

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

Complaint no.:	536 of 2023
Date of complaint:	07.02.2023
Order Reserved On:	18.04.2025
Order Pronounced On:	23.07.2025

M/s Atombridge Networks Pvt. Ltd.

Address: - Plot No. 420, 1st Floor, Kakrolla Housing Complex, Dwarka Mor, New Delhi-110078**Complainant**

Versus

M/s Neo Developers Pvt. Ltd.

Office at: - 1205, Tower B, Signature Tower, South City 1, Gurugram**Respondent****CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Sh. B.L Jangra

Sh. Vikas

Complainant
Respondent**ORDER**

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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(s), 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 and location of the project	"Neo Square", Sector 109, Gurugram
2.	Project area	8.237 acres
3.	Nature of project	Commercial Complex
4.	RERA registered/not registered	Part registered Vide registration no. 109 of 2017 dated 24.08.2017 Valid upto 23.08.2021
5.	DTPC license no. & validity status	102 of 2008 dated 15.05.2008 valid upto 14.05.2024
	Name of licensee	Shrimaya Buildcon Pvt. Ltd. & 5 others
6.	Welcome Letter	21.09.2018 (page no. 24 of complaint)
7.	Buyers agreement	Not executed
8.	Unit no.	12A, Food Court (3 rd Floor) (as per applicant ledger dated 15.10.2020 at page no. 26 of complaint)
9.	Unit area admeasuring (super area)	1,614 sq. ft. (as per applicant ledger dated 15.10.2020 at page no. 26 of complaint)

10.	Demand letters by respondent	27.05.2019, 22.10.2019 (page no. 30-32 of reply)
11.	Cancellation email by respondent	07.12.2022 (page no. 28 of complaint)
12.	Possession clause	NA
13.	Due date of possession	21.09.2021 (calculated from the date of welcome letter as BBA is not executed)
14.	Total sale consideration	Rs.1,49,14,974/- (as per applicant ledger dated 15.10.2020 at page no. 26 of complaint)
15.	Total amount paid by the complainant	Rs.42,51,000/- (as per applicant ledger dated 15.10.2020 at page no. 27 of complaint)
16.	Occupation certificate	14.08.2024 (as per DTCP website)
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. The complainant, believing upon the representation made by the respondent(s), booked a restaurant no. 12-A admeasuring super area 1614 sq. ft. on 3rd floor in the project "Neo Square" at Sector -109 Gurugram by paying an advance booking amount of Rs. 2,51,000/- dated 3rd September 2018 which was duly acknowledged and received by the respondent and to record the transaction the respondent issued an acknowledgment dated 21.09.2018 by issuing Invoice cum receipt of payment.

- II. That the respondent assured the complainant that they will sign a builder buyer agreement with respect to the said restaurant no. 12-A however no agreement was sent and signed by the respondent as per their commitment.
- III. That the complainant in order to fullfill their illegal demand and without signing the builder buyer agreement, paid sum of Rs. 30,00,000/- dated 28th January 2019 which was duly credited in the account of the respondent.
- IV. That despite many follow up with the respondent, no agreement was sent and signed by the respondent with the complainant and only demand were raised by the respondent.
- V. That the complainant paid sum of Rs. 5,00,000/- dated 27.02.20219 which was received by the respondent but no agreement was executed and no development of the project has been sent by the respondent.
- VI. That the last payment sum of Rs. 5,00,000/- dated 30th March 2019 was made by the complainant without signing builder agreement and it was orally communicated by the respondent that they will sign the builder buyer agreement but the respondent neglected the same.
- VII. That as on 30th March 2019 the respondent had received sum of Rs. 42,51,000/- from the complainant which is more than 30% of BSP i.e. 1,37,86,788/- and used the same by the respondent for their own business without development of the project and signing of builder buyer agreement.
- VIII. That the respondent falsely claimed that they had sent demand notice upon the complainant whereas no such written demand ever received by the complainant.
- IX. That the complainant regularly followed up by sending mails about the progress of the project but no information of the project were provided by the respondent and kept the complainant in dark.

- X. That the complainant many times visited the site but was surprised to see that construction work of the project was not in progress and no representative of the respondent were present to address of the queries of the complainant which show the respondent played fraud upon the innocent buyer who had invested hard earned money in the said project but only intention of the respondent was to take money for the unit without completing the work of the project and without signing BBA.
- XI. That non signing of the BBA in respect of the unit on the part of the opposite party and demanding money without providing necessary documents to the complainant is unfair trade practice and the respondent are just earning money from the buyers to whom they issued allotment letters and got a huge amount.
- XII. That the complainant was shocked to know through the mail dated 07.12.2022 whereby the unit i.e. restaurant no. 12 A was cancelled by the respondent which is gross arbitrary and against law and without following the due process of law hence the cancellation of the restaurant no. 12 A is liable to be restored.
- XIII. That in response to the mail dated 07.12.2022 the complainant sent a mail contending the issue and calling upon the respondent for seeking information about outstanding payment, cancellation letter, reminder mails but of no response received from the respondent. The complainant met Mrs. Manpreet, representative of the respondent, about the information of the cancellation of the unit and other queries but no information was provided to the complainant.
- XIV. That all the communication made in this respect by the complainant remained unaddressed and the respondent sent the evasive reply on one or other pretext.

- XV. That till date the respondent failed to procure the occupation certificate of the project.
- XVI. That the respondent had by its acts, conduct and omission had violated the RERA Act read with rules and despite the huge payment from the complainant cancelled the unit.
- XVII. That the respondent illegally and arbitrary cancelled the booked unit and forfeited sale consideration sum of Rs. 42,51,000/- paid by the complainant.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- (i) Direct the respondent to restore the unit by revoking the cancellation.
 - (ii) Direct the respondent to sign the builder buyer agreement in respect of unit.
 - (iii) Direct the respondent to pay interest at prevailing rate of interest from the date of booking till handing over the possession of the unit.
 - (iv) Direct the respondent to pay a sum of Rs. 1,00,000/- towards litigation cost.
5. 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.

6. The respondent vide reply contested the complaint on the following grounds:
- I. That the complainant with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about 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 and the approvals thereof, the complainant decided to apply to the respondent by submitting a booking application form dated 03.09.2018, whereby seeking

allotment of unit no. 12 A, admeasuring 1614 sq. ft. super area on the 3rd restaurant space of the project having a basic sale price of Rs. 1,37,86,788/- The complainant was further informed by the respondent vide welcome letter dated 21.09.2018 that the buyer's agreement/MOU/related documents pertaining to the unit will be executed upon the receipt of the due payments against the unit.

- II. That the respondent post allotment of the unit to the complainant, time and again requested complainant to come forward for the execution of the buyer agreement at the office of the respondent post clearance of the outstanding dues. However, the complainant deliberately and intentionally choose not to approach the respondent office and neither cleared the outstanding dues against the unit.
- III. That after the unit was allotted to the complainant vide application/welcome letter dated 21.09.2018, the complainant started defaulting in making payments of the instalments against the unit and not a single payment was made on time.
- IV. That as per the application form and agreement, the complainant was issued demand letters and reminders and various calls to make the payment, despite of the same the complainant failed to clear the outstanding amount, therefore, the respondent in failure to clear the outstanding dues was constrained to cancel the unit of allotted to the complainant.
- V. That as per the application form dated 03.09.2018, the complainant was bound to make timely payment of instalments in accordance with the demands raised by the respondent. The complainant has only paid Rs. 42,51,000/- against the total due amounts of Rs. 2,97,26,994/- and are in deliberate defaults for an outstanding dues of Rs. 2,54,75,994/- and which is

why the respondent was constrained to cancelled the unit of the complainant.

- VI. That the complainant has been in blatant violation of Section 19(6) of the RERA Act, 2016 as he has failed to pay the due instalments on time against the sale consideration amounts payable towards the unit despite multiple reminders sent to the complainant in this regard. The complainant has opted for instalment plan and the respondent accordingly raised their demands as per the due date of instalment. However, not a single instalment has been paid on time by the complainant.
- VII. That since the very beginning the respondent was committed to complete the construction of the project and has invested each and every amount so received towards the construction in the project. However, the complainant herein again failed to comply with the payment schedule and started defaulting in making timely payments of the instalments.
- VIII. That due to such deliberate act of the complainant the respondent was constrained to issue cancellation letter dated 07.12.2022 against the unit allotted to complainant.
- IX. That the respondent post cancellation of the unit bearing no. 12-A, in the project "Neo Square", requested the complainant to handover the original documents pertaining to the unit to the respondent and collect the refund amount, if any, subject to necessary deduction adjustments as per the terms and conditions of the application form.
- X. That the delay in clearing the outstanding dues resulted in interest on the delay payments to the tune of Rs. 32,88,902/- which is a part of outstanding dues. As per the records of the respondent, the complainant has only paid Rs. 42,51,000/- against the basic sale price of Rs. 1,37,86,788/-. Since the outstanding dues against the unit i.e., earnest money + interest on delayed

payment are more than the amount paid by the complainant. Hence are not eligible for any such refund as per the model buyer agreement.

XI. That as per the application so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to 'Force Majeure' conditions such as several orders/directions passed by various authorities/forums/courts.

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 these undisputed documents and submissions made by the complainant.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking delay possession charges.

F. Findings on the relief sought by the complainant.

- i. Direct the respondent to restore the unit by revoking the cancellation.
 - ii. Direct the respondent to sign the builder buyer agreement in respect of unit.
 - iii. Direct the respondent to pay interest at prevailing rate of interest from the date of booking till handing over the possession of the unit.
12. The complainant in the present complaint has booked unit in the project of the respondent namely 'Neo Square' situated at sector-109, Gurugram, Haryana. The welcome letter was issued to the complainant on 21.09.2018. The complainant has paid an amount of Rs. 42,51,000/- which was acknowledged and received by the respondent. The builder buyer agreement was never executed in the present complaint. The complainant has sought relief w.r.t the revocation of cancelation of unit, to execute builder buyer agreement and to pay delay possession charges. The respondent has stated that they has already cancelled the booking of the complainant on 07.12.2022 after issuance of reminders for making payment on 27.05.2019, 22.10.2019. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 14.08.2024.

Now the question before the authority is whether the cancellation issued vide letter dated 07.12.2022 is valid or not.

13. The authority observes that the respondent has issued welcome letter on 21.09.2018 and thereafter no builder buyer agreement was executed between the parties. The complainant has never approached the respondent for execution of the builder buyer agreement, nor has any document has been placed on record to demonstrate that any such attempt was made by the complainant. Subsequently the respondent issued reminder letters to the complainant on 27.05.2019 and 22.10.2019 requesting the payments however, the complainant failed to comply with the said demands. Owing to the continued non compliance on the part of the complainant the respondent proceeded to cancel the allotment of the unit.
14. The complainant has taken the plea that they withheld payment on the ground that construction was not fully completed. However, this contention is not sustainable in light of the material available on record. The respondent has obtained the Occupation Certificate (OC) from the competent authority on 14.08.2024, which conclusively establishes that construction of the project has been duly completed.
15. After considering the documents available on record as well as submissions made by the parties, the Authority is of considered view that the complainant is at default and the respondent has rightly terminated the booking on failure of the complainant to come forward to complete the booking formalities and finalization of the allotment.
16. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid

circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

17. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Ors. 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."

18. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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 termination/cancellation 07.12.2022 till the 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

19. 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 respondent/builder is directed to refund the deposited amount of Rs.42,51,000/- after deducting 10% of the sale consideration along with an interest @11.10% on such refundable amount, from the termination/cancellation 07.12.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



HARERA
GURUGRAM

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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.

20. Complaint stands disposed of.

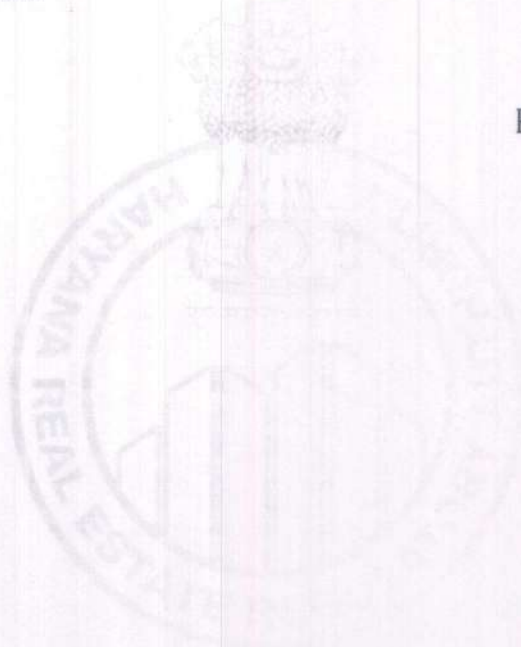
21. File be consigned to registry.

Dated: 23.07.2025

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram



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