

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

Complaint no. : 6511 of 2022
Date of filing : 27.09.2022
Date of decision: 15.04.2025

Hardip Singh Virk
R/o: - H.No.2, Andheria Morh, Mehrauli, Delhi

Complainant

Versus

M/s Neo Developers Private Limited.
Regd. Office at: 32b-Pussa Road, Delhi-110005

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Sh. Kuldeep Kumar Kohli (Advocate)
Sh. Venkat Rao and Gunjan Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 27.09.2022 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Nature of the project	Commercial
3.	Project area	3.089 acres
4.	DTCP license no. and validity status	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 of extension due to COVID-19 = 23.02.2022
6.	Date of start of construction	04.02.2013
7.	Date of execution of Apartment Buyer's Agreement	25.10.2012 (as per page no. 16 of complaint)
8.	Unit no. and area	612, Tower-A admeasuring 1558 sq. ft. (super area)



		(As per BBA at page 18 of reply)
10.	Possession clause	<p>Clause 5.2:</p> <p>The company shall complete the construction of the said building/complex, within the said space is located within 36 months from date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate.</p> <p>Clause 5.4</p> <p>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>
11.	Due date of possession	04.08.2016 (calculated from the date of start of construction, being later including grace period being unqualified)
13.	Total sale consideration	Rs. 1,39,73,541/- (As per SoA on page 70 of reply)
14.	Amount paid by the complainant	Rs. 69,16,409/- (As per SoA on page 70 of reply)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -
- I. That the “**NEO SQUARE**” is a commercial complex being developed by the respondent, situated at Sector 109, Gurugram wherein the complainant had booked an Office Space No. 612, Tower ‘A’, 6th Floor, measuring 144.70 Sq.Meters (1558 Sq.feet) and covered area about 86.80 Sq.Meters (934 Sq.feet), located at Sector 109, Gurugram. The Director, Town and Country Planning (DTCP), Haryana has granted licence to develop and construct said commercial complex.
 - II. That the complainant had initially booked the plot in on payment of **Rs.2,00,000/-** vide cheque No.469066 dated 08.08.2011, drawn on State Bank of Patiala, Delhi. The complainant was allotted Office Space No. 612, measuring 144.70 Sq. Meters (1558 Sq. feet) on Interest free installment plan, receipt of which was issued to the complainant by the respondent on 08.09.2011.
 - III. The respondents thereafter executed a buyers’ agreement with regard to office space in question for basic sale consideration of **Rs.81,01,600/-** with instant complainant vide agreement dated 25.10.2012, wherein general terms and conditions of allotment were prescribed and in clause 5.6, it is specifically mentioned that the project would be completed within 36 months from the date of signing the agreement.
 - IV. That the complainant had paid the total amount of **Rs. 68,72,111/-** against the consideration of the space booked till date.

- V. That the complainant had already paid the 90% amount and rest of the payment is to be made on registration of the commercial property in the name of the complainant by the respondents. In pursuance of the above referred buyer's agreement, it was incumbent upon the respondents to hand over the complete possession of the commercial property as on 24.10.2015 and after grace period of six months as on 24.04.2016. But neither the respondents gave possession of the commercial property nor issued any completion certificate.
- VI. That the complainant continued to visit the office of the respondents time and again and reminded them to handover the possession of the office space in question forthwith as he is suffering a lot in his profession and he has to book rental or paid places to deal his clients and some time he has to borrow place of his colleagues to meet his client. The complainant sent various correspondences and reminders to the respondents in this regard, but the respondents did not pay any heed and rather they continued to raised demand of payment next to next without caring of expiring the agreement period.
- VII. That the complainant after going through tremendous mental torture from the respondent for not handing over the possession filed a Complaint before the Authority with Complaint No. RERA-GRG-433 of 2019. After hearing both the parties throughout the proceedings in period of time, the Ld. Authority passed an order dated 03.02.2019, in favour of the complainant granting delay penalty charges and directions for handing over the possession of the space booked.

VIII. That thereafter, the complainant filed an execution proceedings vide RERA-GRG-4173-2022, which is pending before the Adjudicating Officer.

IX. That even after having the decree in his favour, the respondent has failed to give the possession of the space booked along with the penalty charges, which is in contravention of the Authority's order and now the complainant does not wish to get the possession of the space booked and now want to claim the total refund of the amount paid till date.

C. Relief sought by the complainant:

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

I. To cancel the booking of the commercial space booked by the complainants & refund of the total amount paid till date along with interest amount as per RERA Act.

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 has contested the complaint on the following grounds: -

A. The complainant has earlier filed a complaint bearing no. RERA-GRG- 433 of 2019 before the Authority seeking the below-mentioned reliefs:

i. To impose penalty upon the respondent as per the provisions of Section 61 of the RERA Act for contravention of sections 12, 14, 15 and 16 of the RERA Act.

- ii. To direct the respondent to pay penalty up to 19% of the project cost to the complainant under section 59 of the RERA Act, 2016
- iii. To pay delay possession charges at the prescribed rate of interest.
- iv. To direct for additional compensation for delay Rs. 10/- per sq. ft. of total super i.e. 1558 sq. ft. of the office space in question since April 2016, till date in terms of clause 5.6 of the buyers agreement.
- v. To direct the respondent to deliver the possession of the office space in question to the complainant without charging any additional charges of any kind.

B. That the complaint bearing no. 433 of 2019 was disposed of vide **order dated 03.02.2021**, wherein this ld. authority directed the respondent herein to pay interest for every month of delay and further directed the complainant to pay outstanding dues and interest on due payments to the respondent. The relevant part of the Order dated 03.02.2021 is reproduced herein:

"13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- (i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e., 04.08.2016 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;*
- (iii) The respondent shall not charge anything from the complainant which is not part of the BBA.*

(iv) Interest on the due payment from the complainant shall be adjusted at the prescribed rate of interest i.e. @ 9.30% by the promoter which is same as is delay granted to the complainant in case of delay possession charges.”

- C. Thereafter, the complainant filed an **execution petition bearing No. 4173 of 2022** against the Order dated 03.02.2021 passed in Complaint No. 433 of 2019 before the Adjudicating Officer and sought payment of delay possession charge amounting to Rs. 35,92,058/- from the respondent herein. that during the course of hearing in the said execution petition, The respondent herein had filed its objection and apprised the Adjudicating Officer that after adjusting the Decretal amount which has to be paid to the complainant herein, an amount of Rs. 43,72,105/- is recoverable from the complainant.
- D. That when it came to the knowledge of the complainant herein, that he was liable to pay an amount of Rs. 43,72,105/- the said execution petition was withdrawn on the subsequent date of hearing i.e on 10.11.2022.
- E. That it is pertinent to note that the parties are bound by the principle of *res judicata* as it seeks to promote fair administration of justice and honesty and to prevent the law from abuse. The principle of *res judicata* applies when a litigant attempts to file a subsequent lawsuit on the same matter, after having received a judgment in a previous case involving the same parties and on the same cause of action. Section 11 of Code of Civil Procedure deals with this concept. It embodies the doctrine of *Res Judicata*

or the rule of conclusiveness of a judgement, as to the points decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court; no party can be permitted to reopen it in subsequent litigation. In the absence of such a rule, there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses.

F. That the complainant with a *malafide* intention is filing a subsequent complaint regarding the same unit on the basis of the same cause of action which was alleged in the previous complaint and is now seeking refund of the amounts paid by him against the allotted unit

7. All other averments made in the complaint were denied in toto.
8. 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

9. 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

10. 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

11. 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.

12. 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 complainants at a later stage.

G. Findings on the relief sought by the complainants

G. I To cancel the booking of the commercial space booked by the complainants & refund of the total amount paid till date along with interest amount as per RERA Act.

13. It is important to note that the complainant had previously filed CR No. 433 of 2019, which was disposed of on 03.02.2021. Subsequently, the complainant filed an execution petition (bearing no. 4173 of 2022), wherein a decretal amount of Rs. 43,72,105/- was determined as the sum to be paid to the complainant. However, on 10.11.2022, the complainant voluntarily withdrew the execution petition during the hearing.
14. After consideration of all the facts and circumstance, Authority is of view that the present complaint seeking refund is not maintainable in light of the fact that the complainant had already exercised the remedy of delay possession charge under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") which was granted on 03.02.2021. Section 18(1)(a) of the RERA Act provides that where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, the allottee shall have the option to either withdraw from the project and claim refund of the amount paid along with interest and compensation, or to continue in the project and claim interest for the period of delay, the same 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)

15. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint bearing CR.No. 433 of 2019. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

***Explanation I.**—The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

***Explanation II.**—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*



Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

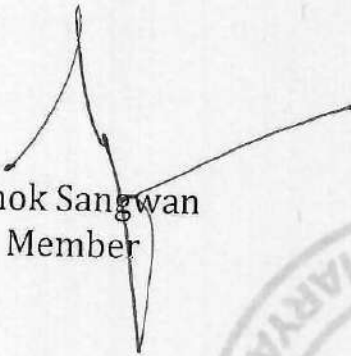
1[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.


Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

16. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity

and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.

17. Complaint stands disposed of.
18. File be consigned to registry.


Ashok Sangwan
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025

HARERA
GURUGRAM