

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

<b>Complaint no.</b>	:	<b>3982 of 2025</b>
<b>Date of Filing:</b>		<b>22.08.2025</b>
<b>Date of Decision:</b>		<b>13.02.2026</b>

Ashish Gupta

**Address:** C-597, Saraswati Vihar, Delhi-110034

**Complainant**

Versus

Neo Developers Pvt. Ltd.

**Address:** 32, Pusa Road, New Delhi-110005

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Nitin Garg

None

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint 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 provisions of the Act or the Rules and regulations made there under 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.	67, Ground floor (page no. 22 of complaint)
7.	Unit area admeasuring	565 sq. ft. (page no. 22 of complaint)
8.	Allotment Letter	12.06.2012 (page no. 14 of complaint)
9.	Buyer's agreement	15.11.2012 (page no. 18 of complaint)
10.	Possession clause	NA
11.	Due date of possession	15.11.2015 (calculated from the date of agreement)
12.	Basic sale consideration	Rs. 69,16,762/- (as per payment plan at page 39 of complaint) Rs. 84,50,926/- (As per SOA at page no. 43 of complaint)
13.	Amount paid by the complainant	Rs. 78,28,886/- (As per SOA at page no. 43 of complaint) Rs. 84,50,925/- (as alleged by complainant)
14.	Occupation certificate	14.08.2024
15.	Offer of possession	22.10.2024

(page no. 41 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. That complainant had applied for booking of a unit in respondent's project namely Neo Square at Sector 109, Dwarka Expressway, Gurugram by making a payment of Rs 5,91,700/-.
  - II. That subsequent to the booking of the aforesaid unit respondent had issued an allotment letter on 12.06.2012 stating therein that complainant have been allotted unit no. 67 on Ground Floor having an area of 610 sq. ft. in "Neo Square", Sector 109, Gurugram. That it was sated that the total cost of the said unit would be Rs 74,59,486/- and the same is payable as per "Construction Linked Plan".
  - III. That thereafter a "buyer's agreement" was executed between the respondent and the complainant on 15.11.2012. However, the area of the said unit was changed from 610 sq. ft. to 565 sq. ft. and the total cost for the new shop was agreed upon as Rs 69,16,762/-.
  - IV. That thereafter complainant had made regular payments as & when demanded by the respondent.
  - V. That thereafter the respondent had issued a demand letter & offer for Fit-out dated 10.04.2024 wherein the respondent had stated that the total amount payable by the complainant is Rs 79,16,672/- which is totally false and against the buyers agreement dated 15.11.2012 executed by the respondent itself.
  - VI. That thereafter finally on 22.10.2024, the respondent issued a demand notice and offer of possession. However, the respondent vide said letter again changed the number & area of unit i.e. from unit no. 67 having an

area of 565 sq. ft. to unit no. G-12A having an area of 593.91 sq. ft. and the said change was done by respondent without taking any consent or prior intimation from complainant.

- VII. That as per the above stated demand notice dated 22.10.2024, the respondent has demanded Rs 11,63,928/- as interest amount which is totally illegal & uncalled for as the complainant has made all the payments on time and infact it is the respondent who has failed to deliver the possession even till date.
- VIII. That the total cost for the new unit i.e. unit no. G-12A stated by the respondent was Rs 84,50,926/- as per respondent's alleged demand letter and offer of possession dated 22.10.2024 which is totally illegal & uncalled for as the said cost is infact more than the original cost of Rs. 74,59,486/- for 610 sq. ft.
- IX. That complainant has paid a total sum of Rs. 84,50,925/- to the respondent against the above stated unit.
- X. That as per clause 5.2 of the buyer's agreement dated 15.11.2012, respondent had agreed to deliver the possession of the unit within 36 months from the date of execution of the agreement i.e. latest by 14.11.2015. However, the respondent has miserably failed to handover the possession to the complainant of the unit in the given time.
- XI. That as per knowledge of the complainant, the respondent has not been able to obtain OC/CC in respect of the unit/project in question.
- XII. That the complainant no longer wanted to continue with the booked unit and sought refund of the entire amount paid to the respondent i.e. Rs. 84,50,925/- vide legal notice dated 05.05.2025 which has been duly served upon the respondent. However, the respondent has neither complied with the said legal notice nor replied the same.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
  - i. Refund the entire amount paid by the complainant i.e. Rs 84,50,925/-.
  - ii. Pay the interest on the amount deposited by the complainant @ 11.10% (MCLR+2%) from the date of each payment till realization.
  - iii. Pay the compensation also to the complainant for utilizing the hard-earned money of the complainant.
5. The present complaint was filed on 22.08.2025. The counsel for the respondent has not filed the reply in the registry of the Authority and none appearing on behalf of respondent. The authority sent notice which is duly served to the respondent-builder to appear and argue in the matter but on hearing dated 17.10.2025, 05.12.2025, 09.01.2026, 06.02.2026 and 13.02.2026 it failed to appear and argue the matter. It shows that the respondent was intentionally delaying the procedure of the Authority by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds the case exparte against the respondent.
6. 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.

**D. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

**D.II Subject-matter jurisdiction**

9. 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.*

10. 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.

**E. Findings on the relief sought by the complainant:**

**(i) Refund the entire amount paid by the complainant i.e. Rs. 84,50,925/-.**

**(ii) Pay the interest on the amount deposited by the complainant @ 11.10% (MCLR+2%) from the date of each payment till realization.**

11. In the present complaint, the complainant booked a unit in the project of the respondent namely, 'Neo Square' situated at Sector-109, Gurugram. The complainant was allotted a unit bearing no. 67 on Ground Floor, admeasuring 565 sq. ft. vide allotment letter dated 12.06.2012. The buyer's agreement was executed on 15.11.2012 between the parties.
12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.***

***(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

13. **Due date of handing over of possession:** The buyer's agreement was executed on 15.11.2012 between the parties. However, there is no possession clause in the present complaint. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "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.
14. In view of the above-mentioned reasoning, the date of agreement i.e., 15.11.2012 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 15.11.2015.
15. 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 was 15.11.2015 and the allottees in this case have filed this complaint on 22.08.2025 after possession of the unit was offered to him on 22.10.2024 after obtaining occupation certificate on 14.08.2024 by the promoter.

16. 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.*

17. 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.
18. 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)*.

19. 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.
20. 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.*

21. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs. 84,50,925/- after deducting 10% of the sale consideration along with an interest @10.80% (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., 22.08.2025 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**(iii) Pay the compensation also to the complainant for utilizing the hard-earned money of the complainant.**

22. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**F. 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) of the Act of 2016:
- i. The respondent/promoter is directed to refund ~~to refund~~ the paid-up amount of Rs. 84,50,925/- after deducting 10% of the sale consideration being earnest money along with an interest @10.80% p.a. (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., 22.08.2025 till 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.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. File be consigned to registry.

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2026



**HARERA**  
GURUGRAM