

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

Complaint No. : 1596 of 2018
First date of hearing: 04.04.2019
Date of decision : 04.04.2019

Sh. Rabinder Bahl
16 E, Elvaston Place, South Kensington, London
Through its power of attorney holder Sh. Manish
Sachdeva, S/o. Dr. B.D. Sachdeva.
R/o. 21/2 Jasmine Street, Emili 1, Vatika City,
Sohna Road, Gurugram,
Haryana – 122018.

Complainant

Versus

M/s. T.S. Realtech P. Ltd.
Corporate Office:- 808, 5th floor, IRIS Tech Park,
Sohna Road, Sector 48, Gurugram,
Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

Chairman
Member

APPEARANCE:

Shri Rabinder Bahl Complainant in person
Shri Sushil Yadav Advocate for the complainant
Shri Kamal Dahiya and Shri
Mukul Sanwariya Advocate for the respondent

ORDER

1. A complaint dated 30.10.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Sh. Rabinder Bahl against the promoter M/s. T.S. Realtech Private Limited in

respect of two booked space/unit bearing numbers 610 and 611 of the project “ IRIS gateway”, located at Sector 85-86, Gurugram for not handing over possession on due as per para 11.1 of the space buyer agreement dated 17.09.2013 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, space buyer agreements for the space/units in question were executed on 17.09.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	“IRIS gateway” located at Sector 85-86, Gurugram, Haryana.
2.	DTCP License no.	40 of 2012 dated 22.04.2012
3.	Nature of real estate project	Commercial colony
4.	Total area of the project	2.8 acres
5.	Allotted space/unit nos.	1. 610, 6 th floor, block A 2. 611, 6 th floor, block A
6.	RERA registered / unregistered	Registered vide no. 168 of 2017



7.	Revised date in completion of project as per RERA registration certificate	31.12.2021
8.	Date of booking (Annx III)	1. 26.06.2013 for unit no.610 2. 01.11.2013 for unit no. 611
9.	Date of execution of space buyer agreement (Annx I)	17.09.2013 of unit no. 610 17.09.2013 of unit no. 611
10.	Measuring area of the allotted space/units	804 sq. ft. of each units.
11.	Total consideration as per customer account statement (Annx III)	1. Rs. 57,13,768.93/- of unit no. 610 2. Rs.53,84,016.25/- of unit no. 611
12.	Nature of payment plan	Construction linked payment plan.
13.	Total amount paid by the complainant till date	1. Rs.17,03,274/- for unit no. 610. 2. Rs. 22,84,645/- for unit no. 611
14.	Due date for delivery of possession. (Clause 11.1, para 4: 42 months from the date of receipt of application plus 90 days' grace period)	1. 26.03.2017 for unit no. 610. 2. 01.08.2017 for unit no. 611
15.	Total delay till 04.04.2019	1. 2 years and 3 years (approx.) in unit no. 610; and 2. 1 year and 11 months (approx.) in unit no. 611
16.	Application for grant of occupation certificate for tower A	28.12.2018 (Annx R-5)

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the

complainant and the respondent. Two separate space buyer agreement dated 17.09.2013 for the aforesaid space/units is available on record. As per the allegation of the complainants, the respondent has failed to deliver the possession of the units till date which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 04.04.2019. The case came up for hearing 04.04.2019. The reply has been filed by the respondent on 05.02.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are -
- a) That the respondent gave advertisement in various leading newspapers and other electronic media about their forthcoming project named "IRIS BROADWAY ", Sector 85-86, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise given by the respondent in the aforementioned advertisements complainant, booked 2 units of space bearing no.610-611 both admeasuring 804 sq .ft. ,in

aforesaid project of the respondent for total sale consideration of Rs 55,07,400/- each.

- b) The complainant made a payment of Rs.17,03,274/- for unit no. 610 and Rs 22,84,645/- for unit no.611 totalling Rs. 3987919/- for both of the units to the respondent vide different cheques on different dates. As per space buyer agreement dated 17.09.2013 the complainant had allotted the unit bearing no. 610-611 having super area of 804 sq. ft. to the complainant. As per para no.11.1 of the agreement, the respondent had agreed to deliver the possession of the flat within 42 months from the date of signing of the application.
- c) The complainant submitted that he has regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the project without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. The complainants alleged that despite receiving the payment as per the demands raised by the

respondent and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted units to the complainant within stipulated period.

d) That it could be seen that the construction of the project in which the complainants flat was booked with a promise by the respondent to deliver the flat by 17.03.2017 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

e) The complainants visited the site but are shocked to see that construction was going on very slow speed then the complainants contacted the respondents through mails and personal visit ,about the project but the respondent did not gave any satisfactory answer and complainant had paid 3987919/- by then as and when demanded by the respondent but the construction was going on at a very slow speed and even the respondent did not know that when they will able to deliver the project. So consequently the complainant stopped making further payment to the

respondent and sent a mail to the respondent for cancellation of the unit and refund the money but the respondent denied for refund of the money. Thereafter instead of refunding the money and resolving the matter, the respondent had not responded at all and denied to refund the hard earned money of the complainant.

- f) Due to the omission on the part of the respondent the complainants has been suffering from disruption on his financial arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the Flat on time. That as per clause 11.1 of the space buyer agreement dated 17.09.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such of nominal rate of Rs.5/- per sq. ft per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay from the agreed possession plan. The

respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.5/- per sq. ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 15% per annum interest on delayed payment.

- g) On the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants @15%per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainants.
- h) That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to refund the amount along with interest @ 15% per annum on the amount deposited by the complainants but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard earned huge amount and

wrongfully gain himself and caused wrongful loss to the complainants. Hence, this complaint filed by the complainant before this authority.

Issues to be determined: -

1. Whether the respondent has failed to hand over the possession and the terms incorporated in the space buyer agreement are one sided and unjustified.
2. Whether the complainant is entitled for the refund of amount paid by him alongwith prescribed interest.

Reliefs sought: -

- Direct the respondent to refund the amount of Rs. 39,87,919/- alongwith prescribed rate of interest from the date of booking till its payment.

Respondent's reply:-

7. The respondent has raised various preliminary objections pertaining to the present complaint. Firstly, that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this authority as the reliefs being

claimed by the complainants cannot be entertain before the authority.

8. Secondly, making reference to some of the provisions of the Real Estate (Regulation and Development) Act 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 made by the government of Haryana in exercise of powers conferred by sub-section-1 read with sub-section-2 of section-84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this authority or the adjudicating officer, sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-Section (2) provides that the form, manner and fees for filing complainant under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 rules provides for filing of complaint with this Ld. authority, in reference to Section 31 of 2016 Act. Sub-clause(1) inter alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudicated by the

adjudication officer, in Form 'CRA'. Significantly, reference to the authority, which is this authority in the present case and before the "adjudicating officer", is separate and distinct "adjudicating officer" as has been defined under Section 2(a) to mean the adjudicating officer appointed under sub-section (1) of the section 71, whereas the "authority" has been defined under Section 2(i) to mean the Real Estate Regulatory Authority, established under sub-section (1) of section 20. Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate Government for the purpose of adjudging compensation under Sections 12, 14, 18 and Section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be taken into account by the Adjudicating Officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to section 18 of 2016 Act, which inter-alia, provides for return of amount and compensation.

9. From the conjoint reading of the aforementioned provisions, it is crystal clear and evident that the claim for the compensation would be adjudged by the adjudicating officer as appointed

under section 71 of 2016 Act and that too keeping in view the factors mentioned in section 72 of 2016 Act. No complaint can be entertained much less before this authority in respect of the matters to be adjudicated by the adjudicating officer.

10. The respondent contended that the complaint is liable to be dismissed as it is barred by the principle of delay and laches. The complainant had booked unit on 20.06.2013 with the respondents. It is also pertinent to mention that the complainant had carried out inspection of the documents in respect of the said project and was duly informed about the completion date of the said unit and other obligations of the Complainant at the time of making application for booking the said unit. The Complainant now in 2018 after passage of 5years from the date Booking Application form cannot be allowed to raise the flimsy and frivolous objections at such juncture where the construction of the units is completed.

11. It was further contended by the respondent that even if it is to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

12. The respondent contended that it would be just and proper to refer to certain provisions of the 2016 as well as 2017 Haryana Rules, which may be relevant for the adjudication of the present lies and which for ease of reference, are reproduced hereunder:-

2016 Act

Section-2 (a) "adjudicating officer" means the adjudicating officer appointed under subsection (1) of section 71;

Section-2 (c) "agreement for sale" means an agreement entered into between the promoter and the allottee; **Section-3.** Prior registration of real estate project with real estate Regulatory Authority **Section-4-** Application for registration of real estate projects **Section-12-** Obligations of promoter regarding veracity of the advertisement or prospectus **Section- 13.** No deposit or advance to be taken by promoter without first entering into agreement for sale **Section-18-** Return of amount and compensation **Section 31-** Filing of Complaint with the Authority or the Adjudicating Officer **Section 71** Power of adjudicate **Section-72** Factors to be taken into account by the adjudicating officer

2017 Haryana Rules Rule 2(o)-“ongoing project” Rule-8

Agreement for sale Rule-15 Interest Payable by the Promoter and the allottee

13. From the perusal of the aforementioned provisions and/or the rules and conjoint reading of the same, it is evidence that the “agreement for sale” that has been referred to under the provisions of 2016 Act and 2017 Haryana Rules, is the “agreement for sale” as prescribed in annexure-A of 2017 Haryana Rules. Apparently, in terms of section 4(1), promoter is required to fill an application to the ‘authority’ for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term ‘prescribed’ has been defined under Section 2(z)(i) to mean prescribed by Rules made under the Act. Further section 4(2) (g) of 2016 Act provides that a promoter shall enclose, alongwith the application referred to in sub-section 1 of section 4, a proforma of the allotment letter agreement for sale, and conveyance deed proposed to be signed with the allottees. section 13(1) of 2016 Act inter-alia provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance

payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force section 13(2), inter alia provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of 2017 Haryana Rules categorically lays down that the agreement for sale shall be as per annexure-A. Suffice it is to mention that Annexure-A forms part of the 2017 Haryana Rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

Besides the aforementioned Sections, a reference may be made to Rule 5 of 2017 Haryana Rules, which inter-alia, provides that the Authority shall issue a registration certificate with a registration number in Form 'REP-III' to the promoter. Clause 2 (i) of form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the Government.

From the conjoint reading of the aforementioned sections/rules, form and annexure-A, it is evident that the

'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure-A, which is required to be executed inter-se the promoter and the Allottee.

14. The respondent has contended no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between the respondent company and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the space buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for compensation, as provided under section-12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana Rules 2017 and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions.

15. It is humbly submitted that the respondent company has obeyed the legal obligations and also complied with laws. The respondent company had registered the said project under

RERA dated 29.08.2017 with registration no. 168 of 2017 which is valid up to 31.12.2021. It is pertinent to mention here that RERA Act 2016 came into force on 1 May 2016 whereas The Haryana Real Estate (Regulation and Development) Rules, 2017 which have come to effect on 28.07.2017 and after coming of The Haryana Real Estate (Regulation and Development) Rules, 2017, respondent company registered their project TREHAN IRIS BROADWAY. It shows that the respondents had since from its inception always done their work by complying upon the legal obligations. It is respectfully submitted that the project of the respondent is in four phases i.e. Phase I, II, III & IV. The Phase I of the project includes Block-A, Phase II includes Block-B, Phase III includes Block-C and Phase IV includes Block-D.

16. In the present case, the complainant purchased two SOHO (Shop Office Home Office) Commercial Unit in the said project bearing No. 610 and 611, Sixth Floor, Block-A. The both the unit of the complainant falls under Phase I which is more than 95% completed.

17. It is submitted that the respondent company had started the construction work after getting all the approvals from the concerned authorities. The said project had got the NOC for construction, NOC from airport, NOC from aravali, NOC from

MoEF environmental clearance, NOC for water, NOC for fire, NOC for lift, NOC for electricity, approval of building sanction plan, approval of zoning plan and sanction load of electricity-DG-HT, etc. The license of the respondent i.e. license no. 40 of 2012 was also renewed by the DTCP dated 10.07.2018 which is now valid up to 21.04.2020.

18. The respondent has submitted that there has been delay in handing over the possession due to sudden demise of the Managing Director (promoter) Sh. Jai Kumar Trehan on 30th December 2013, the construction work was stopped at that time for a certain period of time. There was another substantive reason for delay which was beyond the control of the respondent. It is submitted that at the time of demonetization in the year 2016 i.e. since November 2016, the respondent company have suffered to arrange Labour for construction. Therefore, there was delay in handing over the possession.

19. The respondent has submitted that the said unit of the complainant falls under Phase I which is more than 95% completed. Further the respondent had applied for occupation certificate to the DTCP, Haryana for block-A (phase I) of the said project vide letter dated 28.12.2018. The said phase is planned to complete in all respect. Moreover, the respondent company

has target to offer the possession to the complainant in the last week of February 2019. The current status of the construction is in full swing and the current photographs of the same are annexed herewith as **annexure R-6**.

20. The respondent has further contended that the complainant has failed to fulfil the obligations towards the payment against the said units. Till date the complainant had made very small amount of payment. Despite so many reminders, the complainant has failed to make the payment on time. The complainant has made payment of Rs 17,03,274/- against unit no. 610 i.e. only 29% out of the total consideration and made payment of Rs 22,84,645/- against unit no. 611 i.e. only 35% out of total consideration. The respondent had raised the last demand on 23.10.2017 for both the unit i.e. for unit no. 610 of Rs 88,58,720.54/- and for unit no. 611 of Rs 73,91,556.20/-.

21. The respondent contended that as the complainant was defaulter in making the payments and has not complied with the terms and conditions of the space buyer's agreement. The complainant has violated the provision of RERA Act, 2016. As per section 19(6) of RERA Act, 2016, the complainant is responsible to make necessary payments in time. Further, the respondents are entitled to charge the interest for delay in

payment. As per section 19(7) of the RERA Act, 2016, the complainant is liable to pay the interest for delay in payment.

22. At this stage where the construction of the said unit is more than 95% completed the complainant is seeking for refund along with interest and also seeking for compensation. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant.

23. It is submitted that the complainants are making such unreasonable claims at such a belated stage when the unit is about to hand over. That such claims made by the complainants are mere counterblasts for their own breaches and defaults which is not attributable to the respondent. Further, it is submitted that the respondent has not adopted any unfair trade practice or even otherwise.

24. The complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016 has been mentioned. Thus, the petition is liable to be dismissed solely on this ground. It is reiterated at the risk of repetition, and without prejudice to the aforesaid submissions, that in any event, the complaint, as filed, is not maintainable in the present form, before this authority.

Determination of issues: -

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

1. As regards **issue no. 1 and 2** raised by the complainant, it is observed by the authority that as per para 4, clause 11.1 of both the space buyer's agreement dated 17.09.2013 of the booked unit nos. 610 and 611, the respondent was under contractual obligation to deliver the possession of the subject space/unit nos. 610 and 611 within 42 months plus 90 days' grace period from the date of booking. The relevant portion of para 4, clause 11.1 is reproduced below –

“.....if for any reasons other than those given in clauses 11.1, the Company is unable to or fails to deliver possession of the said Unit to the Allottee(s) within 42 months from the date of application or within any extended period or periods as envisaged under this agreement.....”

2. Hence, on reading of the above, the due date of delivery of possession is to be calculated from the respective date of booking of both the units. The date of booking of unit no. 610 and 611 as per the records available is 26.06.2013 and 01.11.2013 respectively. So, the due date of delivery of possession as per the abovementioned clause on calculation comes out to be 26.12.2016 and 01.05.2017 respectively,

however the respondent has failed to deliver the possession till date which is in violation of obligation of promoter under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

3. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said unit as per para 6 of clause 11.1 of the space buyer's agreement dated 17.09.2013 is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and Ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

4. The project is registered with the authority vide no. 168 of 2017 and the revised date of completion of project under the said registration certificate is given as 31.12.2021. Moreover, as per the photographs annexed by the respondent with their reply as annexure 6, the project is almost completed. Hence,

the order for refund at this belated stage would not serve the ends of justice as it will hamper the interest of other allottees as well who wishes to continue with the project. However, the complainant is entitled for delayed possession charges at the prescribed rate of interest @ 10.75% p.a. for every month of delay from the due date of delivery of possession till actual handing over of possession under section 18 of the Act *ibid*.

Findings of the authority: -

25. By going through the facts and circumstances of the case, the authority is of the considered view that the complainant is covered under the definition of “allottee” as per section 2(d) and also the respondent is covered under the definition of “promoter” as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. In addition to it, the project in question is covered under the ambit of “real estate project” under section 2(zm) of the Act. Hence, the authority has complete jurisdiction to deal with this complaint.

26. The authority has complete subject matter jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later

stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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.

27. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
28. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
29. Arguments heard. Occupation certificate has been received by the respondent on 29.03.2019.
30. During the course of arguments, counsel for the complainant submitted that complainant is a NRI and he wants to surrender the allotment of units and get back the deposited amount. Counsel for the complainant is unable to show any provision/clause under which surrender can be allowed and settlement of payments, in case surrender is allowed at this

stage, then apart from forfeiture of 10% of the basic sale price as earnest money, he will also be liable to pay brokerage, if any, taxes, if paid to the government by the respondent and interest for any due instalment.

31. The other option with the allottee is to get interest for every month of delay at the prescribed rate of interest i.e. 10.75% per annum from the due date of delivery of possession till actual handing over of possession by the respondent, after adjustment of interest on the delayed instalments, if due.
32. Counsel for the respondent consent for any course of action that may be opted by the complainant.

Decision and direction of the authority: -

33. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby advised to opt for either of the two options to the complainant as given below-

- i. In case complainant wants to surrender allotment of units, then respondent is entitled to forfeit 10% of the total sales consideration towards earnest money, brokerage charges, if any, taxes paid, if any, by the respondent to the government and interest for any due instalment. The

balance amount, if any, after deducting the said mentioned amount be refunded to the complainant without interest.

- ii. The other option available to the complainant is not to withdraw from the project and get delayed possession charges for every month of delay at prescribed rate of interest i.e. 10.75% per annum from due date of delivery of possession till actual handing over of possession as per section 18 of the Act *ibid*. The said delayed possession charges be payable by the respondent after adjustment of interest on delayed instalment due, if any.
- iii. The counsel for respondent consented for any course of action that may be opted by the complainant.

34. The order is pronounced.

35. Case file be consigned to the registry.

(Dr. K.K. Khandelwal)

Chairman

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:- 04.04.2019.

Judgement uploaded on 16.05.2019



HARERA
GURUGRAM