

| PROCEEDINGS OF THE DAY | | 33 |
|--------------------------------|---|-----------|
| Day and Date | Tuesday and 04.07.2023 | |
| Complaint No. | CR/4916/2022 Case titled as Dr. Lt. Col. Binny Kohli Vs Vs Neo Developers Private Limited | |
| Complainant | Dr. Lt. Col. Binny Kohli Vs | |
| Represented through | Ms. Sapna Malik Advocate | |
| Respondent | Neo Developers Private Limited | |
| Respondent Represented through | S/Shri Pankaj Chandola, Gunjan Kumar and Ms. Ankita Saikia Advocates | |
| Last date of hearing | 22.03.2023 | |
| Proceeding Recorded by | Naresh Kumari and HR Mehta | |

Proceedings

The present complaint was received on 09.08.2022 and reply on behalf of respondent was filed on 17.01.2023.

Succinct facts of the case as per complaint and annexures are as under:

| S. N. | Particulars | Details |
|-------|--------------------------------------|--|
| 1. | Name of the project | "Neo Square", Sector 109, Gurugram |
| 2. | Nature of the project | Commercial |
| 3. | Project area | 3.089 acres |
| 4. | DTCP license no. and validity status | 102 of 2008 dated 15.05.2008 |
| 5. | RERA Registered/ not registered | 109 of 2017 dated 24.08.2017 valid upto 23.08.2021 plus 6 months of extension due to COVID-19 = 23.02.2022 |

| | | |
|-----|--|---|
| 6. | Application for allotment | 05.02.2015 (Page 26 of reply) |
| 7. | Date of execution of Apartment Buyer's Agreement | 09.02.2015 |
| 8. | Unit no. and area | Restaurant no. 27, 3 rd floor admeasuring 500 sq. ft. (super area) (As per BBA at page 45 of reply) |
| 9. | Memorandum of understanding for assured return | 09.02.2015 (Page 27 of reply) |
| 10. | Possession clause | Clause 3 of MoU: The company shall complete the construction of the said building/complex, within the said space is located within 36 months from date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. |
| 11. | Due date of possession | 09.02.2018 (Calculated as 36 months from the date of execution of agreement i.e., 09.02.2015) |
| 12. | Assured return | Clause 4 of MoU The Company shall pay a monthly assured return of Rs. 45,000/- (Rupees Forty Five Thousand only on the total amount received with effect from 09.02.2015 after deduction of Tax at Source and service tax, cess "or any other levy which is due and payable by the Allottee(s) to the Company and the |

| | | |
|-----|--|---|
| | | balance sale consideration shall be payable by the Allottees) to the Company in accordance with the Payment Schedule annexed as Annexure 1. The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date. |
| 13. | Total sale consideration | Rs. 29,28,532/- (As per SoA on page 95 of reply) |
| 14. | Amount paid by the complainant | Rs. 26,94,780/- (As per SoA on page 95 of reply) |
| 15. | Amount paid by respondent (AR) | Rs. 22,38,000/- (As per SoA on page 95 of reply) |
| 16. | Occupation certificate /Completion certificate | Not obtained |
| 17. | Offer of possession | Not offered |
| 18. | Surrender of unit | Vide letter dated 09.05.2019 (Page 84 of reply) |
| 19. | Cancellation letter | 06.07.2021 (Page 130 of complaint) |

The counsel for the complainant states that the subject unit was allotted to the complainant at a total consideration of **Rs. 29,28,532/-** against which the complainant deposited a total amount of **Rs. 26,94,780/-**. An assured return amount of **Rs. 22,38,000/-** has been paid by the respondent against the unit. Admittedly, the request for surrender of the unit was made by the complainant on **09.05.2019** and simultaneously a MoU for buy back of the unit was also

signed between the parties on the same date (the counsel for the respondent challenges the MoU and states that no such document was signed). Subsequently, an amount of **Rs.30 Lakhs** was paid by the respondent to the complainant for 7 such units in bulk. A dispute arose regarding refund of the balance amount and the complainant requested for reinstatement of the unit which was allegedly accepted by the respondent but the respondent later cancelled the unit on the ground of non-payment of dues. The counsel for the complainant categorically states that no demand for payment of dues was made before calculation.

The counsel for the respondent states that no MoU for buy back was signed between the parties and it is a simple case of surrender. The amount deposited by the complainant was refunded after deduction of assured return already paid by the respondent. The counsel for the respondent further states that they wish to file an amended reply w.r.t the calculations of refundable amount in detail.


An order dated 05.05.2023 of the DCDRC Gurugram in CC No.732 of 2021 has also been produced before the authority which also mentions the present units in dispute. Both the parties to clarify the same in the written submissions.

Parties may file written submissions within a period of 3 weeks with an advance copy to each other.

Matter to come up on **31.10.2023** for final arguments.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member
04.07.2023