

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

**Complaint no. :** 344 of 2023  
**Date of complaint :** 06.02.2023  
**Date of order :** 05.03.2025

Vipin Pruthi and Vandana Pruthi,  
Through SPA Mukesh Pruthi,  
**R/o:** - Villa 29, Belleza, Emaar Marbella Villas,  
Sector-66, Gurugram-122102.

**Complainants**

**Versus**

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

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Prashant Sheoran (Advocate)  
Venket Rao (Advocate)

**Complainants  
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 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 allottees as per the agreement for sale executed *inter se*.

**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.	Unit no.	Unit no.-59, Ground floor (As on page no. 22 of reply)
5.	Unit area admeasuring	573 sq.ft. (super built-up area) (As on page no. 22 of reply) Decrease in area- 492 sq.ft. (as per Annexure C-6 at page 64 of complaint)
6.	Provisional allotment letter	09.10.2012 (As on page no. 53 of complaint)
7.	Date of execution of apartment buyer's agreement	16.12.2013 (As on page no. 20 of reply)
8.	Possession clause	<p>5.2 That the company shall complete the construction of the said building/complex within which the said space is located within <b>36 months from the date of execution of this agreement or from the start of construction whichever is later</b> 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.</p> <p>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.</p> <p>(Emphasis supplied) (As on page no. 28 of reply)</p>



9.	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.
10.	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)
11.	Total sale consideration for shop admeasuring 573 sq.ft. super built-up area	Rs. 72,94,558/- (As per payment schedule annexed with BBA at page 41 of reply)
12.	Amount paid by the complainants	Rs. 73,16,150/- (As per account statement on page no. 43 of reply)
13.	Occupation certificate /Completion certificate	14.08.2024 (as per DTCP website)
14.	Offer of possession	Not offered
15.	Cancellation Letter	16.01.2020 (As on page no. 42 of reply)

**B. Facts of the complaint**

8. The complainant vide complaint as well as written submission dated 19.09.2024 has made the following submissions: -

- I. That the complainant was allotted a unit bearing no. 59, admeasuring 573 sq.ft. in the project of the respondent named "Neo Square" situated at Sector-109, Gurugram vide provisional allotment letter dated 09.10.2012 for a total sale consideration of Rs.72,94,558/- against which the complainant has paid a sum of Rs.73,16,348/- till 31.03.2019. It is further submitted that the complainant has paid a huge amount of Rs.10,37,130/- towards





PLC (Corner + NPR) for said unit.

- II. That the floor plan shared by the respondent at the time of booking is completely different from the floor plan they have shared on their website. It is evident to mention that at the time of booking the unit no. 59 on ground floor was admeasuring 573 sq.ft. and on the floor plan shared by the respondent on their website, the unit no. 59 is admeasuring 492 sq.ft. Thus, the area has decreased by 15.21%. The respondent has clearly violated Section 14 of the Act, 2016.
- III. That the Authority has decided the date 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. Hence, in the present matter the respondent has failed to handover the possession of the unit on the due date i.e. 15.06.2019 which is an obligation under Section 11(4)(a) of the Act, 2016.
- IV. That the respondent on his own and without any fault on part of the complainant allegedly cancelled the allotted unit on 16.01.2020. The respondent also failed to intimate the complainant regarding the cancellation as well. The cancellation letter was never received by the complainant. The said cancellation is completely baseless and incorrect as the complainant has been compliant of all terms of booking and adhered to payment of instalment regularly and on time.
- V. That when the complainant visited the office of the respondent on 13.04.2022 and came to know about the cancellation of his allotted unit for which he has paid more than the demanded amount prior to the date of cancellation. The respondent has also



sent an email dated 13.04.2022 confirming the said visit of the complainant.

- VI. That the complainant after being shocked that his allotted unit has been cancelled, he sent another email dated 21.04.2022 to the respondent stating that the total amount payable prior to possession was Rs.68,99,815/- and as of December 2018 the complainant paid Rs.70,99,039/- as per the demands raised and in addition, he has also paid Rs.2,17,111/- as VAT. This is more than 100% of the original amount due prior to possession. The complainant also requested the respondent to make arrangements to handover his said unit as per the site plan so annexed with the booking form.
- VII. That the respondent sent an email dated 06.05.2022 stating that as per their record the unit stands cancelled and they are trying to reinstate the unit and will inform once an alternate unit is available. This clearly shows the true intention of the respondent who has cleverly cancelled the complainant's unit and tried to cover up its faults.
- VIII. That the complainant sent emails on 13.05.2022 and 30.05.2022 to the respondent inquiring the status of the delivery of possession of his allotted unit no. 59. But unfortunately, no response has been received by the respondent till date.
- IX. That vide email dated 04.04.2020, the respondent intimated the complainant that due to force majeure circumstances, the delivery of the unit in question shall be extended for a further period of 6 months or until lockdown is extended. It is clear that as of 04.04.2020, the respondent admits that the allotment of the complainant still subsists.



- X. That as per buyer's agreement, the unit of the complainant was 573 sq.ft. and the respondent continued demanding payments from the complainant for this 573 sq.ft. area until December 2018. However, as per official website of the respondent, the unit of the complainant was shown 492 sq.ft.
- XI. That the respondent has concealed the fact that the unit of the complainant does not exist due to change in plans. It is submitted that this fact was never revealed by the respondent in its reply; instead, the respondent consistently submitted that they had the right to change the plans and the area of the unit could have changed. However, for the first time on 04.09.2024, the respondent revealed that the unit in question does not exist.
- XII. That the statement of account submitted by the respondent in its reply is manipulated and was prepared on an area of 573 sq.ft. while as per respondent's own website the area of the unit in question was shown as 492 sq.ft. Even otherwise, the respondent has levied service tax, VAT and GST altogether in the same statement, which is not permissible.
- XIII. That the respondent has no right to deny possession of the unit by simply stating that the unit in question does not exist. It is therefore prayed that the respondent be directed to handover possession of a similarly situated unit at the same price and with the same amenities to the complainant and be further directed to pay delay possession charges until actual handing over of possession in the interest of justice.

**C. Relief sought by the complainant:**

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

- i. Direct the respondent to pay delay possession charges from the due date of possession till actual handing over of possession.
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 vide its reply dated 22.11.2023 has contested the complaint on the following grounds:

- i. That the present complaint is hopelessly barred by limitation as the unit in question was cancelled vide cancellation letter dated 16.01.2020. Therefore, the cause of action, if any, accrued on 16.01.2020 itself. However, the present complaint has been filed only on 07.02.2023 i.e., almost after more than 3 years after cancellation of the concerned unit.
- ii. That under the agreement dated 16.12.2013, the complainant was bound to make timely payment of instalments in accordance with the demands raised by the respondent. It is to be noted, that the complainant has only paid Rs.73,16,150/- against the dues of Rs.79,51,429/-, including of interest on delayed payment, which is why the respondent was constrained to cancel the unit of the complainant on 16.01.2020 after making repetitive reminders to the complainant.
- iii. That the complainant has failed to comply with the schedule of payments which was issued by respondent within the said buyer's agreement despite multiple reminders sent to the complainant in this regard. It is pertinent to mention herein that the complainant has opted for construction linked plan and the respondent accordingly raised their demands on achievement of relevant milestones. However, the complainant intentionally and

deliberately failed to make the above said payments as per the above said demand letters. That being left with no option, the respondent was constrained to issue cancellation letter dated 16.01.2020.

- iv. That the respondent post cancellation of the unit, requested the complainant to handover the original documents pertaining to the unit to the respondent and collect the refund amount subject to necessary deduction adjustments as per the terms and conditions of the agreement dated 16.12.2013. However, the complainants never paid heed to the said request of the respondent and further did not come forward to handover the original documents to the respondents and collect the refund amount, if any.
  - v. That as per order dated 05.09.2019 in complaint bearing no. 1328/2019, titled as "Ram Avtar Nijhawan vs M/s NEO Developers Pvt Ltd", this Hon'ble Authority decided and declared "15.12.2015" as the date of start of construction for the project "Neo Square" and hence as per the construction date i.e., 15.12.2015 the due date for handing over of the possession in the instant case comes out to be 15.06.2019.
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 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 relief sought by the complainant**

**F. I Direct the respondent to pay delay possession charges from the due date of possession till actual handing over of possession.**

17. The complainant was allotted a unit bearing no. 59, Tower-A, Ground Floor admeasuring 573 sq.ft. in the project of the respondent named "Neo Square"

situated at Sector-109, Gurugram vide buyer's agreement dated 16.12.2013 for a total sale consideration of Rs.72,94,558/- against which the complainant has paid a sum of Rs.73,16,348/- till date. As per clause 5.2 of the agreement dated 16.12.2013, the due date for handing over of possession was 15.09.2019. The complainants have submitted that the respondent on its own and without any fault on part of the complainant has allegedly cancelled the allotted unit on 16.01.2020 and the said cancellation letter was never received by them. The said cancellation is completely baseless and incorrect as the complainants have been compliant of all terms of booking and adhered to payment of instalment regularly and on time. Further, the total amount payable prior to possession was Rs.68,99,815/- and as of December 2018 the complainants paid Rs.70,99,039/- as per the demands raised and in addition, they have also paid Rs.2,17,111/- as VAT. Furthermore, as per buyer's agreement, the unit of the complainants was 573 sq.ft. and the respondent continued demanding payments from the complainant for this 573 sq.ft. area until December 2018. However, as per official website of the respondent, the unit of the complainants was shown 492 sq.ft. The statement of account submitted by the respondent in its reply is manipulated and was prepared on an area of 573 sq.ft. Even otherwise, the respondent has levied service tax, VAT and GST altogether in the same statement, which is not permissible. The complainants have further submitted that they came to know about the cancellation of their allotted unit only when they visited the office of the respondent on 13.04.2022. The respondent has submitted that the present complaint is hopelessly barred by limitation as the present complaint has been filed after more than 3 years after cancellation of the concerned unit. Further, under the agreement dated 16.12.2013, the complainants were bound to make timely payment of instalments in accordance with the demands raised by the respondent and

the complainants have only paid Rs.73,16,150/- against the dues of Rs.79,51,429/-, including of interest on delayed payment. The complainants have failed to comply with the schedule of payments which was issued by respondent within the said buyer's agreement despite multiple reminders sent to the complainants in this regard. That being left with no option, the respondent was constrained to issue cancellation letter dated 16.01.2020. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 16.01.2020 is valid or not.

18. 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 complainants have paid an amount of Rs.73,16,150/- against the total sale consideration of Rs.72,94,558/-. As per clause 5.2 of the agreement, the due date for handing over of possession was 15.06.2019. The respondent has contended that as per the statement of account annexed with the reply at Annexure R4 total sale consideration of the unit in question was Rs.79,51,429/- including of interest on delayed payment and the complainants have failed to clear their outstanding dues due to which their allotment was cancelled. However, as per the payment plan agreed between the parties vide agreement dated 16.12.2013, the total amount payable prior to notice of possession was Rs.68,99,815/- and an amount of Rs.3,94,743/- was payable at the time of offer of possession. However, in the instant case the complainants have already paid more than 100% of the sale consideration back in December 2018. Thereafter, no fresh demand of outstanding dues, if any was raised by the respondent rather after one year, a cancellation letter dated 16.01.2020 was allegedly issued to the complainants. Moreover, the counsel for the respondent vide proceedings dated 04.09.2024 has submitted that the unit in question does not exist due to change in plans and the amount deposited by the

complainants is yet to be refunded. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the cancellation letter dated 16.01.2020 cannot be held valid in the eyes of law and is hereby set aside.

19. It is further observed that due to above submission of the counsel for the respondent that the unit in question does not exist due to change in plans, the authority vide proceedings dated 16.10.2024, directed the respondent to submit on affidavit whether similarly located shops/units of same size and specifications as per the agreement dated 16.12.2013 is available with it in the project in question as well as copy of original and finally approved plans. However, the said order of the authority was not complied by the respondent despite multiple opportunities. Accordingly, vide order dated 18.12.2024, a penalty of Rs.7 lacs was imposed on the respondent for non-compliance of the order of the authority and the respondent was further directed to submit the required information in form of an affidavit within a period of 2 weeks. Thereafter, the respondent in compliance of the order dated 16.10.2024 submitted an affidavit dated 24.12.2024 in the registry of the authority stating that the similarly located shop/unit is not available with it on the ground floor due to change in building plans and the respondent is willing to refund the entire amount paid by the complainants against the booked unit.
20. The counsel for the complainants during proceedings dated 05.03.2025 stated at bar since the respondent has stated through affidavit that the unit/similarly situated unit is not available on the ground floor and the respondent is ready and willing to refund the entire amount, the complainants are ready to accept the refund along with interest from the date of each payment.

21. Keeping in view the fact that the complainant/allottees now wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016. Sec. 18(1) of the Act 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)***

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount

received by the promoter in respect of the unit with interest at such rate as may be prescribed.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
24. The respondent/promoter is further directed to deposit the penalty of Rs.7 Lacs already imposed on it vide order dated 18.12.2024 in the accounts branch of the authority within a period of one month, failing which legal consequences shall follow.

**G. Directions of the authority**

25. 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):
- The respondent/promoter is directed to refund the entire amount received by it from the complainants i.e. Rs.73,16,150/- along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
  - The respondent/promoter is further directed to deposit the penalty of Rs.7 Lacs already imposed on it vide order dated 18.12.2024 in the

accounts branch of the authority within a period of one month, failing which legal consequences shall follow.

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.

26. The complaints stand disposed of.

27. Files be consigned to registry.

**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.03.2025



**HARERA**  
**GURUGRAM**