

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

Complaint no: 6112 of 2022
Date of filing: 21.09.2022
Date of Decision: 04.11.2025

**Rajiv Gupta and Rajiv Gupta HUF
and Sudha Gupta**

All R/o: Villa no. 30, Monada, Emaar
Marbella, Sector-66, Gurugram.

Complainants

Versus

M/s Neo Developers Pvt. Ltd.

Regd. Office at: - 32-B, Pusa Road,
New Delhi-110005

Respondent

CORAM:

Shri Ashok Sangwan
Shri Phool Singh Saini

Member
Member

APPEARANCE:

Shri Amit Gupta (Advocate)
Shri E. Krishna Dass (Advocate)

Counsel for Complainants
Counsel for Respondent

ORDER

1. This order shall dispose of complaint titled as above filed on 21.09.2022 before the 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.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1)	Name of the project	Neo Square
2)	Project location	Sectors 109, Gurugram
3)	Project type	Commercial
4)	Project Area	3.08 acres
5)	DTCP License	102 of 2008 dated 15.05.2008 valid up to 14.05.2024
6)	RERA Registered/ not registered	109 of 2017 dated 24.08.2017 valid up to 23.08.2021
7)	Allotment letter dated	15.03.2016 (As per page no. 56 of the complaint)
8)	Date of apartment buyer agreement (Singed After 4 MoUs)	18.05.2018 (As per page no. 77 of the complaint)
9)	Unit no. and Floor	8 th Unit and 3rd floor (As per page no. 77 of the complaint)

10)	Unit area admeasuring	1273 sq. ft. (Carpet Area) and 2546 sq. ft. (Super Area) (As per page no. 78 of the complaint)
11)	Possession clause	N/A
12)	Due date of possession	18.11.2021 (3 years from the date of signing of the BBA + 6 months grace period provided by the HRERA) [Note: - As per the judgement Fortune Infrastructure and Ors Vs Trevor D'Lima And Ors MANU/SC/0253/2018]
13)	Total sale consideration	Rs. 1,82,02,957/- (As per statement of account on page no. 96 of the Complainant)
14)	Amount paid by the complainant	Rs. 1,81,57,481/- (As per statement of account on page no. 74 of the reply)
15)	Assured return paid by the respondent	Rs. 85,08,894/- (As per statement of account on page no. 74 of the reply)
16)	Final notice cum cancellation	07.06.2021 (As per page no. 130 of the reply)
17)	Occupation certificate	14.08.2024 (As per the DTCP Site)
18)	Offer of possession	N/A

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint: -
- i. That the developer is a company/promoter engaged in the business of development of real estate and sale of developed units (such as apartments and shops) to the general public.
 - ii. That in the month of October 2014, the developer represented to the complainants that the developer is in possession of a large parcel of land on Dwarka Expressway, Sector-109, Gurugram and has received the requisite permissions, sanctions and licenses from the concerned authorities to develop a commercial project in the name and style of "Neo Square" ("Said Project").
 - iii. That relying on the developer's representations, warranties and promises, the Complainants invested their hard-earned money into a 'Restaurant' to be constructed in the Said Project and paid the entire sale consideration of Rs. 1,71,71,155/- (Rupees One Crore Seventy-One Lakhs Seventy-One Thousand One Hundred and Fifty-Five Only) to the Developer, vide various cheques and RTGS.
 - iv. That four Memorandums of Understanding (MoU), dated 21.10.2014, 28.11.2014, 10.04.2015 and 12.06.2015, were executed between the Complainants and Developer, whereby a 'Commercial Unit on third floor' having total super area approx. 2150 Sq. Ft., was allotted to the complainants, and assured monthly return of Rs. 1,62,594/- per month was promised to be paid by the developer to the complainants till the commencement of the first lease of the unit.
 - v. Subsequently, as per mutual agreement between the complainants and developer, the super area of the unit was increased to 2400 sq. ft. and the

- assured monthly return was also increased to Rs. 1,81,500/- per month (Rs. 1,89,668/- after addition of Service Tax and deduction of TDS).
- vi. That an allotment letter dated 15.03.2016 was also issued by the Developer in favour of the complainants, whereby the complainants were allotted the Unit No. 307 on the Third Floor of the Said Project, having super area approx. 2400 Sq. Ft. and carpet area 1200 Sq. Ft. ("Said Unit").
 - vii. That as per the MOUs, the developer had a contractual obligation to complete the construction of the said project and hand over the possession of the said unit to the complainants complete in all respects, within 48 (Forty-Eight) months i.e. latest by 21.10.2018.
 - viii. That, however, it was only much later that the complainants learnt that 'thin air' had been sold to them as no sanctions/approvals/permissions had been taken in respect of the said restaurant space on the third floor and the same never existed in the official sanctioned plans.
 - ix. Thereafter on 23.05.2017, in furtherance of the criminal scheme of the developer to defraud the complainants and without even starting construction of the proposed 'restaurant space', the developer raised an additional vat demand of rs. 8,27,882/- from the complainants and threatened to charge interest @18% in case of non-payment of the amount
 - x. That in furtherance of the same, the developer also sent emails in june 2017, demanding the vat payments for the said unit and two other units booked by the complainants and their family members in the said project.
 - xi. That left with no option but to save their hard-earned investment, Complainants agreed to make the payment under protest and on the condition that the extra VAT amount shall be refunded by the Developer in case the same is wrongly charged or in case any refund is given by the

- authorities. The Developer agreed to the same and further confirmed that NO DUES were payable after making the said VAT payments.
- xii. That on the basis of the promises given by the Developer, the complainants paid the full amounts to the developer, towards the new VAT Demand.
- xiii. That in May 2018, i.e., only a few months before the promised date of possession, the Developer forced the complainants to execute new documents styled as 'Buyer's Agreement' and 'No-Objection Certificate' dated 18.05.2018, which were completely one-sided and non-negotiable.
- xiv. The allotted unit number was arbitrarily changed from unit no. 307 to unit no. 8 and even the area of the unit was increased to 2546 sq. ft. (super area) and 1273 sq. ft. (carpet area), for the sole purpose of demanding more payments from the complainants.
- xv. That in January 2020, a new frivolous Demand Notice of Rs. 13,34,221/- (Rupees Thirteen Lacs Thirty-Four Thousand Two Hundred Twenty-One Only) towards 'VAT outstanding' was sent by the Developer to the Complainants.
- xvi. That even before this illegal demand, the Developer had made such demands in 2017 and the complainants had readily cleared all the VAT payments, after which the Developer had sent an Email stating that NO DUES are payable. However, despite the same being an admitted position, Developer again raised this demand without giving any legal basis on the basis of which such demand is being made, as VAT had already been superseded by the GST regime.
- xvii. That due to the illegal actions of the Developer, the complainants sent a legal notice dated 07.02.2020 to the developer, calling upon the developer to refund the entire sale consideration of Rs. 3,42,05,943/-

- (Rupees Three Crores Forty-Two Lakhs Five Thousand Nine Hundred and Forty-Three Only) paid by the Complainants and their family members to the Developer towards booking of three units in the Said Project, along with interest @18% p.a. till the date of refund, and to pay the outstanding Assured Monthly Returns and a further sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) towards mental trauma and agony caused to the Complainants.
- xviii. That further, a malafide 'Reminder Letter' dated 17.10.2020 was sent by the developer to the complainants containing threat of 'accrual of interest' if the demand was not paid.
- xix. That when the complainants refused to accede to the illegal demands by the developer, the developer sent a 'final notice' dated 07.06.2021, containing completely false claims regarding 'outstanding amounts' and further threatened to cancel the allotment and resell the said unit if the demanded amount was not paid before 21.06.2021.
- xx. That due to the fraud, cheating and embezzlement of the complainant's hard-earned money by the developer and developer's directors Mr. Ashish Anand and others, the complainants filed a criminal complaint with the DCP, Economic Offences Wing, New Delhi.
- xxi. That based on the complaint written by the Complainant as well as by various other aggrieved investors, who have been cheated by the Developer in similar manner, the Economic Offences Wing registered FIR No. 0046/2022 dated 16.03.2022 against the Developer M/s Neo Developers Pvt. Ltd. and its Directors and other personnel. Investigation is ongoing in the said matter.
- xxii. That the complainants have also come across sanctioned plans on the HRERA website, which clearly reveal that till date there is no sanction of

third floor at the location where the Complainants' unit was supposed to be constructed.

xxiii. Moreover, despite having received the entire sale consideration in advance, the developer has been harassing the complainants by issuing frivolous demand notices on account vat and other imaginary charges, and has also arbitrarily changed the unit size only to extort more money from the complainants. and now the developer has threatened to cancel the allotment of the complainants. Due to all the aforesaid, the complainants are constrained to file this present instant complaint.

C. Relief sought by the complainant: -

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

- I. Without prejudice to any other remedy available, the Complainants seek return of the amount of Rs.1,71,71,155/- paid to the Developer/promoter in respect of the allotted unit, with interest thereon at the prescribed rate.
- II. To direct the Developer to refund the excess amount of Rs. 8,27,882/- (along with interest thereon) taken from the Complainants towards VAT demand and to withdraw the illegal VAT Demand Letter dated 22.01.2020.
- III. To direct the Developer to pay the arrears of Assured Monthly Returns amounting to Rs.81,67,500/- along with interest thereon, from 2019 till date of payment.
- IV. To direct the Developer to deposit the TDS deducted from the Assured Monthly Returns paid to the Complainants till 2019 along with interest/penalty thereon to the Income Tax authorities, if not so paid, and provide TDS certificates to the Complainants.

V. To direct the developer to pay compensation of Rs. 1,00,00,000/- to the complainants for deceiving and cheating the Complainants into investing their hard-earned money in a Unit which was neither sanctioned nor could be constructed.

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.
- i. That Mr. Rajiv Gupta (*hereinafter referred to as "Complainant No. 1"*), Rajiv Gupta HUF (*hereinafter referred to as the "Complainant No. 2"*) and Sudha Gupta (*hereinafter referred to as the "Complainant No. 3"*) and all of them cumulatively (*referred to as the "Complainants"*) with intent to invest in the Real Estate project approached the Respondent to enquire and to know the specific details of the project i.e., "NEO SQUARE", (*hereinafter referred to as the "Project"*) situated at Sector-109, Gurugram, Haryana being developed by the Respondent. That after being fully satisfied with the Project, the Complainants decided to opt for the Investment Return Plan of the said project vide four different Memorandum of Understanding dated 21.10.2014, 28.11.2014, 10.04.2015, 12.06.2015 executed between complainant no.1, complainant no. 2, complainant no. 3 and respondent.
 - ii. That the complainant no. 1 applied through application form and requested the respondent to allot commercial space in the project i.e., "Neo Square". that in furtherance to the same, a Memorandum of Understanding dated 21.10.2014 (*hereinafter referred to as "MOU"*) was

- executed between the Complainant No. 1 and the Respondent for Investment Return Plan with respect to the commercial space booked.
- iii. It is pertinent to mention that as per the said MOU, the respondent agreed to allot the commercial space admeasuring 900 Sq. Ft (83.61 Sq. Mtr) super built-up area on the 3rd floor of tower of the said project.
- iv. That thereafter the complainant no.1 had paid Rs. 76,26,218/- to the respondent against the total sale consideration of the commercial space, against which the respondent has already paid Rs. 34,13,242/- (after deduction of TDS) as assured return payment till 16.12.2018, to the complainant no. 1 against the above said Commercial Space in the project, as per the terms of the MOU.
- v. That the complainant no. 2 applied through application form and requested the respondent to allot commercial space in the project i.e., "neo square". that in furtherance to the same, a memorandum of understanding dated 28.11.2014 (*hereinafter referred to as "mou"*) was executed between the complainant no. 2 and the respondent for investment return plan with respect to the commercial space booked. it is pertinent to mention that as per the said mou, the respondent agreed to allot a commercial space measuring 250 sq. ft (23.226 sq. mtr) super built-up area on the 3rd floor of tower of the said project.
- vi. That the complainant no. 2 paid Rs.21,38,978/- to the respondent against the total sale consideration of the commercial space against which the respondent has already paid Rs. 21,44,189/- (after deduction of TDS) as assured return payment till 16.12.2018 to the complainant no. 2 against the above said commercial space in the project, as per the terms of the MOU.

- vii. That the Complainant No. 2 in furtherance to MOU dated 28.11.2014 further executed a Memorandum of Understanding dated 10.04.2015, with Respondent. It is pertinent to mention that as per the said MOU, the respondent agreed to allot the commercial space measuring 500 sq. ft (46.45 sq. mtr) super built-up area on the 3rd floor of tower of the said project.
- viii. That the complainant No. 2 paid Rs. 30,33,459/- to the respondent against the total sale consideration of the commercial space and the respondent has already paid Rs. 3,80,406/- (after TDS) as Assured Return Payment till 05.02.2016 to the complainant no. 2 against the above said commercial space in the project, as per the terms of the MOU.
- ix. That the Complainant No. 3 applied through Application form and requested the Respondent to allot Commercial Space/premises in the project i.e., "NEO SQUARE", (*hereinafter referred to as the "project"*) situated at Sector-109, Gurugram, Haryana.
- x. That in furtherance to the same, a Memorandum of Understanding dated 12.06.2015 was executed between the Complainant No. 3 and the Respondent for Investment Return Plan. It is pertinent to mention that as per the said MOU, the Respondent agreed to allot the commercial space measuring 500 Sq. Ft (46.45 Sq. Mtr) super built-up area on the 3rd floor of Tower of the said project.
- xi. That the complainant No. paid Rs. 42,98,250/- to the Respondent against the total sale consideration of the commercial space and against the same the respondent has already paid Rs. 17,42,676/- (after deduction of TDS) as Assured Return Payment till 11.08.2019 to the

Complainant No. 3 against the above said Commercial Space in the project, as per the terms of the MOU.

- xii. That against the four MOU's executed at different dates between the Complainants and Respondent, a single commercial space on third floor having super area approx. 2150 sq. ft was initially allotted, against which a monthly assured return amount of Rs. 1,62,594/- was paid by the respondent till the commencement of first lease deed.
- xiii. That it is also an admitted position by the complainants in their complaint that as per the mutual agreement between the complainants and the respondent, the super area of the commercial space was increased from 2150 sq. ft. to 2400 sq. ft.
- xiv. That the respondent till date has paid Rs. 85,08,894/- (eighty-five lakhs eight thousand eight hundred and ninety-four only) towards the assured monthly return to the complainants against the commercial space in the above said project of the respondent which is inclusive of the TDS.
- xv. That since, the complainants failed to make good the pending amounts therefore, the respondent company issued reminder I/ demand II dated 20.03.2025 requesting the complainants to pay the amount due of Rs.90,79,239.62/- along with interest of Rs. 25,101.22/-.
- xvi. That respondent vide allotment letter dated 15.03.2016, provisionally allotted unit no. 307 on third floor having super area of approximately 2400 sq. ft (222.96 sq. mtr.).
- xvii. It is pertinent to mention that the respondent allotted the complainants unit no. 307 on third floor subject to the terms and conditions set out in

payment plan attached to application form as opted by the complainants and further the allotment of the above said unit to the complainants was provisional/tentative subject to the fulfilment of terms and conditions forming part of the application submitted by the complainants.

- xviii. That on 18.05.2018, a "Buyer Agreement" (*hereinafter referred to as the "Agreement"*) was executed between the Complainants and the Respondent, whereby a Restaurant Space bearing No. 08 on third floor in the area designated for the food court having super areas of approximately 2546 sq. ft. at rs. 6894 rate per sq. ft. for a sale consideration of rs. 1,75,52,124/- (One Crore Seventy-Five Lakhs Fifty-Two Thousand and One Hundred Twenty-Four Only) against which complainants had only paid Rs. 1,71,71,155/- (One Crore Seventy-One Lakh Seventy-One Thousand One Hundred and Fifty-Five Only), was allotted to the complainants.
- xix. That It is submitted that as per Clause 10 of the "MOUs" the due date for handing over of the possession was within 48 months from the date of execution of the Agreement or from the start of construction, whichever is later.
- xx. That it is pertinent to mention that this Ld. Authority in Complaint bearing no. 1328 of 2019 titled as "*Ram Avtar Nijhawan vs M/s Neo Developers Pvt Ltd*", pertaining to the same project i.e., 'NEO Square' vide order dated 05.09.2019 held that the due date of start of construction for the instant project was 15.12.2015. The Ld. Authority also granted a period of 6 months as grace period.

- xxi. That, Accordingly, the due date of delivery of possession in the present case is 48 months + 6 months (grace period) to be calculated from 15.12.2015, which come out to be 15.06.2020.
- xxii. That on 07.02.2020, the complainants sent a legal notice to the respondent calling upon the respondent to refund the amounts paid against the sale consideration of the unit along with interest @ 18% p.a. therefore, it is abundantly clear that the complainants were not interested in continuing with the said unit.
- xxiii. That, it is of utmost important to note herein that the request for refund by the complainants were before the due date of possession i.e., 15.06.2020, meaning thereby that in the present case the complainants are surrendering their unit. therefore, in view of Haryana real estate regulatory authority, Gurugram (forfeiture of earnest money by builder) regulation, 2018 dated 05.12.2018, the respondent herein is entitled for forfeiture of 10% earnest money.
- xxiv. That the complainants failed to clear the outstanding dues payable towards statutory taxes and for this reason the respondent was force to issue the reminders for payment 22.01.2020 and reminder dated 30.10.2020.
- xxv. That respondent sufficiently waited for the complainants to make the outstanding payments. however, the complainants never paid heed to the same and as a last resort the only option left out with the respondent was to cancel the unit and refund the amount to the complainants after making necessary deduction as per the terms and conditions of the agreement. it is submitted that complainants were at obligation as per

the terms and conditions of the agreement to make timely payment to the respondent as per the payment plan.

- xxvi. It is submitted that in compliance of the terms and conditions of the above said MOU dated 21.10.2014, 28.11.2014, 10.04.2015 & 12.06.2015 executed between the Complainants and the Respondent, Respondent had paid Rs. 85,08,894/- as assured return payment to the complainants.
- xxvii. That it was agreed by the Complainant in clause 4.2 of the Buyer Agreement that the amounts paid to the Respondent to the extent of 10% of the Basic Sale Price shall be treated as Earnest Money and further agreed in clause 4.5 that the monies already paid to the Complainant in the form of assured return shall also be deducted along with brokerage paid by the Respondent on behalf of the Complainant. Therefore, the amount to the extent of Assured Return paid to the Complainants is liable to be deducted from the refund amount, if any.
- xxviii. That without prejudice and without admitting any averments of the complainants, after the enforcement of the "Banning of Unregulated Deposit Schemes Act, 2019" the respondent was constrained to cease all payment pertaining to assured return to all its allottees who had opted for the same.
- xxix. That It is noteworthy to mention in the present situation, that in order to provide a comprehensive mechanism to ban the unregulated deposit schemes, other than the deposits taken in the ordinary course of business, parliament has passed an act titled as "The Banning of Unregulated Deposit Schemes Act, 2019" (hereinafter referred to as "BUDS Act").

xxx. Also, it is submitted that the all the payment request for dues pertaining to the VAT are made in consonance with the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the Complainants, as the same has been assessed and demanded by the competent authority. It is wrong of the complainants to claim that the VAT demands have been fully paid wherein as per the records of the respondent the same are outstanding and further detailed submissions have been provided in the preliminary submissions and objection which are not repeated herein for the sake of brevity and convenience.

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 submission made by the parties.

E. Jurisdiction of the authority

8. 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. 2021-2022(1) R.C.R. (Civil) 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 relief sought by the complainants.

- I. Without prejudice to any other remedy available, the Complainants seek return of the amount of Rs.1,71,71,155/- paid to the Developer/promoter in respect of the allotted unit, with interest thereon at the prescribed rate.**
- II. To direct the Developer to refund the excess amount of Rs. 8,27,882/- (along with interest thereon) taken from the Complainants towards VAT demand and to withdraw the illegal VAT Demand Letter dated 22.01.2020.**

14. The above reliefs no. I and II are taken up together. The complaint has been filed under Section 31 of the Act, 2016 seeking refund of the amount deposited by the complainants in respect of unit no. 8th unit and 3rd floor of

size 1273 sq. ft. (Carpet Area) and 2546 sq. ft. (Super Area) of total sale consideration Rs. 1,82,02,957/- out of which the complainants have paid the sum of Rs. 1,81,57,481/- in the project "Neo Square", Sector 109, Gurugram, developed by the respondent company. The complainants admittedly executed the Buyer's Agreement dated 18.05.2018 which clearly provides for payment obligations and default consequences. The respondent has paid the sum of Rs.85,08,894/- as assured returns to the complainant till January, 2019.

15. As per the documents available on record, the BBA has been executed on 18.05.2018 between the parties but no specific due date has been mentioned in the BBA. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Forfune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"

16. In the instant case, the BBA executed between the parties on 18.05.2018. On view of above-mentioned reasoning, the date of BBA ought to be taken as the date for calculating the due date of possession. The period of 36 months is calculated from the date of BBA i.e., 18.05.2018. The grace period of 6 months is included on account of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 18.11.2021.
17. Upon perusal of the documents on record, the authority observes; **Firstly**, the complainants have made a payment of Rs. 1,81,57,481/- to the respondent towards booking amount and the respondent has also issued acknowledgment receipts against the same. **Secondly**, the due date of possession is 18.11.2021 and the complainants have filed the present complaint on 21.09.2022, which is after the due date of possession. **Thirdly**, till date no amount has been refunded to the complainant despite of the complainants requested for refund of paid-up amount as the complainants does not want to continue with the project.
18. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact,

claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules, Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project.

19. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amount received from the complainant. Thus, the complainant is entitled to get refund of the entire paid-up amount.

20. So, the respondent/builder is directed to refund the amount received from the complainants and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date i.e. 8.85%)+2% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

III. To direct the Developer to pay the arrears of Assured Monthly Returns amounting to Rs.81,67,500/- along with interest thereon, from 2019 till date of payment.

IV. To direct the Developer to deposit the TDS deducted from the Assured Monthly Returns paid to the Complainants till 2019 along with interest/penalty thereon to the Income Tax authorities, if not so paid, and provide TDS certificates to the Complainants.

21. The Authority observes that the complainants had initially executed four MoUs with the respondent, however, subsequently a Buyer's Agreement

dated 18.05.2018 was executed between the parties. The said Buyer's Agreement, by its express terms, supersedes all the previous MoUs, and notably does not contain any clause with respect to assured returns. Therefore, after the execution of the buyer's agreement, all earlier transactions and understandings between the parties stood extinguished and merged into the said agreement. Furthermore, the exchange of unit was carried out by the complainant of her own free will, as recorded in their No objection certificate dated 18.05.2018, and hence, the relief sought with respect to assured returns cannot be granted at this stage.

- V. To direct the developer to pay compensation of Rs. 1,00,00,000/- to the Complainants for deceiving and cheating the Complainants into investing their hard-earned money in a Unit which was neither sanctioned nor could be constructed.**

22. The complainant is seeking above mentioned relief w.r.t compensation cost. *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the authority.

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the functions entrusted to the authority under section 34(f):

- I. The respondent is hereby directed to full refund of the total amount paid by the complainants, i.e., **Rs. 1,81,57,481/-** (Rupees One Crore Eighty-One Lakh Fifty-Seven Thousand Four Hundred Eighty-One only) to the complainants along with interest at the prescribed rate of 10.85% per annum calculated from the date of filing of the complaint, i.e., 21.09.2022, till the date of actual realization of the refund amount.
- II. It is further directed that the amount already paid to the complainants towards Assured Return of **Rs. 85,08,894/-** shall be deducted from the refundable amount, and such deduction shall also be adjusted with interest calculated at the rate of 10.85% per annum from 21.09.2022 till the date of realization.
- III. 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.

24. The complaint stands disposed of.

25. Files be consigned to registry.


(Phool Singh Saini)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:04.11.2025