

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

**Complaint no. : 2718 of 2024
and others**
Date of filing: 27.05.2024
Date of decision: 29.07.2025

| Name of the Builder | | NEO Developers Private Limited | |
|----------------------------|-----------------|--|--|
| Project Name | | "NEO SQUARE", Sector 109, Gurugram | |
| Sr. No. | Case No. | Case title | Appearance |
| 1. | CR/2718/2024 | Sarla Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 2. | CR/2417/2024 | Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 3. | CR/2419/2024 | Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 4. | CR/2420/2024 | Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 5. | CR/2421/2024 | Pankaj Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |

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| 6. | CR/2433/2024 | Pankaj Kapoor and Anju Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 7. | CR/2715/2024 | Sarla Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |
| 8. | CR/2717/2024 | Sarla Kapoor VS NEO Developers Private Limited | (Complainant) Sh. Anand Dabas Advocate (Respondent) Sh. Venkat Rao |

CORAM:Shri Arun Kumar
Shri Ashok Sangwan**Chairman**
Member**ORDER**

1. This order shall dispose of 8 complaints titled as above filed before this authority 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, "**Neo Square**" being developed by the same respondent/promoter i.e., **NEO Developers Private Limited**. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to allotment and possession of the units in question along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| | | | | |
|--------------------------------------|---|--|---|--|
| <i>Project Name and Location</i> | | <i>"Neo Square", Sector 109, Gurugram, Haryana</i> | | |
| <i>Nature of the Project</i> | | <i>Commercial Project</i> | | |
| <i>Project area</i> | | <i>2.71 acres</i> | | |
| <i>DTCP License No. and validity</i> | | <i>102 of 2008 dated 15.05.2008 valid up to 14.05.2024</i> | | |
| <i>HRERA Registration</i> | | <i>109 of 2017 dated 24.08.2017</i> | | |
| <i>Possession Clause</i> | | 5.2 <i>That the company shall complete the construction of the said building/ complex within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/ occupation certificate...</i> <i>[Emphasis Supplied]</i> 5.4 <i>That the allottee hereby also grants an additional period pf 6 months after the completion date as grace period to the company after the expiry of aforesaid period.</i> | | |
| <i>Occupation certificate</i> | | <i>14.08.2024</i> | | |
| <i>S r. N o.</i> | <i>Complaint No., Case Title, and Date of filing of complaint</i> | <i>Unit no. and Date of execution of BBA</i> | <i>Previous complaint Numbers</i> | <i>Total Sale Consideration / Total Amount paid by the complainant</i> |



| | | | | |
|----|---|--|-----------------|---|
| 1. | CR/2718/2024 Case titled as Sarla Kapoor VS NEO Developers Private Limited | 409-419 on 4 th Floor in Tower- A And 04.02.2013 | 3428 of 2020 | BSC: Rs. 2,60,34,553/- AP: Rs. 2,30,55,501/- |
| 2. | CR/2417/2024 Case titled as Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | 401 & 423 on 4 th Floor in Tower-A & 2101 sq. ft. And 04.02.2013 | 1160 of 2020 | BSC: Rs.67,88,494/- AP: Rs.60,05,018/- |
| 3. | CR/2419/2024 Case titled as Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | 514-516 on 5 th Floor in Tower- A & 2235 sq. ft. And 04.02.2013 | 1159 of 2020 | BSC: Rs. 74,48,153/- AP: Rs. 66,13,193/- |
| 4. | CR/2420/2024 Case titled as Sanjeev Kapoor and Asha Kapoor VS NEO Developers Private Limited | 420-422 on 4 th Floor in Tower- A & 2101 sq. ft. And 04.02.2013 | 1161 of 2020 | BSC: Rs.60,36,882/- AP: Rs. 53,73,367/- |
| 5. | CR/2421/2024 Case titled as Pankaj Kapoor VS NEO Developers Private Limited | 509-512 on 5 th Floor in Tower- A & 3740 sq. ft. And 04.02.2013 | 3900 of 2020 | BSC: Rs.1,18,37,886/- AP: Rs. 1,05,61,879/- |
| 6. | CR/2433/2024 Case titled as Pankaj Kapoor | 506-508 on 5 th Floor in Tower- A & 2475 sq. ft. | 3894 of 2020 | BSC: Rs.76,12,068/- |

| | | | | |
|----|---|---|---------------------|--|
| | <i>and Anju Kapoor VS NEO Developers Private Limited</i> | <i>And 04.02.2013</i> | | <i>AP: Rs. 67,55,268/-</i> |
| 7. | <i>CR/2715/2024 Case titled as Sarla Kapoor VS NEO Developers Private Limited</i> | <i>406-408 on 4th Floor in Tower-A & 2475 sq. ft. And 04.02.2013</i> | <i>3429 of 2020</i> | <i>BSC: Rs.75,12,068/- AP: Rs. 68,97,070/-</i> |
| 8. | <i>CR/2717/2024 Case titled as Sarla Kapoor VS NEO Developers Private Limited</i> | <i>402-405 on 4th Floor in Tower-A And 04.02.2013</i> | <i>3430 of 2020</i> | <i>BSC: Rs. 66,14,583/- AP: Rs. 57,76,909/-</i> |

The complainant herein is seeking the following reliefs:

1. The demand letter dated 08.02.2024 may kindly be stayed/ cancelled being unjustified and uncalled for.
2. The cancellation letter dated 08.05.2024 may kindly be set aside being illegal and unjustified.
3. Possession of the units in tower-A, may kindly be offered to the complainants.
4. Respondent may kindly be directed to pay the delayed possession charges up to date to the complainants;

Note: *In the table referred above certain abbreviations have been used. They are elaborated as follows:*

| <i>Abbreviation</i> | <i>Full form</i> |
|---------------------|--------------------------------------|
| <i>DOF</i> | <i>Date of filing of complaint</i> |
| <i>BSP</i> | <i>Basic sale consideration</i> |
| <i>AP</i> | <i>Amount paid by the allottee/s</i> |

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the allotment letter in respect of subject unit for not handing over the possession by the due date, seeking

refund of entire amount paid by the complainants along with interest at the prescribed rate.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of the complaints filed by the complainant-allottee(s) are similar. Herein, the particulars of lead case ***CR/2718/2024 Case titled as Sarla Kapoor VS NEO Developers Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

7. 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" |
| 2. | Location of the project | Sectors 109, Gurugram |
| 3. | Nature of the project | Commercial |
| 4. | Project Area | 2.71 acres |
| 5. | DTCP license no. and validity status | 102 of 2008 dated 15.05.2008 valid up to 14.05.2024 |



| | | |
|-----|---|---|
| 6. | RERA Registered/ not registered | Registered 109 of 2017 dated 24.08.2017 valid up to 23.08.2021 |
| 7. | RERA Extension | 109 of 2017/ 7(3)/33/2023/10 Valid up to 22.02.2024 |
| 8. | Unit and Floor no. | 409-419 on 4 th Floor in Tower-A (As mentioned in BBA at page no.22 of the complaint) |
| 10. | Unit area admeasuring | 7813 sq. ft. (covered area) (As mentioned in BBA at page no.22 of the complaint) |
| 11. | Date of execution of buyer's agreement | 04.02.2013 (As per page no.20 of the complaint) |
| 12. | Possession clause | 5.2 <i>That the company shall complete the construction of the said building/ complex within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/ occupation certificate...</i> [Emphasis Supplied] 5.4 That the allottee hereby also grants an additional period pf 6 months after the completion date as grace period to the company after the expiry of aforesaid period. (As per BBA at page no.28 of the complaint) |
| 13. | Due date of possession | 15.06.2019 [Nate: calculated from the date of start of construction.] |

| | | |
|-----|--|---|
| | | Grace period of 6 months is allowed as has been decided in CRno.1329 of 2019. |
| 14. | Total Sale Consideration | Rs. 2,60,34,553/- (As per payment schedule at page no.41 of complaint) |
| 15. | Amount paid against the unit | Rs. 2,30,55,501/- (as alleged at page 16 of complaint) |
| 16. | Occupation certificate | 14.08.2024 |
| 17. | Offer of possession | Not offered |
| 18. | Demand letter | 15.02.2024 |
| 19. | Reminder letter (as mentioned in cancellation letter) | 05.03.2024 & 04.04.2024 (page 87 of complaint) |
| 20. | Cancellation letter | 08.05.2024 (page 87 of complaint) |

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the complainant is a joint allottee of unit No.409-419 and is a signatory to the builder buyer agreement dated 04.02.2013 along with her deceased husband who passed away on 03.05.2021 leaving behind the following legal heirs i.e. Sarla Kapoor, Kiran Khanna, Pankaj Kapoor, Sanjeev Kapoor and Simmi Khanna.
- II. That somewhere in the year of 2010, the respondent through its marketing executives and advertisement via various mediums & means approached the complainant along with her deceased husband, with an offer to invest and buy commercial space / shop in the proposed real estate project of

Respondent, namely "Neo Square" situated in village- Pawala Khusrupur, Sector-109, Dwarka Expressway, Gurugram.

- III. That the respondent had executed an Agreement for Sale dated 01.06.2010 with the complainant and her deceased husband namely Sh. Baldev Raj Kapoor and their sons i.e. Pankaj Kapoor, his brother Mr. Sanjeev Kapoor to provide total 40,000 sq.ft. super built up area to the complainant and his family members in lieu of consideration amount of Rs.4,70,11,000/- (Rupees Four Crore Seventy Lakh Eleven Thousand Only). In the Agreement for Sale, it was duly recorded that the respondent had already received the said amount from all three family members of complainants as an advance payment towards full Basic Sale Price of that 40,000 sq.ft. allotted in the said project.
- IV. That After much persuasion the respondent executed a Builders Buyer Agreement No.0001B dated 04.02.2013 with the complainant and her deceased husband showing booked commercial space for shop / restaurant bearing No.409-419 on 4th Floor in Tower-A in the said project of the respondent admeasuring approximately super area 13,024 sq.ft., and covered area of about 7813 sq.ft. The said agreement is the full payment agreement between the parties and the respondent has acknowledged the receipt of Rs.2,30,55,501/- (Rupees Two Crore Thirty Lakh Fifty-Five Thousand Five Hundred One Only) at clause No.4 of the agreement. This is clearly given in Annexure-I of the payment schedule annexed with the BBA. The said payment is inclusive of 100% Basic Sale Price + 100% payment for EDC & IDC charges + 100% payment for sales tax. The only payment left

due was of Registration Charges and Stamp Duty Charges which were supposed to be paid at the time of registration by the complainant.

- V. That the complainant and her deceased husband jointly and severally have paid the entire sale consideration to the respondent for the said commercial space and as per Builder Buyer Agreement dated 04.02.2013, the respondent had assured to the complainant to offer the said unit within a period of 36 months from the date of execution of builder buyer agreement i.e., 04.02.2013. That the respondent failed to deliver the possession of the said unit as per the assured promise date and the project was delayed and possession was not offered.
- VI. That the complainant along with her deceased husband herein had filed a complaint (No. 3428 of 2020) against the respondent seeking interest on an amount of Rs.2,30,55,501/- (Rupees Two Crore Thirty Lakh Fifty-Five Thousand Five Hundred One Only) paid by the applicant, on account of delay in delivering possession of commercial units booked by the applicant in the project named "Neo Square" in Sector-109, Gurugram, Haryana.
- VII. That the respondent failed / neglected to comply with the directions as per the aforesaid order dated 25.01.2022 and the complainant was constrained to file an Execution Petition (E/6926/2022) seeking execution of the order dated 25.01.2022 in Complaint No.3428 of 2020.
- VIII. That is submitted that the Hon'ble Adjudicating Officer was pleased to issue a Recovery certificate No.71 dated 01.03.2023 in favour of the complainant and her deceased husband and against the respondent in which an amount of Rs.81,85,266/- is to be recovered from the respondent towards delay

penalty charges till 31.01.2023, which the respondent has failed to do and still has not paid the abovementioned amount to the complainant.

- IX. That the respondent without paying the above said amount to the complainant has now raised false and baseless demand of money from the complainant to the tune of Rs.84,89,687/- (Rupees Eighty-Four Lakh Eighty-Nine Thousand Six Hundred Eighty-Seven Only) vide Demand Letter dated 08.02.2024.
- X. That the respondent through its Demand Letter dated 08.02.2024 has raised the alleged outstanding demands for BSP, VAT, interest pending on BSP, interest pending on VAT, Labour Cess, FTTH Charges, and Development charges (Electricity Connection Charges, Electrification Charges, Sewerage Connection Charges, Water Connection , Etc.). It is submitted that the complainant is not liable to pay any of these as the complainant along with her deceased husband has paid the entire BSP towards the units allotted and thus, the complainant is neither in any arrears of any amount towards BSP and / or interest thereon. It is pertinent to mention here that the demands towards VAT and interest thereon, Labour Cess, FTTH Charges, and Development charges (Electricity Connection Charges, Electrification Charges, Sewerage Connection Charges, Water Connection , Etc.) are not payable by the complainant as being undue and unjustified in view of the fact that VAT is no longer applicable.
- XI. That as per Annexure-1 (Payment Schedule) of the Builder Buyer Agreement dated 04.02.2013, the complainant is only liable to pay IFMS + Registration + Stamp Duty + Other Charges as applicable amounting to a

total sum of Rs.29,30,400/- (Rupees Twenty Nine Lakh Thirty Thousand Four Hundred Only) only remains to be paid on notice of possession and nothing remains due or payable by the complainant at this stage as the respondent has failed to offer possession till date.

- XII. That the complainant vide her reply dated 15.02.2024 sent through her legal counsel duly communicated the aforesaid facts to the respondent, thereby, calling upon them to immediately withdraw their demand letter being unjustified and uncalled for.
- XIII. That the respondent has not complied with the directions of the Recovery Certificate No.71 dated 01.03.2023 till date and has neither offered possession nor paid any amount towards delay possession charges in terms of the Recovery Certificate No.71 dated 01.03.2023. On the contrary in gross violation of the directions as per the Recovery Certificate No.71 dated 01.03.2023 the respondent has raised demand towards balance consideration vide his demand letter dated 08.02.2024.
- XIV. That it is pertinent to mention here that in this regard the complainant has also filed a restoration to the execution petition number RERA-GRG-6926-2022 as the respondent has till date not complied with the recovery certificate No.71 dated 01.03.2023 in which an amount of Rs.81,85,266/- is to be recovered towards delay penalty charges till 31.01.2023. That the said execution was restored by the Hon'ble Adjudicating Officer and the matter is listed before the Hon'ble Adjudicating Officer on 23.05.2024.
- XV. That That it is pertinent to mention here that in this regard the complainant has also filed a restoration to the execution petition number RERA-GRG-

6926-2022 as the respondent has till date not complied with the recovery certificate No.71 dated 01.03.2023 in which an amount of Rs.81,85,266/- is to be recovered towards delay penalty charges till 31.01.2023. That the said execution was restored by the Hon'ble Adjudicating Officer and the matter is listed before the Hon'ble Adjudicating Officer on 23.05.2024.

- XVI. That the respondent has till date not offered the possession of the subject unit but has been raising demands towards due amount in gross violation of the directions passed vide order dated 25.01.2022 by this Hon'ble Authority and Recovery Certificate No.71 dated 01.03.2023, and is thus, liable to be punished for violating the directions of the Hon'ble Authority. That the respondent vide its letter dated 08.02.2024 has threatened to cancel the booking and subsequent allotment of the unit allotted to the applicant by giving a last opportunity to clear the outstanding balance with delay penalty interest within 7 days i.e. on / or before 15.02.2024, failing which the booking / allotment will be cancelled automatically, which makes it clear that the respondent has no respect and regard for the law of the land much less the directions passed by the Hon'ble Authority.
- XVII. That in response to which the Complainant through her legal counsel sent a reply dated 13.05.2024 to the said cancellation letter stating the facts and circumstances mentioned hereinabove, and asked the respondent to withdraw their cancellation letter dated 08.05.2024, but the respondent has failed to do so and is continuously harassing the Complainant despite the direction of the Hon'ble Authority.

- XVIII. That as the respondent has till date not complied with the directions passed vide order dated 25.01.2022 in Complaint No.3428 of 2020 and has also raised unreasonable and unjustified demands of money from the applicant / decree holder without paying the delay penalty charges and without offering the possession of the units, and now the respondent in gross violation of the directions of the Hon'ble Authority has also cancelled the said units of the Complainant, hence, the respondent be directed to comply with the order dated 25.01.2022 in Complaint No.3428 of 2020 and offer possession of the units allotted to the applicants at the earliest.
- XIX. That an amount of Rs.23,22,841/- (Rupees Twenty-Three Lakh Twenty-Two Thousand Eight Hundred Forty-One Only) has further become due and payable by the respondent / judgment debtor on account of delay in offering possession till date.
- XX. That the cause of action accrued in favor of the complainant(s) and against the Respondent on 08.02.2024, when the respondent raised illegal demands vide demand letter dated 08.02.2024. Further, the cause of action accrued in favor of the complainant(s) and against the respondent on 08.05.2024, when the respondent cancelled the units of the complainants vide Cancellation Letter dated 08.05.2024. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not complied with the directions passed vide order dated 25.01.2022 and has also raised unreasonable and unjustified demands of money without paying the delay penalty charges and without offering the possession of the

units and now the respondent has also cancelled the units of the complainant.

- XXI. That the complainant(s) further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

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

- I. To The demand letter dated 08.02.2024 may kindly be stayed / cancelled being unjustified and uncalled for.
 - II. To cancellation letter dated 08.05.2024 may kindly be set aside being illegal and unjustified.
 - III. Possession of the unit no's 409-419, 4th Floor, Tower-A, may kindly be offered to the complainant.
 - IV. Respondent may kindly be directed to pay the delayed possession charges up to date to the complainant.
 - V. Any other relief/order or direction which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint
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. That the reply on behalf of respondent had been filed on 16.01.2025. The brief facts of reply filed by the respondent are given below: -

- a) That the instant reply to the above-captioned matter is being filed on behalf of the Respondent i.e., M/s Neo Developers Pvt. Ltd. (*hereinafter referred to as the "Respondent"*) through its authorized representative, Mr. Manish Bhola who is duly authorized to act on behalf of the Respondent *vide* Board Resolution dated 16.08.2021.
- b) That at the outset, it is relevant to state the Respondent is a real estate company engaged in the business of the development and construction of the real estate projects and is one of the most reputed companies in the real estate sector.
- c) That the present Complaint has been preferred by Sarla Kapoor (*hereinafter referred to as "Complainant"*) on frivolous and unsustainable grounds and the Complainant have not approached the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram (*hereinafter referred to as the "Ld. Authority"*) with clean hands and are trying to suppress material facts relevant to the matter. The Complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the Respondent with malicious intent and sole purpose of extracting unlawful gains from the Respondent. The instant Complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.
- d) That the demands raised by the Respondent is in consonance with the mutually agreed terms and conditions of the BBA and the Judgement dated 25.01.2022 in Complaint bearing no. 3428 of 2020 titled as "Baldev Raj Kapoor vs M/s Neo Developers Pvt Ltd",

e) That the Complainants were bound to adhere to the obligation undertaken in the BBA and were liable to pay the demand as raised by the Respondent. However, due to the failure of the Complainants in clearing the outstanding dues, eventually led the cancellation of the units of the Complainants.

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 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 complainant

G.I. The demand letter dated 08.02.2024 may kindly be stayed / cancelled being unjustified and uncalled for.

G. II. To cancellation letter dated 08.05.2024 may kindly be set aside being illegal and unjustified.

G. III. Possession of the unit no's 409-419, 4th Floor, Tower-A, may kindly be offered to the complainant.

G. IV. Respondent may kindly be directed to pay the delayed possession charges up to date to the complainant.

G.V. Any other relief/order or direction which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint.

17. It is important to note that the complainant had previously filed CR No. 3428 of 2020, which was disposed of on 03.02.2022. Subsequently, the complainant filed an execution petition (bearing no. 6926 of 2022) which is still pending and the next date of hearing is **21.10.2025**.

18. After consideration of all the facts and circumstance, Authority is of view that the present complaint seeking delay possession charges and possession of the unit is not maintainable in light of the fact that the complainant had already exercised the remedy of delay possession charges and possession under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") which was granted on 25.01.2022. 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)

19. 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. 3428 of 2020. 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.]”*


20. 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.
21. The Authority also takes judicial notice of the fact that the execution proceedings arising out of the order passed in Complaint No. 3428 of 2020 are still pending before this Authority. Accordingly, the present complaint,

being founded on the same cause of action, is not maintainable and is barred by the doctrine of *res judicata*.

22. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
23. Complaint stands disposed of.
24. File be consigned to registry.



Ashok Sangwan
(Member)



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025

HARERA
GURUGRAM