states that the respondent shall complete the construction within 36 months from the execution of the buyer' agreement.

6. That thereafter, the respondent kept raising demands for payment and the complainant believing in good faith that the construction was going on as per schedule, kept making timely payments as and when the respondent demanded. From the year 2012 up until the year 2017, the complainant has made a total payment of Rs. 49,56,408/- which is more than 60% of the cost of the unit.
7. That thereafter, the complainant was very shocked to know that the construction was way behind the schedule and that the respondent would not be able to honour their side of the bargain. However, the complainant decided to be cooperative and continued to make the payment in good faith that the respondent is trying its best to develop the project and hand over the possession as soon as possible.
8. That the complainant received another shock when she got to know that the respondent had changed the entire layout of the project, from the website of the respondent and other brokers in the market. The respondent had even decreased the height of the shop from what was shown in the brochure and promised to the complainant, without taking the permission/consent or even informing the complainant about the same. Thereafter, the complainant raised the query regarding the change in layout with the officials of the respondent but they chose to ignore the complainant. The complainant tried to meet the officials of the respondent, tried to contact them through call/email but to no avail as they kept prolonging the matter on one pretext or other. The complainant was left with no option but to withhold the payment until the queries of the complainant were resolved.
9. That the complainant kept seeking clarifications regarding change in the layout, but the same was ignored as usual. Meanwhile, the respondent also

failed to provide justification for the delay in construction of the project and in handing over of the possession. The husband of the complainant had even sent an email dated 22.5.2019 stating that the complainant was ready to make the payment of the outstanding amount subject to clarification of previous and new queries regarding the project and the shop, however despite receipt of the emails no revert was provided by the respondent for malafide reasons.

10. That the complainant was bewildered to receive a notice of cancellation on 10.06.2019 through email stating that the allotment of shop no. 62 in Tower B was cancelled on the account of outstanding payment. The complainant sent a reply dated 21.06.2019 to the notice through email stating that the complainant is interested in keeping the shop and also willing to make all the payments subject to clarification of queries relating change in the layout, change in the height of the shop, location and area of the shop etc.
11. That thereafter, the complainant tried to sort out the issue with the respondent but the respondent for reasons best known to them refused to disclose the details relating to the layout of the project and the area and changes made in the shop booked by the complainant.
12. That it is now clear from the facts narrated above that the respondent has acted illegally and deceived the complainant. As per the buyer's agreement, the respondent was under an obligation to complete the construction within 36 months i.e. by 19.10.2015. That 5 years have gone by from the actual date of completion of construction but the same has not been completed yet.
13. That first, the complainant failed to construct the project within the promised time frame and on top of that kept making demand for the

payment. Further, the complainant changed the layout of the project and made changes in the dimensions of the shop without the consent of the complainant and when the complainant sought clarification for these acts of the respondent, the respondent crossed the limit and cancelled the allotment of the shop. Therefore, it is clear that the respondent had an intention of cheating, deceiving and extorting all the hard earned money of the complainant and that the respondent never planned on handing over the possession of the shop to the complainant.

14. That respondent has not bothered to act accordingly and did not comply with the terms and conditions of the allotment letter and did not handover the possession of the unit till date.
15. That the complainants avert that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on its part. They are also liable to pay pendent lite interest and further interest till date of actual payment.
16. That since there complainant was not at fault, thus after receiving more than 60% of the total cost of the shop, the respondent had not right to cancel the allotment of the complainant. All this is done by them with malafide reasons and as such the allotment of the complainant is required to be restored.

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):
 - i. Restore the booking of the unit made by the complainant.

- ii. Handover the physical possession of the Shop No. 62 in Tower B, ground floor situated at “**NEO SQUARE**”, Sector-109, Gurgaon, Haryana purchased by the complainants.
- iii. Pay compensation for delay in construction and deliver of possession of the unit.

D. Reply by respondent:

18. That at the very outset, it is stated that the instant complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached the Authority with clean hands. The instant complaint is not maintainable in the eyes of the law and is devoid of merit and is fit to be dismissed *in limine*.
19. That as per clause 4.6 of the agreement the respondent is not obliged to send demand notices or reminders regarding the payments to be made by the complainant. The complainant is to make regular payments as per the payment schedule on their own volition. However, for ease of the complainant, the respondent sent demand notices and the repeated reminders, to clear the outstanding dues. It is pertinent to mention that the complainant despite receiving various demands letters failed to make any payments towards the total sale consideration of the unit.
20. That the complainant has not paid the instalments since 19.09.2017 despite receiving repeated reminders. A table is being provided herein below for showing the instalments which was not paid by the complainant till date:

S.No.	Reminder Letter Date	Stage For Which It Was Raised	Amount
1.	09.09.2017	Start of Floor below Top Floor	Rs. 8,94,053/-
2.	08.11.2017	Start of Top Floor	Rs. 14,98,252/-
3.	05.03.2018	Start of Internal Plaster	Rs. 19,96,582/-
4.	28.06.2018	Start of External Glazing/Finishing	Rs. 22,75,491/-
5.	25.03.2019	Final Notice	To clear all the dues.

21. Further it is brought to the attention of the Authority that though the complainant had paid Rs. 49,56,408/- against the total sale consideration of Rs. 74,56,370/-, there exist vast outstanding amounts to the tune of Rs.46,07,826/- inclusive of GST, EDC/IDC & VAT, that stand due and payable on part of the complainant till date. That in the light of the facts mentioned herein, the complainant cannot be allowed to take the benefit of his own wrong. Therefore, the complaint ought to be dismissed right at the very outset.

22. It is most humbly brought to the notice of the Authority that the complainant is a habitual defaulter. Previously also termination letter dated 28.03.2013 was sent to the complainant due to default in payment, wherein the complainant was asked to clear the dues failing which the unit would be cancelled. A perusal of the Letter dated 28.03.2013 clearly enumerates that the complainant is always defaulting in its instalments. Since, the complainant at that point of time cleared the dues after receipt of the Letter dated 28.03.2013 the respondent did not cancel the unit.
23. However, it is pertinent to mention that despite receiving subsequent demands letter the complainant preferred to ignore them and failed to pay the due amounts. It is submitted that the respondent was again compelled to send a final notice dated 25.03.2019 to the complainant requesting to clear her dues by 04.04.2019 and specifically stated that in case the demands were not paid the application for booking of the complainant will be cancelled.
24. That despite receiving the aforementioned notice dated 25.03.2019 the complainant failed to make payments towards the due amount payable to the respondent. It is submitted that respondent being a responsible developer/promoter fulfilled its obligation and has reminded the complainant to make payment towards the due amount but it is the complainant who did not paid any heed towards those reminders.
25. It is most humbly submitted that in Clause 4.5 of the agreement it is specifically agreed between the complainant and the respondent that if the complainant fails to comply with the payment schedule, then the respondent has the right to cancel the agreement dated 19.11.2012. Furthermore, it is specifically submitted that in **Clause 4.5** of the

agreement dated *sic* 19.11.2012 it was mutually decided between the parties that in case of failure on part of the complainant in making the timely payment the agreement shall stand cancelled and the respondent shall be free to resell and/or deal with the unit in any manner whatsoever at its sole discretion.

26. It the respondent after reminding the complainant to clear the dues was left with no choice but to cancel the agreement of the complainant vide cancellation letter dated 10.06.2019 as per clause 4.5 of the agreement.

27. It is humbly submitted that the present complaint is only an afterthought of the complainant to hide her own default. In fact, after cancellation of the Unit the complainant's husband has been in constant touch with the representative of the respondent for refund after deduction of the earnest money. However, all of a sudden, the complainant has filed the present complaint with a malafide intention only to extract unjust enrichment from the respondent.

28. All other averments were denied in total.

29. 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. Jurisdiction of the authority:

30. 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

31. 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.

E. II Subject matter jurisdiction

32. 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.

33. 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.

F. Finding on the relief sought by the complainants.

F.I Restore the booking of the unit made by the complainant.

F.II Handover the physical possession of the Shop No. 62 in Tower B, ground floor situated at "**NEO SQUARE**", Sector-109, Gurgaon, Haryana purchased by the complainants).

34. The above mentioned reliefs no. F.I & F.II as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

35. It is pertinent to mention here that the counsel for the complainant during the court proceeding dated 09.01.2024, requested for seeking confirmation from the complainant about the request of the refund made to the respondent. During the course of proceeding dated 02.04.2024, the counsel for the complainant states that no request for refund was made. In fact, post cancellation, the respondent expressed its inability to refund the amount vide email dated 10.06.2020 due to Covid-19. The email has been placed on record during the course of proceedings. Further, the proxy counsel for the respondent states that the respondent is still willing to refund the amount to the complainant and the counsel for the complainant agrees.

36. Thereafter, during the course of proceeding dated 09.07.2024, the Authority asked the respondent as to what amount the respondent is agreeable to refund. On asking the Authority, the counsel for the respondent states that respondent is willing to refund the amount deposited by the complainant i.e. Rs. 49, 56,408/- after deduction of the earnest money as the unit stands cancelled.

37. The complainant was allotted a shop no 62, in tower B in the project "Neo Square" by the respondent builder for a total consideration of Rs. 74,56,370/- against which she paid a sum of Rs. 49,56,408/- which is

approx.. 67% of the total sale consideration. The respondent had sent final reminder letter dated 25.03.2019 to make payment of the outstanding amount. The complainant continued with their default and again failed to make payment even after receipt of final reminder letter.

38. It is important to note that as per clause 4.5 of the buyer agreement dated 19.11.2012, it was incumbent on the allottee to comply with the terms and conditions of the agreement. However, complainant failed to clear the outstanding dues despite of repeated reminders and requests which restrained the respondent to cancel the unit of complainant in the project of the respondent. The complainant received cancellation notice dated 10.06.2019 but there is nothing on record which shows that respondent-builder refunded the balance amount after deduction of earnest money.

39. While discussing earlier, it has been held that the complainant was in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of buyer agreement. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottees are under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The complainants continued with their default and making payment even after of various reminder letters, which led to cancellation of their unit. The Authority is of considered view that the cancellation done by respondent is valid in the eyes of law.

40. The deductions from the amount refundable are to be made 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."

41. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the

allotted unit and respondent/builder is directed to refund the paid-up amount by the complainants after deducting 10% of the sale consideration being earnest money along with an interest @11% 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., 10.06.2019 till actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.V Compensation

42. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. Directions of the Authority:

43. 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 amount i.e., Rs. 49,56,408/- after deducting 10% of the sale consideration being

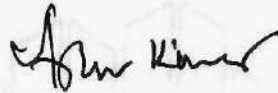
earnest money along with an interest @11% p.a. on the refundable amount, from the date cancellation i.e., 10.06.2019, till the actual date of refund of the deposited amount.

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.

44. Complaint stands disposed of.

45. File be consigned to the registry.

(Demitted office)
(Sanjeev Kumar Arora)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.08.2024


(Ashok Sangwan)
Member