

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Order pronounced on: 20.01.2026**

Name of Promoter		Neo Developers Private Limited	
Project Name		Neo Square	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/5934/2024	Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited.	Mr. Rajinder Singh (Complainants) Venket Rao (Respondent)
2.	CR/5936/2024	Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited.	Mr. Rajinder Singh (Complainants) Venket Rao (Respondent)
3.	CR/5937/2024	Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited.	Mr. Rajinder Singh (Complainants) Venket Rao (Respondent)

CORAM:

Shri Arun Kumar	Chairman
Shri Phool Singh Saini	Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this Authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "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 setting aside of cancellation, assured return and direction for execution of the conveyance deed.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Neo Square", Sector-109, Gurugram						
1. Completion certificate- 14.08.2024						
2. DTCP License no. 102 of 2008 dated 15.05.2008 valid upto 14.05.2025 - Shri Maya Buildcon Pvt. Ltd. and 5 Ors. are the licensee for the project as mentioned in land schedule of the project.						
3. Nature of Project- Commercial Colony						
4. RERA registration -109 of 2017 dated 24.08.2017, valid upto 22.02.2024						
Sr. No.	Complaint No., Case Title, and Date of filing of complaint and reply received	Unit no. & size	Date of execution of BBA	Sale Consideration (S.C)/ Total Amount paid by the complainants (A.P)	Cancellation letter Issued by the respondent	Relief Sought
1.	CR/5934/2024 Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited DOF: 06.12.2024 Reply: 09.10.2025	Unit No. 01, 11 th Floor (1101) 1915 sq. ft (As per pg. no. 22 of the BBA in the complaint)	BBA: 26.11.2015 (As per pg. no. 17 of the BBA in the complaint)	S.C: Rs. 1,26,39,000/- (As per pg. no. 22 of the BBA in the complaint) A.P.: - Rs.39,50,954/- (As per pg. no. 24 of the BBA in the complaint)	23.03.2021 (As per pg. no. 45 in the reply)	1.Execute the Sale Deed. 2.Respondent to adjust the Assured Return. 3.Respondent to pay the interest. 4.Not to cancel the Unit

2.	CR/5936/2024 Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited DOF: 06.12.2024 Reply: 09.10.2025	Unit No. 02, 11 th Floor (1102) 752 sq. ft (As per pg. no. 20 of the BBA in the complaint)	BBA: 10.07.2017 (As per pg. no. 15 of the BBA in the complaint)	S.C: Rs. 48,88,000/- (As per pg. no. 20 of the BBA in the complaint) A.P.: Rs. 15,30,188/- (As per pg. no. 22 of the BBA in the complaint)	23.03.2021 (As per pg. no. 45 in the reply)	1.Execute the Sale Deed. 2.Respondent to adjust the Assured Return. 3.Respondent to pay the interest. 4.Not to cancel the Unit
3.	CR/5937/2024 Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited DOF: 06.12.2024 Reply: 09.10.2025	Unit No. 19, 11 th Floor (1119) 1822 sq. ft (As per pg. no. 21 of the BBA in the complaint)	BBA: 26.11.2015 (As per pg. no. 16 of the BBA in the complaint)	S.C: Rs. 1,20,25,200/- (As per pg. no. 21 of the BBA in the complaint) A.P.: Rs.37,59,078/- (As per pg. no. 23 of the BBA in the complaint)	23.03.2021 (As per pg. no. 47 in the reply)	1.Execute the Sale Deed. 2.Respondent to adjust the Assured Return. 3.Respondent to pay the interest. 4.Not to cancel the Unit

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5934/2024 titled as Urmila Sharma and Ved Parkash V/S NEO Developers Private Limited** are being taken into consideration for determining the reliefs of

the allottee(s) qua setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.

A. Project and unit related details.

7. 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:

CR/5934/2024 titled as Urmila Sharma and Ved Parkash

V/S NEO Developers Private Limited

S. No.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
	Project area	3.08 acres
1.	Nature of the project	Commercial colony
2.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
3.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
4.	Unit no.	1101, 11 th floor (page no. 45 of reply)
5.	Unit area admeasuring	1915 sq. ft. (page no. 45 of reply)
6.	Date of buyer's agreement	26.11.2015 (page no. 17 of complaint)
7.	Possession clause	5.2 of BBA <i>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/ Occupancy Certificate.</i> <i>(As per pg. no. 27 of the complaint)</i>

8.	Date of start of construction	The Authority has decided the date of start of construction as 15.12.2015 which was agreed to be taken as date of start of construction for the same project in other matters. In CR/1329/2019 it was admitted by the respondent in his reply that the construction was started in the month of December 2015.
9.	Due date of possession	26.11.2018 (36 months - Calculated from date of agreement being later as per 5.2 clause of the BBA)
10.	Basic sale consideration	Rs. 1,26,39,000/- (as per page no. 22 of complaint)
11.	Amount paid by the complainant	Rs. 39,50,954/- (as per BBA pg. no. 24 of complaint)
12.	Occupation certificate	14.08.2024 (as per DTCP site)
13.	Offer of possession	NA
14.	Reminders for payment	16.12.2017, 05.03.2018, 24.02.2020, 07.06.2021 (As per page no. 40 to 44 of reply)
15.	Final notice of cancellation	23.03.2021 (As per page no. 45 of reply)

B. Facts of the complaint.

8. The complainants have made following submissions in the complaint:

- i. That the complainants Mrs. Urmila Sharma and Mr. Ved Parkash, R/o 3, Oxford RD # 03-07, Singapore - 218814, who purchased the unit on 26.11.2015 and are law-abiding citizens, taxpayers to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India. The

complainants are husband and wife wherein husband is overseas citizen of india and wife is non- resident Indian who are residing in singapore currently.

- II. That the respondent i.e., M/S Neo Developers Private Limited and the directors are having its registered office at 32-B, Pusa Road, New Delhi and branch office at 1205-B, 12th floor, tower-b, signature towers, south city-I, NH-8, Gurugram, Haryana-122001. The respondent is engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
- III. That the complainants thought of investing their hard-earned money in some real estate project in India. The prime reason for investing in India was that the returns on investments in real sector in India were far more promising than returns in Singapore. That the complainants visited a property exhibition in singapore where they came across the project "Neo Square" of the respondent. Thereafter the complainants, contacted representative of the company who explained the project to the complainants. Later, the complainants were introduced to Mr. Ashish Anand Director of the company. Mr. Ashish Anand Director and employees of the company explained the project to complainants wherein it was stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.
- IV. The complainants initially purchased a restaurant unit in the company's assured return plan. The company committed to paying Rs. 90 per sq. ft. per month for the area purchased, provided the full payment for the unit was made either at the time of booking or during the execution of the memorandum of understanding (MOU). This assurance was strongly emphasized by Mr. Ashish Anand Director of the company, along with its employees, who guaranteed that there would be no delays in the assured payments under any circumstances.

Following the acquisition of the restaurant unit, the complainants conducted a thorough assessment of the returns on their investment. They were influenced by the initial representations and assurances regarding the projected profitability of the venture. Encouraged by these assurances and the anticipated financial prospects, the complainants proceeded to expand their investment within the same project by purchasing three additional office units.

- V. That the directors and employees of the company after convincing the complainant that their investment will yield a good return, finally convinced the complainants to purchase the office unit after giving assurance that the investment on return from the restaurant unit is good and that the complainants would be able to generate good profit out of the office units too.
- VI. That complainants entered builder buyer agreement executed on 26.11.2015. Mr. Ashish Anand Director of the company explained the complainants that the project would be state-of-the-art and that the company had obtained all the mandatory permissions/clearances to construct the project, which would be constructed strictly in conformity with the sanctioned plan. In view of the above assurance an impression was given to complainants that since the project covers retails, food court, office, restaurant, cinema and hyper market, the footfall would be higher in number than any other place. Based on the above inducement and assurance of Mr. Ashish Anand and the employees of the company and also after purchasing the commercial unit (restaurant) on the third floor, the complainants purchased an office unit on the eleventh floor and executed a builder buyer's agreement dated 26.11.2015 having area admeasuring 1915 sq. ft. super built-up area at the rate of Rs. 6600/- per sq. ft. wherein office unit no. 01 was assigned on 11th floor. It is pertinent to mention that at the time of entering the bba, the construction of the project has already commenced

therefore the assurance to deliver the project in 36 months apparently was lucrative in nature.

- VII. The complainants paid a sum of Rs 39,50,954/- (Rupees thirty-nine lakh fifty thousand nine hundred fifty-four only) towards consideration of the office unit no. 01, which were duly acknowledged by the company in the BBA.
- VIII. The respondent on 16.12.2017 sent a letter for installment due for unit no. 1101 wherein a sum of Rs.66,78,907/- was demanded from the complainants which included the charge of EDC/IDC.
- IX. That subsequently the respondent again on 05.03.2018 sent a letter for installment due for unit no. 1101 wherein a sum of 66,78,907/- was demanded from the complainants. Furthermore, when clarifications were sought by the complainants about the interest and the status of the construction of the building, no satisfactory reply was given by the respondent and to the utter shock, the respondent again on 24.02.2020 sent a letter for installment due for unit no. 1101 wherein a sum of Rs.1,01,73,848/- was demanded from the complainants in which interest amount of Rs.34,52,476/- was added. The complainant approached the respondent in order to understand the interest amount which was levied on the installment but no satisfactory reply was received by the complainants.
- X. With respect to the unit no. 36 in the food court which was purchased by the complainants on 14.05.2015, the respondent as per the BBA and MOU was liable to make payment towards the assured return. However, the cheque for the financial year 2018-19 were delivered late and subsequently the same got dishonoured. Further the construction was not in conformity with the payment link plan to the construction which led the complainants to contact the respondent's office. Despite there being several communications, the respondents failed to make the payments towards the assured return as well

as construct the project in conformity with the plan which was shown at the time of selling the unit to the complainant. Being left with no other option, the complainant first requested the respondent to adjust the assured return towards the payment of the office units purchased by them and upon denial by the respondent, it led to a dispute regarding delay of construction as well as recovery of assured return from the respondent.

- XI. That it is submitted by the complainants that they received the letter dated 24.02.2020 via aramex courier on 02.03.2020 pursuant to which a reply was sent to the respondent - company on 19.03.2020 wherein the complainants told the respondent that the letter dated 24.02.2020 and 30.12.2019 was not received by the complainants until 02.03.2020. It is submitted that in the reply the complainants again sought clarifications with respect to the amount of interest levied on the due instalments and also requested the respondent to comply with the BBA/MOU w.r.t the restaurant unit in which assured return was not been sent by the respondent and therefore under the circumstances, the complainants were left with no choice but to stop the payment of the office unit until all the issues were resolved.
- XII. That the company sent an email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibilities, the company invoked force majeure clause despite the fact that no such clause pertaining to force majeure exist either in BBA.
- XIII. That despite assurance of completion of construction of project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of more than 8 years. the structure of only office building is constructed. The building wherein food court and restaurants, has been constructed up to 2nd floor only and there is no sign of construction of the tower wherein inox nine-screen cinema,

serviced apartment, infotainment and entertainment zone were shown in the brochure. It has also come into complainant's, knowledge that the company has not even received the license from the concerned authorities to construct the tower/building besides office building.

- XIV. The complainant has filed the complaint before economics offences wings delhi on 25.03.2021. wherein FIR no- 0046/2022 has been filed under sections 406/420/120b against the respondent.
- XV. That the respondent at various instances violated the terms and condition of the BBA by:
- Not completing the project in terms of the BBA.
 - Not handing over the peaceful and vacant possession of the above said allotted office unit after completion of the project.
 - Levying interest on the balance payment on the office unit even though the delay in constructing the project is of the respondent.
- XVI. It is submitted that since there has been a delay in the construction of the project and a significant deviation from the originally agreed-upon plan, coupled with the failure on the part of the builder/respondent to honour the payment of the assured return, it is evident that the builder/respondent is not justified in charging interest on the interest amount. This action is not in alignment with the payment-linked plan, particularly given that the delay in construction was solely attributable to the respondent. Furthermore, the delay and deviations were duly communicated to the respondent, underscoring the builder's failure to fulfil their obligations. Under these circumstances, imposing interest on the interest amount is unjust and lacks any contractual or legal foundation.

- XVII. That the complainant Urmila Sharma is giving a power of attorney to complainant Ved Parkash for filing the complaint on behalf of her and to represent her in legal proceedings arising from or related to said complaint.
- XVIII. The complainants hereby declare that they have filed criminal complaint no. 3398 of 2020 under section 138 of the negotiable instruments act, 1881, before the court of chief metropolitan magistrate, Patiala house courts, New Delhi, on 20.02.2020, and the matter is still pending adjudication. This complaint arose from the dishonour of a cheque issued by the respondent towards the payment of the assured return, which the respondent was contractually obligated to make. Upon the dishonour of the cheque, the complainants promptly communicated the issue to the respondent, seeking clarification and redress. however, despite repeated follow-ups, the respondent failed to provide any satisfactory explanation or resolution. Consequently, the complainants were left with no option but to initiate legal proceedings under section 138 of the negotiable instruments act to ensure their rights were protected and the respondent was held accountable for their default.

C. Relief sought by the complainants

9. The complainants have sought the following relief(s):
- I. To direct the Respondent to execute the Sale Deed in favour of the Complainant after the completion of the project and after receiving Completion Certificate and Occupation Certificate.
 - II. Declare that the Respondent cannot charge interest since the project has been delayed by the Respondent.
 - III. To direct the Respondent to pay the interest as per RERA Act.
 - IV. Declare that the builder has no right to allot the unit of the Complainant to Third party or cancel it.

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. The respondent has contested the complaint on the following grounds:

- i. That the complainant requested the respondent to allot a unit/space, admeasuring 1915 sq. ft. super area in the project "NEO Square" (hereinafter referred to as the "project).
- ii. That considering the request of the complainant, the respondent booked a unit bearing no. 01, on 11th Floor, admeasuring 1915 sq. ft. super area, (hereinafter referred to as the "subject unit/unit").
- iii. That after much persuasion by the respondent, the complainant came forward and executed the builder buyer's agreement on 26.11.2015 (hereinafter referred to as the "BBA").
- iv. 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 16.12.2017, 05.03.2018 and 24.02.2020 requesting the complainant to do the needful.
- v. That, despite repeated reminders and ample opportunities granted by the respondent, the complainant failed to come forward to clear the outstanding dues. Consequently, the respondent was constrained to issue a final notice dated 07.06.2021, calling upon the complainant to make payment of the outstanding amount of Rs.1,78,74,340/- towards the said unit.
- vi. That, even after issuance of the final notice dated 07.06.2021, the complainant failed to discharge the outstanding dues. Consequently, the respondent was left with no alternative but to cancel the allotment of the said unit vide letter dated

23.03.2021, in accordance with the terms and conditions of the buyer's agreement.

- vii. That the present complaint has been preferred by the complainants before the Id. authority on frivolous and unsustainable grounds and the complainant has not approached the Id. authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the respondent. the instant complaint is not maintainable in the eyes of the law, is devoid of merit and is fit to be dismissed in limine.
- viii. That as per clause 9-11 of the duly executed bba, the allottee was contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, and allied services in relation to the said unit and the project as a whole. the said clause expressly provides that the allottee shall be liable to make timely payment of maintenance charges and other related dues, as determined by the builder or its nominated maintenance agency, from time to time, in accordance with the applicable maintenance cost. clauses 9-11 of BBA clearly states that the allottee(s) are duty bound to pay charges, taxes etc.
- ix. That, furthermore, clause 4.5 of the BBA specifically empowers the respondent/promoter to terminate the agreement in the event of such default, treating it as a breach of contractual obligations.
- x. The said clause also outlines the mechanism for refund, after deduction of 10% of the basic sale price and other amounts expended by the promoter, including brokerage and assured returns. Accordingly, in view of the continuing default by the allottee in making timely payment of legitimate dues, the respondent was well within its contractual rights to terminate the allotment and cancel the unit. The respondent's action was neither arbitrary nor unjust but strictly in

conformity with the binding agreement voluntarily executed between the parties.

- xi. That the respondent was under no legal or contractual obligation to issue reminders to the complainant/allottee for payment of charges that were lawfully due and payable under the terms of the builder buyer. The contractual framework between the parties clearly stipulates that timely payment of installments and other applicable charges such as maintenance fees, registration charges, taxes, cess, and other levies was the sole responsibility of the allottee, and the essence of the agreement.
- xii. Despite there being no duty cast upon the respondent to send repeated reminders, the respondent, acting in good faith and in a spirit of cooperation, duly issued notices and final demand letters informing the complainant of the outstanding dues and providing ample opportunity to comply. However, the complainant failed to honour the contractual terms and continued to remain in default, thereby justifying the respondent's subsequent cancellation of allotment.
- xiii. That the respondent, in good faith and in compliance with the contractual provisions, issued several written communications and demand notices to the complainant through letters, emails, and reminders dated 16.12.2017, 05.03.2018 and 24.02.2020, requesting him to make timely payment of all lawful charges. The said intimations were duly served upon the complainant at his registered address/email id as mentioned in the BBA, but the complainant neither replied nor complied, thereby wilfully defaulting in his obligations.
- xiv. That, it is pertinent to highlight that the respondent was duly served with a formal demand notice dated 07.06.2021, explicitly calling upon him to clear the outstanding dues amounting to Rs.1,78,74,340 /- (including interest, if any) within 15 days, i.e., on or before 21st June 2021. The said notice clearly

reiterated that timely payment of instalments was the essence of the agreement, as per clause 4.4 thereof, and that continued default would amount to breach of contract, thereby inviting consequences as stipulated in the agreement.

- xv. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of 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.
- xvi. 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.
- xvii. It is pertinent to apprise to the Ld. Authority that 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 [hereinafter referred to as 'GST'] 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.

- xviii. 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. This led to a shortage of working capital, affecting procurement, labour payments.
- xix. That from the facts indicated above, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the completion period as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the Respondent builder.
- xx. That the complainant/allottee wilfully failed to comply with his contractual obligations to pay the requisite charges as stipulated under the builder buyer agreement, which included maintenance charges, IFMS, registration fees, stamp duty, taxes, levies, and other lawful dues. Despite repeated intimations and reminders issued by the respondent demanding payment of the said charges, the complainant deliberately chose to ignore the same. such conduct amounts to a

material breach of the terms of the agreement. consequently, the respondent, being left with no other recourse, lawfully invoked clause 4.5 of the BBA.

- xxi. That the cancellation of the unit was neither arbitrary nor unjustified, but was a necessary contractual consequence of the complainant's own conduct. The respondent acted only after affording ample time and opportunity to the complainant to rectify his default and comply with his obligations. The said cancellation was duly intimated to the complainant through letter dated 23.03.2021.
- xxii. That the allegation of any memorandum of understanding (MOU) executed between the complainant and the respondent is wholly false, fabricated, and baseless. The respondent emphatically denies the existence of any such mou at any point of time. no MOU was ever executed, signed, or exchanged between the parties in respect of the unit in question or for the purpose of any assured return or similar scheme.
- xxiii. That the complainant has further attempted to mislead this hon'ble authority by making false and fabricated assertions regarding the existence of an alleged memorandum of understanding (MOU). The complainant has not produced any such document on record nor mentioned any specific clause, date, or term thereof. This false representation was made deliberately with mala fide intent to misguide the Hon'ble Authority and obtain unjust enrichment. Such conduct amounts to a clear abuse of process and disqualifies the Complainant from claiming any equitable or discretionary relief.
- xxiv. That in view of the above, it is respectfully submitted that there is no contractual basis for any claim of assured return or similar liability against the respondent. The entire complaint is founded on a false premise and is liable to be dismissed with exemplary costs for misleading the Hon'ble Authority and wasting its valuable time.

12. Copies of all the relevant documents have been filed and placed on 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.

F. Findings on the relief sought by the complainants.

I. To direct the Respondent to execute the Sale Deed in favour of the Complainant after the completion of the project and after receiving Completion Certificate and Occupation Certificate.

II. Declare that the Respondent cannot charge interest since the project has been delayed by the Respondent.

III. To direct the Respondent to pay the interest as per RERA Act.

IV. Declare that the builder has no right to allot the unit of the Complainant to Third party or cancel it.

17. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

18. The complainants were allotted a unit bearing no.01, 11th floor measuring 1915 Sq. Ft. for Rs.1,26,39,000/-, vide BBA dated 26.11.2015 under possession linked payment plan. Complainants have paid an amount of Rs.39,50,954/- against the total sale consideration of Rs.1,26,39,000/-. As per clause 5.2 of the agreement, the respondent was required to hand over possession of the unit till 26.11.2018.

19. Thereafter, the respondent has issued various payment request cum demand letters dated 16.12.2017, 05.03.2018 and 24.02.2020 to the complainants and requested to pay the outstanding dues but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 23.03.2021 vide which the respondent threatened the complainant to forfeit the entire amount paid by him.

20. The respondent submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 23.03.2021. Accordingly, the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.
21. The authority also observes that the respondent company raised subsequent demands in accordance with the agreed payment plan. However, the complainants failed to make the requisite payments within the stipulated time, despite several reminders and pre-cancellation notices dated 16.12.2017, 05.03.2018 and 24.02.2020. The Authority also finds that the rebate benefit was conditional upon timely payment of all dues as per the demand letters. Since the complainants defaulted in adhering to the payment schedule, they are not entitled to claim any rebate. Hence, the delay or any consequential financial implication cannot be attributed to the respondent.
- Now, the question before the Authority is whether this cancellation is valid or not?
22. It is matter of record that the complainant booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs.39,50,954/- towards total consideration of Rs.1,26,39,000/- which constitutes 30% of the total sale consideration and the complainant has paid the last payment only in the year 06.10.2015. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 14.08.2024.
23. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit. The respondent after giving reminders dated 16.12.2017, 05.03.2018 and 24.02.2020 and final reminder on 07.06.2021 for making payment for outstanding dues as per payment plan and has cancelled the subject unit via letter 23.03.2021.

24. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clearing the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent issued final notice dated 07.06.2021, and the relevant proportion of the said notice is reproduced as under: -

"You are hereby called upon to clear all outstanding payments amounting to Rs.17,874,340/- within 15 days from the date of this notice i.e. on or before 21st June 2021."

"In case you fail to clear the outstanding dues within the time period stipulated in this notice i.e., by the Last Date for Payment, we will be compelled to consider this failure of yours as breach of the terms and conditions of the MOU as well as the Agreement., and consequences thereof, as per the MOU and Agreement, shall be at your sole risk and responsibility."

"Thereinafter, your allotted Unit No. 1101 in Neo Square shall be treated as cancelled from the next day following the Last Date for Payment and you, the Allottee shall be left with no lien, right, title, interest or claim of whatsoever nature in the said unit. We, the Company, shall thereafter be free to resell and/or deal with the said space in any manner whatsoever at our sole discretion."

25. It is further pertinent to note that even after issuance of the final cancellation notice dated 23.03.2021, the respondent, in good faith, extended an additional opportunity to the complainants to clear the outstanding dues and regularise the allotment on 07.06.2021. However, despite such indulgence and repeated opportunities granted by the respondent, the complainants failed to make the requisite payments. The continued default on the part of the complainants clearly establishes their lack of intent to perform their contractual obligations, thereby justifying the cancellation of the allotted unit in accordance with the terms of the BBA.
26. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default under the said agreement.
27. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and

the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

28. Now, another question arises before the Authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has not sought the relief of the refund of the entire paid-up amount while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the balance amount after deduction as per relevant clause of agreement has been refunded back to the complainant. The Authority observed that rule 28(2) of the rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The Authority will not go into these technicalities as the Authority follows the summary procedure and principal of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate

sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

29. From the above, the intention of the legislature is quite clear that the Act of 2016 has been enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation. In view of the same, the Authority has power to issue direction as per documents and submissions made by both the parties.
30. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached 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. National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

""5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the

same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

31. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder cannot retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date i.e. 8.80%)+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*.
32. After considering the documents available on record as well as submissions made by the parties, the Authority is of considered view that the complainants are at default and the respondent has rightly terminated the booking on failure of the complainants to come forward to complete the payment and the booking formalities. In view of the above facts and circumstances, the Authority is of the considered opinion that the respondents have acted strictly in accordance with the terms and conditions of the builder buyer agreement and that the cancellation letter dated 23.03.2021 was lawful, valid, and in consonance with the provisions of the Real Estate (Regulation and Development) Act, 2016.

G. Directions of the Authority

33. 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 function entrusted to the Authority under section 34(f):
- i. The respondent is directed to refund the paid-up amount of Rs.39,50,954/- after deducting 10% of the sale consideration of Rs.1,26,39,000/- being earnest money and amount of assured return paid, if any. The interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation 23.03.2021 till its realization.
 - ii. 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.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. The complaints stand disposed of.
36. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026