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/2068/2025	Kanchana Bansal V/S NEO Developers Private Limited.	Mr. Ashutosh Tiwari (Complainant) Venkat Rao (Respondent)
2.	CR/2069/2025	Manjeet Kaur V/S NEO Developers Private Limited.	Mr. Ashutosh Tiwari (Complainant) E. Krishna Das and Dushyant Yadav (Respondent)

CORAM:	
Shri Arun Kumar	Chairman
Shri Phool Singh Saini	Member

ORDER

1. This order shall dispose of all the 2 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)	Offer of possession letter	Relief Sought
1.	CR/2068/2025 Kanchana Bansal V/S NEO Developers Private Limited DOF: 25.04.2025 Reply: 11.12.2025	Unit No. 42, Ground Floor 565 sq. ft (As per the pg. no. 34 of the complaint)	BBA: 24.04.2017 (As per pg. no. 31 of the BBA in the complaint)	S.C: Rs. 68,00,270/- (As per pg. no. 43 of the BBA in the complaint) A.P.: - Rs.53,73,962/- (As per pg. no. 49 of the complaint)	NA	1.Refund

2.	CR/2069/2025 Manjeet Kaur V/S NEO Developers Private Limited DOF: 25.04.2025 Reply: 18.11.2025	Unit No. 46 First Floor 411 sq. ft (As per pg. no. 25 of the payment plan in the complaint)	BBA: NA	S.C: Rs. 43,57,821/- (As per pg. no. 25 of the BBA in the complaint) A.P.: Rs. 16,09,147/- (As per pg. no. 18 in the complaint)	NA	1.Refund

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/2068/2025 titled as Kanchana Bansal V/S NEO Developers Private Limited*** are being taken into consideration for determining the reliefs of the allottee(s) qua of refund the entire amount paid by the respondent with interest.

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/2068/2025 titled as Kanchana Bansal

V/S NEO Developers Private Limited

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	3.08 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.	Booking of the Unit	15.10.2012 (Pg no. 50 of the complaint)
7.	Buyer's agreement	24.04.2017 (As per pg no.31 of the complaint)
8.	Unit no.	Unit - 42 on ground floor (As per pg no. 65 of the reply)
9.	Unit area admeasuring	565 sq. ft. (Super Area) (As per pg. no.34 of the complaint)
10.	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.
11.	Possession clause	NA
12.	Due date of possession	24.10.2020 [36 months from signing of the BBA plus a grace period of 6 months is granted to the respondent in view of the HARERA notification no. 9/3-2020

		dated 26.05.2020 for the projects having completion date on or after 25.03.2020] As per the SC judgement – 3 years.
13.	Assured return Clause	NA
14.	Basic Sale consideration	Rs. 53,67,500/- As per pg. no. 34 of the complaint)
15.	Total sale consideration	Rs.68,00,270 (As per pg. no. 43 of the complaint)
16.	Amount paid by the complainant	Rs. 53,73,962/- (As per pg. no. 35 of the complaint)
17.	Occupation certificate	14.08.2024 (As per DTCP site)
18.	Offer of possession	NA

B. Facts of the complaint.

8. The complainant has made following submissions in the complaint:

I. That in 2011, the Respondent Company announced the launch of its upcoming commercial project, named "NEO Square" (hereinafter referred to as the "Said Project"). Following this announcement, the respondent company approached the complainant, promoting the purchase of a commercial unit in the said project by painting an overly optimistic picture of its potential. the respondent touted the project as one of the most prestigious and elite commercial developments in the history of Gurgaon, Haryana. the respondent company portrayed itself as an ethical business entity with a strong reputation and widespread goodwill across the country. it further claimed to be renowned for its commitment to delivering projects that met the highest quality standards and adhered to the agreed

timelines, thus instilling confidence in the complainant regarding the successful and timely completion of the said project.

II. That complainant based upon such representation and assurance being made by the respondent company booked a unit bearing shop no. 42, ground floor admeasuring 565.00 sq. ft. @ Rs. 9,500/- + EDC + IDC all-inclusive which comes to Rs. 68,00,270.57/- (Sixty-Eight Lakh Two Hundred and Seventy Rupees and Fifty-Seven Paisa Only.

III. That the basic sale price of the said unit was mentioned by the respondent company to the tune rs. 53,67,500.00 & edc + other charges=rs.14,32,770.57) and the same is framing the part of the buyer's agreement dated 24.04.2017 as specifically mentioned under clause-24.

IV. That the said unit was booked in the year 2012 and payments was made by the complainant towards booking the said unit, the first payment was made by the complainant in the year 2012 and respondent has duly issued the receipt dated 24.08.2012.A copy of the receipt of payment dated 24.08.2012 issued by the Respondent is annexed herewith. It is pertinent to mention that respondent has started collecting the consideration amount towards the sale and purchase of the said unit from the complainant since 2012 and the same is evident from the payment receipt dated 24.08.2012.

V. That in fear of getting the unit cancelled and forfeiting the whole hard earned amount, the complainant made all the payments as demanded by the respondent company from 2012 to 2018. it is pertinent to mention that complainant made a total payment of Rs . 53,73,962/- (Fifty-Three Lakhs Seventy-Three Thousand Nine Hundred and Sixty-Two only) via cheques which have been duly received by the respondent and respondent has duly provided the receipts/ acknowledgement to the complainant.

VI. It is crucial to emphasize that the respondent began accepting payments from the complainant as early as 2012, but the builder agreement (BA) was not signed until april 2017. according to clause 5.2 of the BA, the construction was supposed to be completed within 36 months from either the start of construction or the date of execution of the agreement. however, the respondent cleverly structured this clause to avoid any liability by deliberately delaying the signing of the BA. While payments for the construction were requested and accepted by the Respondent as early as December 1, 2015, the formal agreement was not executed until 2017, leaving the complainant at a disadvantage. the respondent's strategy in delaying the signing of the agreement and not starting construction until after receiving funds allowed them to avoid clear accountability for meeting deadlines. given that payments were initiated as early as july 27, 2012, the actual 36-month period should rightfully commence from the date payments began, rather than from the date the agreement was executed in 2017.

VII. Therefore, the actual start of the 36 months shall be from the date of starting of payment i.e. 27.07.2012.

VIII. Thereafter complainant has immediately approached respondent company for seeking refund of complete amount with interest but respondent have failed to refund the said amount. It is crucial to note that the complainant repeatedly requested the respondent to refund the amount, but these requests were consistently ignored. The respondent repeatedly offered the same excuse, claiming that the project site was still under progress, without addressing the complainant's concerns or providing a satisfactory resolution.

IX. It is deeply distressing to realize that the respondents have been misusing the complainant's hard-earned money, a substantial sum of Rs. 53,73,962/- without making any progress or yielding any interest, all while continuously making false statements throughout the entire duration.

X. The cause of action firstly arose on 27.07.2015 when the respondent has failed to complete construction and handed over possession of said unit to complainant. It again arose in 2022 when the complainant has requested the respondent to refund the amount paid by him but all such requests went into vain. The cause of action is still subsisting and continuing one. thus, the complaint has been filed within time with effect from accrual of the cause of action.

XI. That the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law and any other authority or any other tribunal in respect of the same subject matter.

C. Relief sought by the complainants

9. The complainant has sought the following relief in the complaint and during final arguments as well:

   I. Direct the respondent to refund all the paid-up amount paid by the complainant to the respondent with interest.

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 complainants had commercial space for a total sale consideration of Rupees 20,00,000/-(Twenty Lakhs Rupees only).However the complainant made a default in timely payment of the dues as per the payment plan opted by him in view of such continued default, and in accordance with the terms and conditions of the BBA, the respondent was constrained to send various demand

letters to the complainant but instead of replying to same , the complainant instead filed a complaint before this Hon'ble Authority.

ii. That the present Complaint has been preferred by the Complainant on frivolous and unsustainable grounds and the Complainant have not approached this Hon'ble Authority with clean hands and are trying to suppress material facts relevant to the matter. The Complainant are making false, misleading, fatuous, baseless and unsubstantiated allegations against the Respondent with malicious intent and sole purpose of extracting unlawful gains from the Respondent. The instant Complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.

iii. That the Complainants, applied for and were allotted a commercial unit in the project titled "NEO SQUARE" situated at Sector-109, Dwarka Expressway, Gurugram. The said unit bearing Shop No. 42, allotted on the Ground Floor, measuring approximately 565 square feet Super Area in the designated Food court and entertainment space. The total basic sale consideration for the said unit was agreed at Rs.53,67,500/- (Rupees Fifty-Three Lakhs Sixty-Seven Thousand Five Hundred only). A Builder Buyer Agreement executed on 24.04.2017.

iv. That the complainant and the respondent executed a duly registered builder buyer agreement (BBA) on 24.04.2017, whereby the complainant expressly undertook to make payment of the total sale consideration in accordance with the construction-linked payment plan annexed thereto.

v. That Clause 4.4 & 4.5 of the BBA clearly stipulates "timely payment of instalments as per the Payment Plan is the essence of this Agreement". Thus, the Complainant was contractually bound to honour every stage-wise demand raised by the Respondent in proportion to the progress of construction. The said

clause formed a foundational obligation of the allottee under the contract and was critical for the sustenance and continuation of the contractual relationship.

vi. That it is respectfully submitted that reminders dated 04.09.2012, 02.12.2013 and 03.03.2016 were sent to the complainant but the complainant failed to make the due payment as per the plan which was agreed between the parties in the builder buyer agreement.

vii. It is respectfully submitted that the complainants have persistently defaulted in clearing her outstanding dues despite repeated requests and reminders issued by the respondent. The respondent, in good faith and in accordance with the contractual terms, made multiple attempts to secure compliance by the complainants, who wilfully ignored such communications.

viii. That it is submitted that the respondent, despite not being under any contractual obligation to issue reminders or follow-ups, has, in good faith and as a gesture of fairness, issued multiple written communications to the complainant demanding the outstanding dues payable in relation to the allotted unit.

ix. That the respondent herein had been running behind the complainant for the timely payment of dues towards the unit in question. that in spite of being aware of the payment plans the complainant herein has failed to pay the outstanding dues on time. it is humbly submitted that though the complainant may have cleared the basic sale price of the said commercial property, however, they are still liable to pay all other charges such as VAT, Interest, Registration Charges, Security Deposit, duties, taxes, levies etc. when demanded. The same has been clearly agreed to in various clauses of the buyer agreement and MoU.

x. It is respectfully submitted that the builder buyer agreement (bba) dated 24.04.2017 executed between the parties constitutes a binding contract comprising reciprocal promises within the meaning of the indian contract act, 1872. As per section 51 of the contract act, when a contract consists of reciprocal

promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. further, under section 52 of the contract act, when the order of performance of reciprocal promises is expressly fixed by the contract, the promises must be performed in that order.

xi. That the BBA categorically provides that the complainant shall make timely payments as per the construction-linked payment plan, and in return the Respondent shall carry out development and handover possession upon completion. The performance of the Respondent (i.e., construction and delivery of possession) was contingent upon timely payment by the Complainant. The Complainant's payment obligations were therefore the first and fundamental reciprocal promises under the contract. The complainant, however, failed to make timely payments of several instalments despite repeated reminders. the payment schedule was not adhered to, which squarely amounts to a breach of his reciprocal promises. by reason of such default, the complainant has disentitled himself from claiming any relief, including refund, under the doctrine of reciprocal obligations. the principle that one cannot take advantage of his own breach applies squarely in the present case.

xii. In view of the complainant's persistent defaults, the respondent was entitled under section 51 of the contract act to withhold performance until the complainant complied with his part of the obligations. moreover, as per section 52, the contract specifically fixed the order of performance i.e., first payment by the complainant as per demand notices, followed by construction milestones and eventual possession. since the complainant defaulted in the initial obligations, he cannot demand that the respondent refund the money or treat the contract as rescinded. the principle is well established that a defaulting party cannot enforce reciprocal performance against the other party.

xiii. It is most respectfully submitted that the complainant, along with several other allottees, failed to discharge her obligations of making timely payments under the construction-linked plan as stipulated in the builder buyer agreement dated 24.04.2017. such defaults were not isolated but widespread among multiple allottees in the project.

xiv. 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.

xv. That 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.

xvi. That the present complaint is misconceived and devoid of merits inasmuch as the issue of commencement of construction and due date of possession in respect of the instant project already stands conclusively adjudicated by this hon'ble authority in complaint bearing no. 1328 of 2019 titled *"ram avtar*

nijhawan vs m/s neo developers pvt. ltd.". vide order dated 15.09.2019, this hon'ble authority categorically held that the date of start of construction for the project in question was 15.12.2015 and, consequently, the due date of possession was 15.06.2019.

xvii. That as per Clause 5.2 of the Builder Buyer Agreement (BBA), the project was to be completed within 36 months from the date of execution of the bba or from the date of start of construction, whichever is later. since the construction of the project commenced on 15.12.2015, the stipulated period of 36 months for completion expired on 15.06.2019, which was the due date of possession as already noted by this hon'ble authority in the aforementioned proceedings.

xviii. In light of the categorical findings of this Hon'ble Authority in *Ram Avtar Nijhawan vs M/s Neo Developers Pvt. Ltd.* (Complaint No. 1328 of 2019), coupled with Clause 5.2 of the Builder Buyer Agreement, it is abundantly clear that the due date of possession stood as 15.06.2019, reckoned from the actual commencement of construction on 15.12.2015. The respondent has therefore acted strictly in accordance with the contractual stipulations and the binding determination of this Hon'ble Authority. Any attempt by the complainant to allege an earlier due date of possession is contrary to the record, devoid of merit, and liable to be dismissed.

xix. That it is respectfully submitted that if this Hon'ble Authority were to grant refund to the present complainant, despite his own defaults in timely payment, it would set a dangerous precedent. other similarly placed allottees, including those who may have also defaulted, will be encouraged to seek similar refunds, thereby undermining the financial stability of the project and the promoter. the funds received from allottees form the core financial backbone of any real estate project. if refunds are directed in favour of defaulting allottees, it will have a disastrous impact on the viability of the project, as substantial outflows will

disrupt the working capital required for maintenance, finishing activities, and statutory compliances post-oc.

xx. That it is a settled principle of law that the hon'ble authority / court is required to balance the competing interests of all stakeholders. authorities under rera must balance the interest of both allottees and developers while ensuring justice. if a defaulting allottee is granted refund despite his failure to adhere to the agreed payment schedule, the same would amount to rewarding default and punishing the promoter and other allottees who have complied with her obligations. such an approach would tilt the balance unfairly and create an inequitable situation.

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 complainant.

I. Direct the respondent to refund all the paid-up amount paid by the complainant to the respondent with interest.

17. The complainant was allotted a unit bearing no.42, ground floor measuring 565 Sq. Ft. for basic price Rs.53,67,5000/-, vide BBA dated 24.04.2017 under construction linked payment plan. Complainant has paid an amount of Rs.53,73,962/- against the total sale consideration of Rs.68,00,270/-.

18. **Due date of possession**: The subject unit was allotted to the complainant vide MoU dated 24.04.2017. As per the documents available on record, nowhere in the MoU mentioned the period of possession/due date of possession hence the same cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC***

(civ) 1 and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered"*

19. In the instant case, the MoU was executed between the parties on 24.04.2017. In view of the above-mentioned reasoning, the date of the MoU is liable to be considered as the base date for calculating the due date of possession. Further, a grace period of six months is admissible to the respondent in terms of HARERA Notification No. 9/3-2020 dated 26.05.2020, applicable to projects having a completion date on or after 25.03.2020. Accordingly, the due date for handing over possession is computed as 24.10.2020.

20. The respondent has contended that various payment request-cum-demand letters were issued to the complainant (though not annexed with the reply), calling upon her to clear the outstanding dues. It is further submitted that despite repeated reminders and final opportunities, the complainant failed to adhere to the agreed payment plan and defaulted in making timely payments as per the terms of the agreement to sell executed between the parties.

21. It is a matter of record that the complainant booked the aforesaid unit under the agreed payment plan and paid an amount of Rs. 53,73,962/- out of the total sale consideration of Rs. 68,00,270/-, which constitutes approximately 79% of the total consideration. It is further observed that the last payment was made on 27.12.2018, as evidenced by the cheque annexed with the complaint. The respondent obtained

the occupation certificate in respect of the allotted unit on 14.08.2024. In these circumstances, the Authority finds that the respondent was justified in raising demands as per the agreed payment plan, and there exists a default on the part of the complainant in clearing the outstanding dues.

22. It is pertinent to note that under Sections 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016, the allottee is obligated to make timely payments towards the consideration of the allotted unit. The continued default on the part of the complainant indicates a failure to perform her contractual obligations.

23. On the other hand, the complainant has sought refund of the entire amount paid, alleging that the respondent failed to adhere to the stipulated timelines for completion and delivery of possession. It is contended that the project was promised to be completed by the year 2020, however, possession has not been offered within the said period. Such delay, according to the complainant, amounts to a breach of contractual obligations, leading to loss of faith in the project. Accordingly, the complainant has prayed for refund along with applicable interest.

24. Now, 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."*

25. 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.

26. As, per Clause 4.5 of the builder-buyer agreement, the respondent/promoter has the right to cancel/terminate the booking and forfeit the amount paid up-to the earnest money by the complainant if the allottee/complainant wishes to withdraw or surrender the allotment for any reason. The relevant clause is extracted below:

> *"That it shall be incumbent on the Allottee to comply with the terms of payment and / or other terms and conditions of this agreement failing which the company shall be at liberty to terminate the present MOU and refund all monies paid under this MOU after deduction of the 25% of the total basic sale price (earnest money) in addition to the monies already paid to the allottee in the form of assured returns and brokerage paid to*

the broker and return the balance to the allottee within a period of 6 months from the date of cancellation of the allotment. In case the allottee has paid less than the 25% of total basic sale consideration price and brokerage paid by the company then the company shall be entitled to recover the balance from the allottee. Late payment charges and interest shall not be refundable to the allottee in the case of withdrawal or cancellation."

27. 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 farmed 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."

28. 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.

29. In the present case, despite the subsequent grant of Occupancy Certificate, the complainant is no longer willing to continue in the project, having lost faith due to the inordinate delay in offering possession. The Hon'ble Authority has consistently held that delay in possession constitutes a continuing cause of action, and the allottee cannot be compelled to accept possession at a belated stage. Further, ***Imperial Structures Ltd. v. Anil Patni and Another (2020) 10 SCC 783***, the Court held that Section 18 of the RERA, 2016 entitles the allottee to get refund of the amount on the promoter's failure to handover possession as per the terms of the home buyer's agreement.

30. Submissions and contentions of the parties have been considered and examined in the light of facts and circumstances coming on record. Although much has been argued on behalf of the parties in support of their respective cases, yet the claim of complainant remains is of simply refund of the amount paid by her as per Section 18 of the Act, which speaks as under:

"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:

31. A bare perusal of the aforesaid provision demonstrates that an indefeasible right has been conferred upon the allottee in the event the promoter fails to complete the project or is unable to hand over possession of the apartment in accordance with the terms stipulated in the Agreement for Sale. In the present case, it is an admitted and undisputed position that possession of the subject apartment was not offered to the complainant within the agreed timeline, i.e., 07.10.2020. Instead, the respondent gets the OC from the competent Authority on 14.08.2024, reflecting a substantial and unjustified delay. Such delay constitutes a clear violation of the contractual obligations as well as the statutory mandate under the Act. Consequently, the complainant is entitled to invoke the remedies available under law.

G. Directions of the Authority

32. 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.53,73,962/- after deducting 10% of the sale consideration of Rs.68,00,270/- 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 filing of the complaint i.e., 25.04.2025 till its realization.

In CR/2069/2025, the respondent is directed to refund the paid-up amount of Rs.16,09,147/- after deducting 10% of the sale consideration of Rs.43,57,821/- 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 filing of the complaint i.e., 25.04.2025 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.

33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

34. The complaints stand disposed of.

35. Files be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.01.2026