BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**2495 of 2025**
Date of filing:	**23.05.2025**
Date of Order:	**11.08.2026**

Amit Singh
R/O: - 7/13, Sector-5, Rajendra Nagar,
Sahibabad, Ghaziabad,
Uttar Pradesh-201005 **Complainants**

Versus

M/s Neo Developers Pvt. Ltd.
Regd. Office at: - 32-B, Pusa Road, New Delhi-110005 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Shri Krish Khera (Advocate) Counsel for Complainant
Shri Dushyant (Advocate) Counsel for Respondent

ORDER

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

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants(s), 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.	Date of MoU	08.06.2016 (As per pg no.18 of the complaint)
7.	Buyer's agreement	08.06.2016 (As per pg no.29 of the complaint)
8.	Unit no.	Priority No. 72, 3rd floor, Restaurant (page no. 32 of the complaint)
9.	Unit area admeasuring	250 sq. ft. (Super Area) (As per pg. no. 32 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	Clause 3 of MoU *The company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/ Occupancy Certificate* (As per pg. no. 20 of the complaint)
12.	Due date of possession	08.06.2019 [36 months from signing of the agreement for sale as per the possession clause]
13.	Total basic Sale consideration	Rs. 18,50,000/- (As per pg. no. 20 *of the complaint*)
14.	Amount paid by the complainant	Rs. 20,50,000/- (As per pg. no. 20 *of the complaint*)
15.	Occupation certificate	14.08.2024 (As per DTCP site)
16.	Offer of possession	04.02.2025 (As per pg. no. 61 of the complaint)
17.	Reminder	27.02.2025, 26.03.2025, 02.04.2025 [on page 74, 73, 71 of reply respectively]
18.	Reminder for fit out charges	28.02.2025, 17.04.2025 [on page 68, 70 of reply respectively]

B. Facts of the complaint.

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

i. That the complainant is a law abiding citizen of India and is residing at the above mentioned address. It is submitted that complainant herein that upon the representation by the Respondent and Advertisement done on their behalf, the complainant herein made up their mind and went ahead for the purchasing of the commercial unit bearing no. priority no. 72, 3rd Floor, admeasuring approx.-250 Sq. Ft located at Sector 109, Gurugram, Dwarka Expressway, Haryana 122004 i.e. "NEO SQUARE" a commercial complex

floated by respondent and on their inducement that the possession of the said unit purchased shall be handed over to the complainant within 36 months from the execution of space buyer agreement and with all amenities as promised by the respondent herein. That the complainant had booked the said unit and deposited the total consideration against the commercial unit as the complainant opted for the assured return plan payment to respondent on dated 08.06.2016 through account payee cheques and RTGS.

ii. That the complainant applied and deposited 100% consideration amount as booking of Rs20,50,000/- to the respondent company against the said unit in the year of 2016. That the respondent made a commitment to the complainant through the said assured return agreement/mou dated 08.06.2016 that an assured return of Rs 90/-per Sq. Ft. per month amounting in all to Rs 20,250/- shall be paid to the complainant starting from 08th June 2016 until the commencement of first lease on the said unit.

iii. That the respondent allotted a unit no. priority no. 72, 3rd floor in the project "NEO SQUARE" commercial space, Sector-109, Gurugram, Dwarka Expressway, Haryana-122004 and admeasuring approx. 250 Sq. Ft. video space buyer agreement dated 08.06.2016 in the name of the complainant and asked to sign the same it is further submitted that complainant had paid 100% to the respondent before the execution of space buyer agreement.

iv. It is submitted that the complainant herein raised their concern telephonically before the respondent as the contents of the MoU dated 08.06.2016 with regard to the completion of the project under clause 3 described that the grant of occupancy certificate of the allotted unit would be handed over within 36 months from the date of execution of MoU agreement , which was poles apart from the assurances made by the respondent at the time of booking. That no satisfactory answers were provided to the complainant by the respondent.

That the complainant had already deposited total/huge amount of Rs 20,50,000/- which would be calculated as 100% of total cost of the allotted unit and also in violation of Section-13 of the Real Estate (Regulation & development) Act, 2013.

v. That the complainant had already paid a 100% of Rs 20,50,000/- out of total consideration of Rs 20,50,000/- against the said allotted unit bearing no. unit no. priority no. 72, 3rd Floor in the project "NEO SQUARE" commercial space, Sector-109, Gurugram, Dwarka Expressway, Haryana-122004 and admeasuring approx. 250 sq. ft. to the respondent till June'2016 before the execution of space buyer agreement.

vi. It is submitted that the complainant visited the project site somewhere in Feb-March'2019 to cross verify the development and that time he got to know that the development work was not going as per the stipulated time as mentioned in the terms & conditions in MoU and as per the promises made by the respondent. Thereafter upon presentation of said fact of delay in development in the said project before the respondent, the officials of respondent again blew false assurances to the complainant qua construction and possession time.

vii. That it is submitted that the payment plan opted by the complainant was assured return plan however, the respondent company paid the assured return via account payee cheques from July'2016 till Feb'2018 of Rs 20,250/- per month. That the complainant raised the said concern with the respondent and never received satisfactory reply with regard to the unpaid cheques against the assured returns.

viii. It is pertinent to mention that the respondent company was under contractual obligation to handover the possession of the allotted office space within 36 months i.e 08/06/2019 as per the agreement dated 08/06/2016.

However, to the dismay of the complainant, the respondent company failed to handover the possession on the due date. It is submitted here that due to their own negligence the respondent company was unable to fulfill the assurances and guaranties made by themselves to complainant at the time of the booking as well as the time of signing the agreements dated 08.06.2016.

ix. That the complainant were in constant and continuous follow ups with the respondent company to check upon the status of the allotted unit, however all the efforts of the complainant went into vain. That it is also noteworthy to mention here that the respondent arbitrarily stopped the assured return payment from March'2018 without giving any advance information to the complainant herein and till date to assured return was handed over to the complainant from March'2018, which is also an example of unfair trade practice adopted by the respondent on their part.

x. That it is submitted that the respondent company has not provided lawful possession to the complainant till now and has not even responded or paid heed to any of the requests of the complainant. It is not out of context to mention that the respondent company by making false and frivolous commitments lauded their projects to entice the genuine and authentic buyer.

xi. That it is submitted that the respondent company swindled the complainant and kept on evading their legal liability by making one or the other excuse it is pertinent to mention here that the complainant since the booking of commercial unit in the respondent company's project is running from pillar to post to get their either the possession of the said unit or refund of the entire deposited amount till date.

xii. That the respondent company in greed of money and increased property rates issued a letter of demand notice and offer of Possession dated 04.02.2025 for making an excess payment of Rs 6,18,016/- which is to payable

by the complainant by 11.02.2025 which is an excess amount against the agreed amount in the terms & conditions of the agreement signed between the complainant and the respondent dated 08.06.2025.

xiii. That the respondent company again issued a demand letter in the name of fit out charges for the said booking unit at neo square project, demanding the amount of Rs 10,32,500/- on dated 02.04.2025 and subject to which in case of default in making the payment of the demanded amount by the respondent company, the complainant will be liable to pay the amount with delayed penalty and interest.

xiv. That the acts of the respondent company are not only gruesome violation of morals and business ethics, but are also a breach of terms of agreement and various provisions of the RERA, 2016 as the developer has failed to discharge its duties and responsibilities as imposed on them.

xv. That it is submitted that the complainant have been left with no other option but to approach to the doors of this Authority to get refund of their legitimate money. That as per Section 18 of the RERA, 2016, the complainant are legally entitled to get their refund along with interest since the promoter fails to complete the project as promised by them and discontinued it without any force majeure or reasonable reasons.

xvi. It is submitted that the complainant cannot be made to wait for an indefinite time for possession and the same position has been settled by the Hon'ble Apex Court in a number of judgements. That in a recent judgement of the Hon'ble Supreme Court in Civil Appeal No. 3182 of 2019 titled as Kolkata West International City Pvt. Ltd. vs. Devasis Rudra, it has been held that the buyer cannot be expected to wait endlessly for his possession and moreover, if the specific prayer for refund has been made in the prayer of the buyer, it would be unfair to non-suit the buyer and to deny his prayer.

xvii. That the complainant has the right to seek remedy under the umbrella of section 18 of the RERA Act, which provides that if the promoter fails to provide the possession of the apartment, plot or building or complete the construction in the given time period, the promoter becomes liable to refund the deposited money of the demand along with the interest or to hand over the possession of the apartment, plot, or building along with interest for every month of delay, if the allottee does not intend to withdraw from the project.

xviii. That in conformity with the provisions and objectives of the RERA Act, 2016, the Authority is requested to issue necessary directions to the respondent company to refund the amount owed by them in respect of the complainant along with delay interest for the period of delay keeping into the consideration the complainant had been made to go through for all this year's.

xix. That the Authority is requested to give necessary directions to the respondent to provide the refund along with interest due to their arbitrary & illegal conditions against the allotted commercial unit.

C. Relief sought by the complainants

4. The complainants have sought the following relief(s):

1) The Authority is requested to redress the grievances of the complainant for the continuous hardships as faced by him as a considerable amount of their money has been retained by the respondent company. That the Authority is further requested to give necessary directions to the respondent company to refund the deposited amount of Rs 20,50,000/- with the interest @9.10% p.a till date or according to the RERA norms.

D. Reply by the respondent

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

i. It is submitted that the complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about

the project i.e., "Neo Square", situated at Sector-109, Gurugram, Haryana being developed by the respondent. That after being fully satisfied with the project and the approvals thereof, the complainants decided to apply to the respondent by submitting a booking application form dated 29/04/2016, whereby seeking allotment of unit no. 72, admeasuring 250 Sq. Ft Super Area on the 3rd floor of the project having a basic sale price of Rs. 7400/- The complainants, considering the future speculative gains, also opted for the investment return plan being floated by the respondent for the instant project.

ii. That upon the request of the complainants through the above said application form dated 29/04/2016, respondent vide welcome letter dated 10.05.2016 as well as allotment letter allotted unit bearing no. 72 on 3rd floor as per the terms and conditions forming part of the application form & buyer's agreement.

iii. That since the complainant had opted for the investment return plan, a memorandum of understanding dated:- 08/06/2016 was executed between the parties, which was a completely separate understanding between the parties in regard to the payment of assured returns in lieu of investment made by the complainants in the said project and leasing of the unit thereof. It is pertinent to mention herein that as per terms of the "MoU", the returns were to be paid from 08/06/2016 till commencement of first lease. It is also submitted that as per terms of the MoU, the complainants herein had duly authorised the respondent to put the said unit on lease.

iv. That by no stretch of imagination it can be concluded that the complainants herein are "Allottee." That the complainants are simply investors who approached the respondent for investment opportunities and for a steady

assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

v. That at this stage, it is categorical to highlight that the complainant is trying to mislead this Authority by concealing facts which are detrimental to this complaint at hand. That the MoU executed between the parties was in the form of an "investment agreement." That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession.

vi. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainants cannot be dealt with by this Authority. Without prejudice to the rights of the respondent, at the utmost bonafide, the Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.

vii. It is also pertinent to mention that the complainant voluntarily also executed the buyer agreement dated 08.06.2016 for Shop No. 72 on 3rd Floor admeasuring 250 Sq. Ft Super Area in the project.

viii. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

ix. It is humbly submitted that under the Scheme of the RERA Act 2016 there is no provision for examining and deciding the issues relating to the provisions of assured return, also the Authority has no jurisdiction to entertain an

application for enforcement of an agreement of assured return on investment, which is separate from the agreement of sale or allotment, which grants right in immovable property. To elaborate this ground, it is necessary to reproduce certain provisions of the RERA Act, 2016

x. That a perusal of Section 13 (2) would show that assured return is not a matter which is contemplated to be included in the agreement of sale. In fact, the same arises from a separate agreement and is in no manner arising out of any provision of the RERA 2016.

xi. It is submitted that the RERA Act, specifically provides for the matters which are mandatory to be included, this attains more importance where the project was an ongoing project and provisions of the act were being made applicable, in such a situation, a strict interpretation of the statutory provisions are being mandated.

xii. That it is submitted that the governing section for registration also only requires the submission of an agreement of sale, matters of which are covered under section 13. It is submitted that section 13 nowhere mentions the agreements pertaining to assured return are covered under the RERA Act, 2016, it is imperative that a strict interpretation is given to its provisions while deciding the matters pertaining to assured return.

xiii. That the complainant in the present complaint is claiming the reliefs on basis of the terms agreed under the MoU between the parties. It is submitted that the Authority is exercising its power and jurisdiction as provided under the provisions of the RERA Act, 2016. As per the provisions of the RERA Act, 2016, the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the agreement for sale. However, in the present matter the complainant is relying upon the terms of MOU which is a distinct agreement

than the buyer's agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on the basis that there exists no builder-allottee in terms of the MOU, by virtue of which the complainant is raising their grievance.

xiv. It is pertinent to note herein that the buyer's agreement and the assured return agreement both contain rights and obligations of parties which are not identical of each other. Therefore, both these documents cannot be treated as a single document enumerating the same rights and obligations. Thus, in view of the above, it is most humbly submitted herein that the present complaint is arising out of the MOU which is not maintainable before the Authority and thus, the present complaint is liable to be dismissed.

xv. That it is pertinent to mention here that, RERA Act has been introduced by the Legislation to maintain the uniformity in the real estate industry through out the country.

xvi. That the respondent cannot pay "assured returns" to the complainant by any stretch of imagination in the view of confusion prevailing over the interpretation of definition of deposit under BUDS Act and various promotional offers of the company offering discounts while promoting the sale of its properties. It is pertinent to note that none of the promotional offers qualify under the deposits or any other scheme as contemplated under any law, however, with introduction of BUDS Act, and anomaly in the definition of deposit thereof, company may be exposed to severe penalties and hence the Respondent had no other alternative but to stop the payment of any return etc.

xvii. Further, it pertinent to mention herein that the BUDS Act provides two forms of deposit schemes, namely regulated deposit schemes and unregulated deposit schemes. Thus, for any deposit scheme, for not to fall foul of the

provisions of the BUDS Act, must satisfy the requirement of being a 'Regulated Deposit Scheme' as opposed to Unregulated Deposit Scheme. Hence, the main object of the BUDS Act is to provide for a comprehensive mechanism to ban Unregulated Deposit Scheme.

xviii. In catena of the above discussion, it is submitted that in the present complaint the respondent has offered assured returns to the complainant in lieu of advance payments received in respect to a unit booked in the project. It is merely an offer of marketing whereby the immovable property is sold against a certain consideration and certain percentage whereof is offered as assured return over a period of time, which can be treated as passing on of discount as price realization against such sale through the said offers is much higher and substantial amounts are received by the respondent at one go which works as working capital for development of project.

xix. It is submitted that the as per clause 11 of the 'MOU', the Respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the mou or from start of construction, whichever is later and apply for grant of occupancy certificate. It is submitted that as per clause 5.2 of the agreement the construction completion date was the date when the application for grant of occupancy certificate was made. Accordingly, as per clause 11 of the MOU the due date of delivery of possession in the present case is 36 months i.e., to be calculated from 01.11.2016, and the due date of possession in the instant case comes out to be 01.11.2019.

xx. It is pertinent to mention that the respondent from time-to-time issued demand reminders to the complainant to clear the outstanding dues against the booked unit.

xxi. It is to be noted that the complainants miserably failed to comply the payment plan under which the unit was allotted to the complainants and further on each and every occasion failed to remit the outstanding dues on time as and when demanded by the respondent. The complainant as per the records of the respondent had only paid Rs. 21,48,425/- against the total due amount of Rs. 25,49,697/-. It is to be noted that there is still an outstanding due of Rs. 6,18,016/- which is to be paid by the complainant against the unit booked as per the demand letter dated: 28.02.2025.

xxii. That it is pertinent to mention here that the complainant failed to abide to the terms of the builder buyer agreement and memorandum of understanding executed by and between the parties.

xxiii. That the respondents had substantially failed to discharge its obligations imposed upon them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

xxiv. That since the respondents had opted for the investment return plan, through memorandum of understanding, which was a separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the respondents in the said project and leasing of the unit thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainant and the respondents, the returns were to be paid from 08/06/2016 till the commencement of first lease. It is also submitted that as per clause 8 (a) of the MOU, the respondent herein had duly authorised the complainant to put the said unit on lease. That is because it contained a "Lease Clause" which empowers the complainant to put a unit of respondent on lease and does not have possession clauses, for handing over the physical possession.

xxv. That as per the terms of the MOU the complainant explicitly agreed to the complainant that in case of the tenant desires any infrastructural changes in form of separate sewage arrangement or the gas pipeline or any other charges which involves expense on the part of the allotee(s), then in that event the same shall be paid by the Respondent, strictly within the period of 15 days from the day of written notification by the company and if the Respondent fails to come forward to tender the payment as demanded by the complainant then in that event the complainant shall bear the same from its own pocket.

xxvi. That apart from the above it is worth mentioning here that the allotee is not entitled to revoke, cancel, extend, terminate, neither shall be authorized to negotiate on the terms of the lease. The decision taken and terms negotiated by the company shall be final and binding on the allotee(s).

xxvii. That complainant is trying to negotiate to the demand of respondent on fit out, the respondent has raised the demand of Rs 3500/- per Sq. Ft to the complainant which is sum of Rs. 10,32,500/- for getting the said unit fit out which is essential for getting the said unit leased out. That the respondent to avoid making the payment for the demand for fitout, deliberately filed the present suit.

xxviii. It is a matter of fact, that time was essence in respect to the complainant obligation for making 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.

xxix. 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. It is further pertinent to mention here that the complainant failed to clear the outstanding dues of Rs. 06,18,016/- payable against the unit.

xxx. That in the present case, the complainant has not obliged its duties as per the MOU & buyer's agreement and further has not made the payments as per the agreed timeline. In these circumstances, the complainant is estopped from raising any allegations against the respondent as the complainant himself is at fault. It is relevant to mention that the complainant herein has clearly violated the duties of an allottee provided under section 19(6) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 19 (6) of the Act, it is the duty of the allottee to make timely payments in the manner as agreed between the parties and within the time specified in the agreement signed between the allottee and the promoter.

xxxi. It is humbly submitted that the respondent is raising the vat demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainant, as the same has been assessed and demanded by the competent Authority.

xxxii. It is pertinent to mention that the respondent has not availed the Amnesty Scheme namely, Haryana Alternative Tax Compliance Scheme for Contractors, 2016, floated by the Government of Haryana, for the recovery of tax, interest, penalty or other dues payable under the said HVAT Act, 2003.

To further substantiated the same, the name of the respondent is not appearing in the list of builders, as circulated by the Excise & Taxation Department Haryana, who have opted for the Lumpsum Scheme/Amnesty Scheme under Rule 49A of HVAT Rules, 2003.

xxxiii. It is further submitted that the demand of VAT is done as per clause 11 of the buyer's agreement. The aforesaid mentioned clause clearly states that the allottee is liable to pay interest on all delayed payment of taxes, charges etc. It is noted herein that the complainants are liable to pay the VAT demands as the respondent has not availed any amnesty scheme. It is submitted that as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions the respondent was entitled for extension of time for completion.

6. All other averments made in the complaint were denied in toto.

7. 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

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. ***1/92/2017-1TCP dated 14.12.2017*** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated

within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F. I. Objection regarding the complainants being investor.

12. The respondent has taken a stand that the complainant is investor and not an allottee/consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under Section 31 of the Act. The Authority observes 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;"*

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

F. II Objection regarding the project being delayed because of force majeure circumstances.

14. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities, etc. As per MoU, the due date of possession was 14.05.2018. It is observed that 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 leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the

promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

G.I The Authority is requested to redress the grievances of the complainant for the continuous hardships as faced by him as a considerable amount of their money has been retained by the respondent company. That the Authority is further requested to give necessary directions to the respondent company to refund the deposited amount of Rs 20,50,000/- with the interest @9.10% p.a till date or according to the RERA norms.

15. The complainant was allotted a unit bearing propriety no.72, ground floor measuring 250 Sq. Ft. for basic price Rs. 18,50,000/-, vide BBA dated 08.08.2016 under construction linked payment plan. Complainant has paid an amount of Rs. 20,50,000/- against the basic sale consideration of Rs. 18,50,000/-.

16. It is a matter of record that the complainant booked the aforesaid unit under the agreed payment plan and paid an amount of Rs. 20,50,000/- out of the total sale consideration of Rs. 18,50,000/-. 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.

17. 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.

18. The Authority observes that Section 18(1) of the Act, 2016, is applicable only in the eventuality where the promoter fails to complete or is unable to give possession of the unit in accordance with terms of agreement for sale or duly

completed by the date specified therein. This is a case where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and is demanding refund of the amount paid by the complainant in respect of the unit with interest at the prescribed rate.

19. **Due date of possession:** As per clause 3 of the MoU dated 08.06.2016, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of that agreement or commencement of construction i.e., 15.12.2015 (as per order dated 05.09.2019 in complaint bearing no. CC/1328/2019) whichever is later. Therefore, the due date has been calculated as 36 months from the date of execution of MoU among the parties being later. Thus, the due date of possession come out to be 08.06.2019.

20. The allottees have not exercised the right to withdraw from the project after the due date of possession was over, till the offer of possession was made to them. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Had the complainants wished to continue in the project, the consequences for delay provided in proviso to section 18(1) would come in force and the promoter would be liable to pay interest at the prescribed rate of every month of delay till the handing over of possession. However, in the present matter, this is not the case.

21. The authority has observed that the respondent/builder has offered possession of the unit on 04.02.2025 after obtaining occupation certificate on 14.08.2024 but the complainant wants to surrender the unit and refund the amount paid by him. Keeping in view the aforesaid circumstances, the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and judgment of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on**

11.01.2021, it is concluded that the allottees were obligated to take possession of the unit.

22. However, in the present matter the complainant do not wish to take possession of the unit. In terms of clause 16 of the MoU, 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 in case of any breach of any term by the Allottee(s), especially in case the breach mentioned in clauses no.5, 9, 10(i) and 10(ii) occurs then the Company shall have the right to terminate the present MOU and refund all monies paid under this MOU after deduction of the 10% 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 10% of total basic sale consideration price in addition the monies already paid in the form of assured returns 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."*

23. 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."*

24. 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.

H. Directions of the authority

25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

    i. The respondents/promoter are directed to refund the amount received by it from the complainant, after deducting 10% of the sale consideration of 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 filing of complaint by the allottee i.e. 23.05.2025, 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.

26. The complaint stands disposed of.

27. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated:11.08.2026