

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

Complaint no.	:	150 of 2025
Date of Filing:		17.01.2025
Date of Decision:		14.11.2025

Aswati Devi

R/o: - House no. 89, VPO Pandwala Kalan,
South West Delhi, Delhi-10043

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. Harsh Jain

Sh. E. Krishna Dass

**Complainant
Respondent**

ORDER

1. The present complaint dated 17.01.2025 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, priority no. 30 (page no. 53 of complaint)
7.	Unit area admeasuring	800 sq. ft. (page no. 53 of complaint)
8.	Welcome Letter	13.03.2019 (page no. 34 of complaint)
9.	MOU	29.03.2019 (page no. 39 of complaint)
10.	Assured return Clause	3. <i>The Company shall pay a Penalty of Rs. 79,928/- per months on the said unit, On the total amount received with effect from 29th September 2020 Subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total Sale Consideration, the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the payment Schedule annexed as Annexure-I. The penalty shall be paid to the Allottee (s) from end of effective date II until the offer of possession letter date, on prorata basis.</i> (page no. 42 of complaint)

11.	Buyer's agreement	29.03.2019 (page no. 50 of complaint)
12.	Possession clause	3. 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 start of construction, whichever is later and apply for grant of completion/occupancy certificate.
13.	Due date	29.09.2022 (calculated as 3 years from the date of agreement including grace period of 6 months due to covid -19)
14.	Sale consideration	Rs. 86,05,984/- (TSC) (as per payment plan at page 69 of complaint) Rs. 91,98,870/- (as per SOA at page 92 of complaint)
15.	Amount paid by the complainant	Rs. 84,26,414/- (as per SOA at page 92 of complaint)
16.	Occupation certificate	14.08.2024 (page no. 41 of reply)
17.	Offer of possession	09.12.2024 (page no. 90 of complaint)
18.	Reminders	03.01.2025
19.	Lease agreement	28.02.2025 (Page no. 44 of reply)
20.	Reminders for fit out	02.04.2025, 17.04.2025

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant booked a commercial virtual space with the builder and signed a MOU on 29.03.2019. That a MOU was executed between Neo Developers pvt. Ltd. hereinafter referred to as the respondent and the complainant namely, Mrs. ASWATI DEVI on 29.03.2019 and received a welcome letter regarding the said project on 13.03.2019.

- II. That the complainant during time of registration/booking of project paid an amount of Rs. 84,62,414/- to the respondent vide different cheques. That the respondent at the time of booking the said project made almost 98% of the total price of the said unit.
- III. That the complainant and the respondent on 29.03.2019 signed a MOU where respondent promised the complainant to pay a delay penalty of Rs. 79,928/- per month from 29.09.2020 till the offer of possession but till date no such payment is ever credited by the respondent to the complainant. That at the same time in the present MOU promised to pay an assured return to the complainant which the respondent not paid till date and at the same time the respondent also promised to the complainant that the said commercial unit will get a assured rental to the complainant to which till date no lease deed was ever signed by the complainant through the respondent.
- IV. That at the time of signing the builder buyer agreement the respondent assured the complainant that the project is ready for the possession as the project was started way back in 2011 but till date no physical possession is hand over to the complainant.
- V. That from 2019 to 2024 many email conversation took place between the complainant and the respondent where respondent fail to provide a satisfactory answer to the complainant whereas it is proved through the mail conversations that the promise made by the respondent was totally false and fictitious and only to cheat the complainant and to grab her hard earned money.
- VI. That on 09.12.2024 the complainant received a demand notice and offer of possession letter from the respondent where the complainant was shocked to see the demand amount sent by the respondent as after

paying almost 98% of the total amount the respondent again demanded an additional amount of Rs. 7,72,456/- which is totally illegal on the part of respondent as such demands was never a part of builder buyers agreement.

- VII. That this was a big setback for complainant as they were not mentally prepared for this and complainant feel like they got into a trap wherein there was no return path except proceeding ahead only, keeping in view of this respondent sales team assurance as complainant was not mentally & financially prepared for this conditions at the time of booking commercial unit.
- VIII. After receiving the demand and offer of possession letter the son of the complainant visited the office of the respondent regarding the illegal demand and to see the occupation certificate and to see the status of the project where the complainant got tremendous shock to see that the associates of the respondent were not able to provide the OC certificate to the complainant s son and were not able to update any status regarding the said project.
- IX. That the MOU was executed between the complainant and respondent on 29.03.2019. Furthermore, it was contest by the complainant at the time of signing the agreement that at the time of booking it was alleged by the respondent company that the possession of the unit will be delivery on or before time and at the time of booking it was also promised by the respondent company the unit will be ready in time only and the same will be delivery to the complainant on or before time, to which respondent company responded that it is just the formality you are required to sign and the subject unit is ready and the same will be deliver to the complainant within time from the signing of the

agreement, based on such false assurance by the respondent company, complainant sign the same.

- X. That the respondent was to provide to the complainant with the possession of the property within prescribed time period or commencement of construction as calculated from the date of terms of the MOU dated 29.03.2019.
- XI. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned commercial unit already paid a total sum of Rs. 84,62,414, towards the said unit against total sale consideration of Rs. 85,19,971/-.
- XII. During the period the complainant along with her son went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site, once complainant along with her son visited the site but complainant was shocked to see that the site of the respondent was still under construction and nothing progressive happened so far thereafter the complainant's son clicked few photographs of the site. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- XIII. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession.
- XIV. That the complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the

matter to when will they deliver the project. Some or the other reason was being given.

- XV. That complainant raise the concern with respect to prior inspection/visit of the commercial unit before taking the possession, further to provide the copy of the OC, asking for the details of the TDS plus the details of the taxes paid by complainant and the draft copy of the conveyance deed but instead of replying to the above said queries of the complainant respondent kept on sending the demand letters/ reminder letters.
- XVI. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- XVII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their commercial unit and the provisions allied to it. the modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through

not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

C. Relief sought by the complainant:

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

i. To get refund of full amount paid by the complainant along with interest at prescribed rate.

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 800 sq. ft. super area in the project "NEO Square".

II. Considering the request of the complainant, the respondent allotted a unit bearing priority no. 30 on 3rd floor, admeasuring 800 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 29.03.2019.

- 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 29.03.2019 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 requested the complainant to forward to complete the formalities with respect to leasing of the unit. The occupation certificate of the project was granted by the competent authority on 14.08.2024.
- VII. Thereafter, the respondent sent an offer of possession letter dated 19.12.2024, wherein the respondent requested the complainant to clear the outstanding amounts payable against the unit.
- VIII. That the respondent vide letters dated 28.02.2025, 02.04.2025 and 17.04.2025 requesting the complainant to make payment of the fit-out charges as per the agreed terms and conditions of the MOU.
- IX. That the respondent vide letter dated 24.04.2025, requested the complainant to make payment of the Maintenance charges as per the agreed terms and conditions of the MOU.
- X. 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.

- XI. 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.
- XII. 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.
- XIII. 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.
- XIV. 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.
- XV. 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.

- XVI. 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.
- XVII. 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.
- XVIII. That under clause 9 (b) of the MOU, it is categorically agreed between the complainant and the respondent that upon the finalization of terms and conditions with respect to leasing of the unit between the respondent and the prospective lessee, the complainant, if required, shall execute a separate lease deed with the prospective lessee. That in case, the complainant fails to come forward to execute the lease deed within 7 working days from the date of receipt of the communication in regard to the same, then the respondent shall be entitled and authorized to execute the lease deed on behalf of the complainant. It is further noted herein that under the said clause the complainant authorized the

respondent to execute the lease deed or agreement with the third party with prior intimation to the complainant.

- XIX. 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
- XX. 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.
- XXI. That though the respondent has not raised any demand of maintenance charges. However, it is pertinent to mention herein that as per clauses 10, 11 and 12 the complainant is contractually obligated to pay all lawful charges pertaining to the maintenance, upkeep, repairs, security, insurance, stamp, registration, development charges and allied services in relation to the said unit and the project as a whole. The said clauses expressly provide that the complainant shall be liable to make timely payment of maintenance charges and other related dues.
- XXII. That time was essence in respect to the complainant's obligation to make the respective payment and, as per the agreement so signed and acknowledged the complainant was bound to make the outstanding payment as and when demanded by the respondent.

XXIII. 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.

XXIV. 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 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 29.09.2022.

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 interest at prescribed rate.

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 29.03.2019 and on the same date the buyer's agreement also got executed between the parties. The complainant was allotted a unit of 800 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., 29.03.2019. 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 29.09.2022.

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 29.03.2019, 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 29.09.2022. The total sale consideration for the unit was ₹86,05,984/- (as per payment plan) out of which the complainant has paid a sum of ₹84,26,414/-. The occupation certificate for the project was received on 14.08.2024 and subsequently unit was offered for possession on 09.12.2024.
- XVIII. 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 29.09.2022 and the allottees in this case have filed this complaint on 17.01.2025 after possession of the unit was offered to him on

09.12.2024 after obtaining occupation certificate on 14.08.2024 by the promoter.

- XIX. 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 ₹84,26,414/- 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., 17.01.2025 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 29.03.2019 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 ₹84,26,414/- to the complainant after deducting 10% of the sale consideration along with an interest @10.85% from the date of surrender/filing of the complaint i.e., 17.01.2025 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 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.



HARERA
GURUGRAM



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025