

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

Complaint no.	:	1652 of 2025
Date of Filing:		18.04.2025
Date of Decision:		10.10.2025

Vibhuti Dimri Sikka

R/o: - 8/8 Behind Patel Nagar Metro Station,
South Patel Nagar, Central Delhi - 110008**Complainant**

Versus

M/s Neo Developers Pvt. Ltd.

Office at: 32-B, Pusa Road,
New Delhi - 110005**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**Sh. Vijay Pal Chauhan
Sh. Gunjan KumarComplainant
Respondent**ORDER**

1. The present complaint dated 18.04.2025 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 allottees 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.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	3 rd floor (page no. 19 of complaint)
7.	Unit area admeasuring	400 sq. ft. (page no. 19 of complaint)
8.	Date of MOU	14.02.2020 (page no. 17 of complaint)
9.	Buyer's agreement	14.02.2020
10.	Possession clause	3.The company shall complete the construction of the said building/complex within which the said space is located within 36 month from the date of this Agreement or from the start of construction, whichever is later and apply for grant of completion/occupation certificate.
11.	Assured return Clause	4. The Company shall pay a penalty of Rs.49,500/- per month on the said unit. On the total amount received with effect from 31.01.2021 Subject to TDS, cess or any other levy which is due and payable by the Allottee and which shall be adjusted in Total Sale Consideration, the balance total sale consideration which shall be payable by the Allottee to the Company in accordance with

		<i>the Payment Schedule annexed as Annexure-I. (page no. 20 of complaint)</i>
12.	Due date	14.08.2023 <i>Calculated from the date of agreement including grace period of 6 month due to covid-19)</i>
13.	Basic sale consideration	Rs. 41,46,800/- (as per BBA at page 43 of complaint) Rs. 49,46,768/- (as per payment plan) Rs. 52,46,454/- (As per SOA at page no. 62 of complaint)
14.	Amount paid by the complainant	Rs. 46,44,364/- (As per SOA at page no. 62 of complaint)
15.	Occupation certificate	14.08.2024 (page no. 41 of reply)
16.	Offer of possession	24.12.2024 (page no. 44 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - I. That the complainant has booked a shop on 17.11.2019 by paying a cheque of Rs.1,00,000/-. The complainant in total has paid an amount of Rs.46,44,316/-. After it an MOU got signed between complainant and respondent in which respondent acknowledge the payment made by complainant. Also an NOC also signed by the complainant.
 - II. That it was assured rental plan and the respondent have to pay Rs.49,500/- as penalty per month on the said unit with effect from 31.01.2021. So an amount of Rs.25,24,500/- is still outstanding and never paid the respondent to the complainant.
 - III. That on 21st January, 2021 a buyer's agreement got signed between complainant and respondent.

- IV. That as per MOU the respondent not paid any penalty till date and now complainant have no further faith in respondent other commitments and therefore withdraw from the said project. The complainant wants full refund along with Rs.2,00,000/-paid in cash with applicable rate of interest.
- V. That the respondent failed to deliver the possession of the retail space/ shop and the complainant asked the respondent for delay penalty as well as assured penalty which is effected from 31.01.2021 on the amount paid by him along with compensation, but the grievance of the complainant has not been redressed by the respondent.
- VI. That due to non-performance of its obligations and duties the complainant is going through mental pain and agony.
- VII. That the entire sequential of events leading to the instant complaint establish the malafide intent of the respondent to defraud the complainant of his hard earned money. The complainant is entitled to exercise its right conferred by the Real Estate (Regulation & Development) Act, 2016 under section 31 read with section 19(3) read with section 18 on in alternative section 19(4) read with section 18 of the Act.
- VIII. That the complainant wants to withdraw from the project. The respondent has not fulfilled its obligations provided under the RERA Act, 2016 and therefore the respondent is obligated to pay penalty charges as per MOU till the handing over of the possession.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s):
- To get refund of full amount paid by the complainant along with applicable rate of interest.

ii. To get Rs.25,24,500/- Till March, 2025 as penalty charges which never paid by the respondent to complainant along with applicable rate of interest.

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-builder by way of written reply submitted the following submissions:

- I. That the complainant with an intention of earning a lease rental and assured return invested in the instant project and submitted a booking application form requesting the respondent to allot a unit/space, admeasuring 400 sq. ft. super area in the project "NEO Square".
- II. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 119 on 3rd floor, admeasuring 400 sq. ft. super area.
- III. Thereafter, the respondent made multiple requests to the complainant to visit the office of the respondent for executing the builder buyer's agreement and other agreements/documents with respect to lease rental, assured return etc. However, the complainant failed to come forward to do the needful.
- IV. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 14.02.2020.
- V. Since, the complainant has invested in the project to earn assured returns and lease rental by getting the unit leased out through



respondent, therefore a memorandum of understanding dated 14.02.2020 was executed between the parties.

- VI. That since the building was completed way before the grant of the occupation certificate therefore, prospective lessees were approaching the respondent for taking the units in the project. The respondent was anticipating that the occupation certificate would be granted by the competent authority shortly and leased out the subject unit and vide letter dated 01.10.2020 requested the complainant to forward to complete the formalities with respect to leasing of the unit.
- VII. Thereafter, the respondent sent an offer of possession letter dated 24.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit. Despite receiving the offer of possession the complainant failed to come forward to complete the formalities of possession and payment of outstanding dues. Therefore, the respondent was constrained to issue reminders dated 05.11.2020, 29.06.2022, 14.02.2025, 25.02.2025 and 21.03.2025 requesting the complainant to do the needful.
- VIII. That the complainant is an investor who had approached the respondent for investing in the project of the respondent to earn maximum returns on their investment by way of receiving an assured return and lease rental benefits.
- IX. That the complainant has booked the subject unit solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties.
- X. That from a bare perusal of the aforementioned terms and conditions of the MOU, it is evident that the complainant has invested in the instant project with the sole motive of earning lease rental by getting the

subject unit lease through the respondent. It was never agreed between the complainant and the respondent that the physical possession of the subject unit shall be handed over to the complainant or that the complainant shall lease out the subject unit by himself.

- XI. That there is no additional demand nor any price escalation and the unit sold to the complainant is of the same price. That under clause 11 of the BBA, the complainant has agreed to pay all applicable charges, including development charges, as may be levied at the time of execution of the BBA or at any future date.
- XII. That the complainant himself has agreed to pay the fit-out charges to be incurred on account of leasing the unit to any lessee. The respondent, in consonance with the agreed terms of the MOU, has sent demand/reminder letter, wherein the respondent has intimated the complainant about the details of the lease and requested the complainant to pay the fit-out charges to the company, which is facilitating the leasing process in the project.
- XIII. That the respondent after completing the construction and meeting the requirements of the grant of the occupation certificate has applied for the same before the competent authority on 24.02.2020 and reapplied on 29.06.2021. The building was completed and all the requirement for the grant of the occupation certificates were fulfilled and the respondent anticipated the grant of the occupation certificate in the year 2020 itself and since the prospective lessee were showing interest in taking the units in the project on lease therefore, the respondent anticipating that the occupation certificate will be granted by the competent authority, entered into a 1st lease with the lessee.

- XIV. However, due to certain reasons beyond the control of the respondent, the occupation certificate was not issued in the year 2020 or 2021. Subsequently, the COVID-19 pandemic emerged, significantly affecting the real estate sector. That after the situation returned to normal, the respondent once again applied for the issuance of the occupation certificate before the competent authority on 23.01.2023 and the same was issued on 14.08.2024.
- XV. That in the present case it was agreed under the MOU, that a fixed amount shall be paid to the complainant as an assured return from effective date as mentioned in the MOU till commencement of first lease and thereafter the complainant shall be entitled to receive the lease rental as mentioned in the MOU.
- XVI. That in clause 8 (b) of the MOU it is categorically agreed by the complainant that in case of any increase in monthly lease rental in excess of the assured return, the sale consideration shall be enhanced by Rs. 66.66/- per sq. ft. for each rupee increase in the monthly lease rental and likewise, in case the monthly lease rental is reduced from the assured return, then for each decreased rupee per sq. ft. per month, the sale consideration shall stand decreased by Rs. 133.33/- per sq. ft. That under the said clause, it was also agreed that the final sale consideration shall be calculated in terms of clause 8 (b) of the MOU.
- XVII. That the complainant have categorically agreed to pay increased sale consideration in circumstances where the unit is leased out at a higher rate in comparison to the assured return which was paid to the complainant. Similarly, the sale consideration shall be reduced in circumstances where the lease rentals are less in comparison to the assured return which was paid to the complainant. Therefore, the

complainant is bound to fulfil the terms and conditions with respect to the increase in sale consideration as agreed under Clause 8 (b) of the MOU.

XVIII. That the complainant, vide the present complaint, is seeking payment of assured return. However, it is most humbly submitted that the issue of assured return does not fall within the ambit of the RERA Act, 2016. That

XIX. That without prejudice to the foregoing, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving assured return/penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.

XX. That construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. The force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity:

- **Ngt Orders/ Construction Bans:** The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
- **Demonetization of Rs. 500 and Rs. 1000 currency notes:** The Real Estate Industry is dependent on un-skilled/semi-skilled unregulated



seasonal casual labour for all its development activities. The respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 months.

- **GST Implications:** The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including the city of Gurgaon wherein the project of Respondent is situated for 8-10 days.
- **Cascading impact of default of the buyer's on project progress:** That due to persistent and simultaneous defaults by several buyers including the respondent faced severe financial constraints, which significantly hampered the timely progress of construction of the

Project. The financial model of the project was structured on the timely inflow of funds from buyers, which was disrupted due to non-payment of dues.

XXI. That the construction/ completion work of the project was hampered due to force majeure situations beyond the control of the respondent. That the respondent despite facing the force majeure situations beyond its control has completed the construction/development of the project, obtained the occupation certificate and offered possession of the subject unit in terms with MOU.

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 written submissions made by the parties and the same have been perused.

E. Jurisdiction of the authority

8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent no. 1 regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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

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. 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 complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and



adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F.I Objections regarding force majeure

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by National Green Tribunal and other authorities to stop construction during the years 2015-2016-2017-2018, Jat Reservation Agitation, GST Implications, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and other authorities and demonetisation advanced in this regard is devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further the events such as Jat Reservation Agitation is unsustainable. The said agitation was a localized and time bound law



and order situation which may have caused temporary inconvenience but did not lead to prolonged cessation of construction activities for any substantial period. Moreover, the plea regarding GST implications is also misplaced, as GST came into effect in July 2017 whereas the BBA in the present case was executed in the year 2020 i.e., much after the implementation of GST. Hence the respondent was fully aware of the tax structure at the time of execution of the BBA. Also, there may be cases where some of the allottees have not paid instalments regularly but all the allottees cannot be expected to suffer because of them. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. The Authority is of the view that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 14.08.2023.

F.II. Objection regarding the complainant being investor.

15. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of



the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

16. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

17. **Relief sought by the complainant:** The complainant has sought the following relief(s):
- i. To get refund of full amount paid by the complainant along with applicable rate of interest.
 - ii. To get Rs.25,24,500/- Till March, 2025 as penalty charges which never paid by the respondent to complainant along with applicable rate of interest.
18. The complainant booked a unit in the project developed by the respondent company, namely "Neo Square" located at Sector-109, Gurugram. The MOU was executed on dated 14.02.2020 and on the same date the buyer's agreement also got executed between the parties. The complainant was allotted a unit of 400 sq. ft. on 3rd floor. As per the stipulations contained in the MOU/builder-buyer agreement, the possession of the unit was to be handed over within a period of 36 months from the date of agreement or from the date of start of construction, whichever is later and apply for grant of completion/occupation certificate. The date of start of construction is not available on records therefore, the due date is calculated from the date of agreement i.e., 14.02.2020. Further grace period of 6 months on account of Covid-19 is allowed for the reasons mentioned above. Hence the due date of possession comes out to be 14.08.2023.
19. The complainant in its pleading has stated that they wants refund of the amount paid by him.
20. The question of refund is now to be determined on the basis of the facts and circumstances of the present case. The Authority notes that, as per clause 03 of the Memorandum of Understanding (MOU) dated



14.02.2020, possession of the allotted unit was to be delivered within a period of 36 months from the date of start of construction, whichever is later and apply for grant of completion/occupation certificate. However, the record does not reflect the specific date of commencement of construction. In the absence of such evidence, the due date for possession is calculated from the date of execution of the builder-buyer agreement, including the stipulated grace period, which results in the due date falling on 14.08.2023. The total sale consideration for the unit was ₹49,46,768/- (as per payment plan) out of which the complainant has paid a sum of ₹46,44,364/-. The occupation certificate for the project was received on 14.08.2024 and subsequently unit was offered for possession on 24.12.2024.

- IX. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per buyer's agreement was 14.08.2023 and the allottees in this case have filed this complaint on 18.04.2025 after possession of the unit was offered to him on 24.12.2024 after obtaining occupation certificate on 14.08.2024 by the promoter.
- X. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has



already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money they have paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022; that: -

25. *The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*
21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of



failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the complainant/allottees failed to exercise the right although it is unqualified one. The complainant has to demand and make their intention clear that they wish to withdraw from the project. Rather, tacitly wished to continue with the project and thus made themselves entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottees invest in the project for obtaining the allotted unit and on delay in completion of the project and when the unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

22. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)** wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate and also in consonance with the judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors (Supra)**.

23. Keeping in view of the aforesaid circumstances that the respondent-builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, it is concluded that if the complainant/allottees still want to withdraw from the project, the paid-up amount shall be refunded after deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.
24. The Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India* (1973) 1 SCR 928 and *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, 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 flat remains with the builder as such there is hardly any actual damage. So, it was held that 10% of the basic sale price is reasonable amount to be deducted in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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.*

25. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of ₹46,44,364/- after deducting 10% of the sale consideration along with an interest @10.85% (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 surrender/filing of the complaint i.e., 18.04.2025 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
26. The Authority further observes that Memorandum of Understanding (MOU) dated 14.02.2020 contains a clause regarding assured return. However, both the parties have not filed any documentary proof showing payment of assured return to the complainant. Nevertheless, if the respondent has made any payment towards the assured return, the same shall be adjusted at the time of granting refund.

H. Directions of the Authority

- i. The respondent builder is directed to refund the paid-up amount of ₹46,44,364/- to the complainant after deducting 10% of the sale consideration along with an interest @10.85% from the date

of surrender/filing of the compliant i.e., 10.02.2021 till the actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

- ii. A period of 90 days is given to the respondent no. 1 to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025



HARERA
GURUGRAM