

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

Date of order: 21.05.2025

NAME OF THE PROMOTER		M/s NIMAI DEVELOPERS PVT. LTD. M/s Y B BUILDERS PVT. LTD.	
PROJECT NAME		"NIMAI PLACE"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3506/2024	Suraj Bhan V/s M/s Nimai Developers Pvt. Ltd. & Anr.	Garvit Gupta Advocate and Sushil Yadav Advocate
2.	CR/1181/2024	M/s Nimai Developers Pvt. Ltd. & Anr. V/s Suraj Bhan	Sushil Yadav Advocate and Garvit Gupta Advocate

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, "**NIMAI PLACE**" being developed by the same



respondent/promoter i.e., ***M/s Nimai Developers Pvt. Ltd. & M/s Y B Builders Pvt. Ltd.***

3. The aforesaid complaints were counter filed by the parties against each other on account of violation of the provisions of the Act, 2016.
4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case bearing no. ***CR/3506/2024 titled as Suraj Bhan V/s M/s Nimai Developers Pvt. Ltd. & Anr.*** are being taken into consideration for determining the rights of the parties.

A. Project and unit related details

5. Both the cases relate to one allotted unit. One among these is filed by the allottee and the other one is filed by the promoter, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of unit details, sale consideration, the amount paid by the respondent-allottee, 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	"Nimai Place" at Sector 114, Gurgaon
2.	Nature of the project	Commercial
3.	Project area	3.0125 acres
4.	DTCP license no.	126 of 2012 dated 20.12.2012 valid upto 19.12.2028
5.	RERA Registered/ not registered	Registered vide no. 7 of 2018 issued on 13.07.2018 up to 31.03.2023
6.	Date of booking/allotment	02.07.2013 (page 30 of complaint)
7.	Unit allotted	028, Ground Floor (page 30 of complaint)
8.	Unit admeasuring area	574 sq.ft. (carpet area) (page 30 of complaint)
9.	Date of builder buyer agreement	Not executed

10.	Due date of possession	02.07.2016 (calculated from the date of allotment) [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]
11.	Reminders	04.05.2022, 03.08.2022, 20.07.2022, 16.01.2024 (page 58-64 of reply)
12.	Forfeiture letter giving opportunity to clear dues by 31.01.2024	16.01.2024 (page 25 of reply)
13.	Surrender request made by the allottee	10.04.2016 (page 32 of complaint)
14.	Total sale consideration	Rs.70,96,008/- (page 2 of reply)
15.	Total amount paid by the respondent/allottee	Rs.13,31,755/- (page 2 of reply)
16.	Occupation certificate	10.02.2023 (as per DTCP website)
17.	Offer of possession	Not on record

B. Facts of the complaint

6. The complainant/allottee has made the following submissions in the complaint:

- I. That the respondent no.1 offered for sale units in a commercial project known as 'Nimai Place' situated at Sector 114, Gurugram, Haryana which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc.
- II. That the complainant received a marketing call from the office of respondent no.1 in the month of April 2013 for booking in the retail part of the above-mentioned project of the respondents.
- III. That the complainant on 02.07.2013, induced by the assurances and representations made by respondent no.1, decided to book a

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commercial unit in the project of respondent no.1. The representatives of respondent no.1 categorically assured the complainant that the possession of the said unit would be handed over to him within three years from the date of booking.

- IV. That the complainant made the payment of Rs.7,00,000/- vide cheque no. 228057 on 02.07.2013. Accordingly, respondent no.1 issued receipt dated 19.09.2013 against the said payment. Vide the said receipt, the complainant was apprised of the fact that unit no. 028, admeasuring 574 sq. ft was allotted to him by respondent no.1 in the said project.
- V. That the complainant, thereafter, made the payment of Rs.4,31,755/- vide cheque no. 932979 on 02.09.2013 and Rs.2,00,000/- vide cheque no. 417321 on 03.04.2014. Accordingly, respondent no.1 issued receipts dated 12.10.2013 and 04.04.2014 towards the said payments. Thus, the complainant has made the payment of Rs.13,31,755/-.
- VI. That the complainant vide several telephonic conversations requested respondent no.1 to update him about the execution of the builder buyer's agreement as well as the status of development of the project. Respondent no.1 in response to the said inquiries further assured the complainant that the possession of the unit would be handed over to him within 3 years from the date of booking and the builder buyer's agreement would be executed between the complainant and respondent no.1 within some time. It is pertinent to mention here that as per the assurances and representations of respondent no.1, the possession of the said unit was to be handed over to the complainant by 02.07.2016.
- VII. That the respondent no.1 failed to execute the builder buyer's agreement with the complainant despite the repeated assurances. It is



pertinent to mention here that the complainant visited the construction site in the month of January 2016 and was shocked to see that there was no construction at the site of the project whatsoever and the same has been stood still. However, respondent no.1 on the other hand kept on sending payment demands against the construction milestones. The complainant confronted the representatives of respondent no.1 and informed them that he would not make the payment towards the demanded amount until and unless it doesn't correspond with the actual construction at site.

VIII. That the complainant vide his email dated 21.02.2016 again requested respondent no.1 to uprise the complainant about the construction status and the execution of the builder buyer's agreement. Furthermore, as per the agreed terms and conditions, the payments by the complainant were to be made as per the construction linked payment plan which was not even shared by respondent no.1 with the complainant. The complainant vide the said email also requested respondent no.1 to share the said construction linked payment plan with the complainant and to not levy any interest on unpaid amount which did not correspond with the actual construction status at site, but no heed was paid to the genuine requests of the complainant by respondent no.1. The complainant thereafter upon not receiving any satisfactory response from the respondents, again visited the construction site in the month of April 2016. The complainant on the said visit realized that respondent no.1 had no interest whatsoever in finishing the said project and rather the sole intention of respondent no.1 was to somehow harass the innocent allottees such as complainant. Accordingly, the complainant being aggrieved by the omission of respondent no.1 and on account of non-compliance of the

assurances and representations on the part of respondent no.1, was constrained to request for refund of the hard-earned amount already paid by him towards the said allotment vide his email dated 10.04.2016.

- IX. That respondent no.1 vide its email dated 11.04.2016, assured the complainant that the possession of the said unit would be handed over to him by the end of 2017. It is pertinent to mention here that respondent no.1 unilaterally concocted a condition as per at least 35% of the basic sale price was to be paid before the execution of the agreement. The said condition was never informed to the complainant and was illegal, absurd and one sided along with being against the provisions of the RERA Act, 2016.
- X. That the complainant, vide his email dated 15.04.2016, being aggrieved by the illegalities of respondent no.1 requested it to refund the amount paid by the complainant. Thus, it was a classic case of misrepresentation wherein even the basic documents of allotment including but not limited to builder buyer's agreement was deliberately not executed by respondent no.1. The complainant was cheated in making payment towards the sale consideration and complainant no.1, in complete defiance of law, accumulated the hard-earned money of the complainant without even setting the terms and conditions of the allotment.
- XI. That respondent no.1 despite specific requests of the failed to pay any heed to the requests of the complainant and failed to refund the said amount as demanded by him. It is pertinent to mention here that despite the assurances, respondent no.1 failed to complete the construction of the said project within the prescribed time period. Moreover, the respondents kept on sending demand letters in order to

create false evidence despite the request of refund by the complainant. Thus, the requests of the complainant to refund the hard-earned amount fell on deaf ears and the same were deliberately avoided by respondent no.1. It is astonishing to note that although the allotment was done by respondent no.1, yet some of the payment demands were sent to the complainant by respondent no.2 as well.

- XII. That the respondents vide its letter dated 04.09.2019, intimated the complainant that the structure of the said project was ready and only finishing work was remaining. Furthermore, the respondents vide the said letter also requested the complainant to make the due payments along with the penal interest of Rs.54,62,274/- as levied by the respondents unilaterally. The complainant upon receipt of the said letter further approached the respondents and requested the respondents to stop sending payment requests as the complainant had already requested for refund of the amount.
- XIII. That the respondents finally after a delay of more than 10 years from the date of booking has obtained the occupation certificate from the concerned authorities for the said project which was eventually granted by the office of DTCP vide letter dated 10.02.2023.
- XIV. That the complainant has been duped of his hard-earned money paid to the respondents regarding the commercial unit in question. The respondents have been dilly-dallying the matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondents.
- XV. That as per Section 18 of the RERA Act, 2016, the respondents/promoters are liable to return the amount along with interest and to pay compensation to the complainant for delay and failure in handing over of such possession as per the terms and agreement of sale.

- XVI. That the above-mentioned acts of the respondents are also in violation of Section 11(4)(a) of the Act, 2016. Further, as per Section 12 of the Act, the promoters/respondents are liable to return the entire amount along with interest to the complainant for giving incorrect, false statement.
- XVII. That the respondents in utter disregard of their responsibilities have left the complainant in the lurch and the complainant has been forced to chase the respondents for seeking relief. Thus, the complainant has no other option but to seek justice from this Authority.
7. The complainant in compliant no. **3506/2024** has sought following reliefs:
- Direct the respondent to refund the paid-up amount along with interest.
8. The complainant in compliant no. **1181/2024** has sought following reliefs:
- To declare the unit no. 028 as cancel from the name of respondent.
 - To forfeit the amount given by respondent as per RERA rules.
9. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.
- The respondent-developers had conceived and planned a commercial project under the name and style of 'Nimai Place' on land situated in Sector 114 Gurugram, Haryana.
 - That complainant after conducting his own due diligence applied for booking of shop in the said project vide application form. The



complainant had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the shop, size/super area of the shop, timeline for possession etc. The complainant paid an amount of Rs.5,65,877/- towards the booking amount.

- iii. That the respondent-developer allotted unit no. 028 on Ground Floor having an area of 574 sq. ft. vide provisional allotment letter. The total sale consideration of the unit was Rs.70,96,008/- and the total amount paid by the complainant is Rs.13,31,755/- till 20.03.2024. The payment plan for the said project was construction link plan for all the allottees and Rs.1,02,17,205/- is still due till 16.01.2024.
- iv. That the complainant has failed to make timely payment and at every installment the respondent had to request the complainant to provide the same. That despite serving several reminders the complainant failed to make time payment for the respective unit.
- v. That the respondent-promoter completed the project in May 2022 and vide letter dated 04.05.2022 sent the intimation of possession to the respondent-allottee and requested him to clear his dues and could visit to his allotted unit and point out any deficiency if at all which will enable the respondent to start the process of handing over the possession.
- vi. That the respondent was committed to complete the project in time therefore, the respondent applied for the occupation certificate before the Department of Town and Country Planning Haryana. However, the DTCP vide letter dated 10.02.2023, granted the occupation certificate to the respondent. The major amount of time

- was taken by the DTCP in issuing the occupation certificate for the said project which was purely beyond the control of the respondent.
- vii. That the complainant on 27.02.2023 submitted an affidavit with the respondent stating that he wants to surrender the unit and want adjust the paid amount after due deduction in unit no. 055 in the name of Jyoti Jain W/o Mainsh Jain and also surrender and give up all rights on the above mentioned property, but now again complainant trying to claim and illegally grab the said unit and neither depositing the balance amount nor coming forward to execute BBA and take the possession .
- viii. That since the complainant-allottee was not coming forward to clear his dues even after doing constant follow ups and communication the respondent issued many reminder letters thereby requesting the complainant to clear his outstanding dues and respondent sent pre-cancellation letter to complainant and finally on 16.01.2024, the respondent sent the final cancellation notice of the unit and sent the cancellation notice to the complainant.
- ix. That in the present case, possession of the unit has already been offered by the respondent. Thus, the complainant is liable to pay the outstanding dues along with the interest on the payments due. It is stated that the complainant has defaulted in taking timely possession of the unit and is thus also liable to pay holding charges.
- x. That respondent has given numerous opportunities to complainant to clear his due for the said unit, but complainant fails to pay. Consequently, respondent cancelled the said unit and forfeit the amount paid by complainant as per Rera Rules. It is pertinent to mention here that complainant has surrender all his rights against the said unit and now it is respondent who is aggrieved person.

D. Jurisdiction of the authority

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

D. II Subject-matter jurisdiction

13. 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 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

14. 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.

E. Findings on the relief sought:

15. The foremost question that arises before the authority is as to whether the allottee is entitled for refund of the entire paid-up amount along with interest or after certain deductions as per the (Forfeiture of earnest money by the builder) Regulations, 2018.
16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at prescribed rate.
17. **Due date of possession:** The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**
18. In view of the above-mentioned reasoning, the date of booking i.e. 02.07.2013 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 02.07.2016.
19. The promoter filed a complaint before the authority bearing no. CR/1181/2024 on 22.03.2024 and thereafter the allottee also filed a complaint bearing no. CR/3506/2024 on 24.07.2024. Both these complaints were clubbed together vide proceedings dated 09.04.2025 in order to avoid conflicting orders.

20. The complainant-allottee was allotted a unit bearing no. 028, Ground Floor, measuring 574 sq.ft. on 02.07.2013 and the subject unit was to be handed on or before 02.07.2016. The respondent as per the schedule of payment agreed between them raised 3rd demand 'on start of excavation' amounting to Rs.8,48,816/- against the unit on 01.03.2014, however, the complainant defaulted in making payment and only deposited Rs.2,00,001/- against the same. Thereafter, on 18.01.2016, 4th demand on account of 'casting of second basement floor slab' was raised by the respondent, but the same was also remained unpaid. Despite issuance of various reminder letters and even after receiving reasonable time for making payment of the outstanding dues of Rs.29,38,078/-, the complainant defaulted in making payment and ultimately surrendered the unit vide email dated 10.04.2016 i.e. before the due date of possession. The complainant has submitted that vide email dated 10.04.2016, he has already withdrawn from the project and sought refund of the amount paid along with interest, but the respondent has failed to refund the paid-up amount till date. The respondent has submitted that it has given numerous opportunities to complainant to clear his due for the said unit, but the complainant fails to pay. Consequently, the respondent cancelled the said unit and forfeit the amount paid by complainant as per Rera Rules.
21. In the present case, demand for refund of the paid-up amount was made by the complainant in April, 2016 i.e. before the due date of possession, which will amount to the breach of the contract on his part. Accordingly, the respondent/promoter is entitled to forfeit 10% of the basic sale consideration as laid by the Hon'ble Appellate Tribunal in appeal no. **255 of 2019** titled as ***Ravinder Pal Singh V/s Emaar MGF Land Ltd. & anr.***

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government".

22. The authority observes that out of the sale consideration of the unit of Rs.70,96,008/-, the complainant has paid Rs.13,31,755/- (more than 10%) to the respondent, but the respondent has failed to refund the balance amount till date. Thus, after withdrawal from the project before the due date of possession, the respondent could not have retained more than 10% of the sale consideration and was bound to return the remaining. Even the Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928***, ***Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136***, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as ***Jayant Singhal and Anr. Vs. M/s M3M India Ltd.*** decided on 26.07.2022 and took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the unit remains with the promoter and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as

Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

23. The authority further observes that the complainant-allottee has surrendered the unit back in April 2016 and has taken more than 8 years to file a complaint seeking refund. Although the complainant is entitled to refund of the balance amount after deduction as above, but it would be inequitable and unjust to direct the respondent to pay interest from the date of surrender i.e. 10.04.2016, particularly in light of the fact that breach of the contract has been done on his part and he has remained dormant on his rights for more than 8 years by not approaching any forum to avail his rights. Such inaction cannot result in the imposition of an undue financial burden on the respondent, especially when the allottee is himself at fault. Accordingly, the authority finds it appropriate to allow interest at prescribed rate on the balance refundable amount from the date of filing of complaint by the allottee i.e. 24.07.2024 till its actual realization.
24. Keeping in view the aforesaid factual and legal provisions, the respondents cannot retain the amount paid by the complainant against the allotted unit and are directed to refund the paid-up amount of Rs.13,31,755/- after deducting 10% of the sale consideration of



Rs.70,96,008/- 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 filing of complaint by the allottee i.e. 24.07.2024 till actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017 ibid.

H. 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 paid-up amount of Rs.13,31,755/- after deducting 10% of the sale consideration of Rs.70,96,008/- being earnest money along with an interest @11.10% p.a. on the refundable amount from the date of filing of complaint by the allottee i.e. 24.07.2024 till actual date of refund of the amount.
 - 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. This decision shall mutatis mutandis apply to both the complaints.
27. Complaint stands disposed of.
28. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.05.2025