

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

Complaint no.	:	1455 of 2019
Date of filing complaint:		18.04.2019
First date of hearing:		04.09.2019
Date of decision	:	25.07.2022

1. Sh. Satish Goyal S/o Sh. BM Goyal 2. Smt. Richa Goel W/o Sh. Ram Niwas Goel Both R/O: 101, Lotus Boulevard, Tower 12, Sector 100, Noida-201301	Complainants
Versus	
M/s ATS Real Estate Builders Private Limited Regd. office: 711/92, Deepali Nehru Place, New Delhi South Delhi-110019	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Mukul Kumar Sanwariya (Advocate)	Complainants
Sh. M.K. Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under

the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ATS Marigold", Sector 89A, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	11.125 acres
4.	DTCP License	87 of 2013 dated 11.10.2013 valid till 10.10.2017
	Name of the licensee	Dale Developers Private Limited & Gabino Developers Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 55 of 2017 dated 17.08.2017 valid till 31.07.2021
6.	Application dated	01.04.2014 (A per page no. 22 of complaint)
7.	Allotment letter dated	02.01.2015 (As per page no. 22 of complaint)
8.	Date of execution of flat buyer's agreement	02.01.2015 (As per page no. 23 of complaint)
9.	Unit no.	4073 on 07 th floor, tower 04

		(As per page no. 22 of complaint)
10.	Super Area	2150 sq. ft. (As per page no. 22 of complaint)
11.	Total consideration	BSP- Rs. 1,30,33,300/- TSC- Rs. 1,45,89,550/- (excluding tax) (As per page no. 54 of the complaint)
12.	Total amount paid by the complainants	Rs. 53,86,976/- (As per page no. 35 of reply)
13.	Possession clause	<p>Clause 6.2</p> <p><i>(The Developer shall endeavor to complete the construction of the Apartment <u>within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date")</u>, subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).)</i></p>
14.	Due date of possession	02.01.2019 (Calculated from the date of the agreement i.e.; 02.01.2015 + grace period of 6 months) Grace period is allowed
15.	Occupation Certificate	Not obtained

16.	Offer of possession	Not offered	
17.	Letter/email sent before filing of present complaint seeking refund	10.11.2015 (Followed by 04.04.2016, 02.06.2016) (As per page no. 56 of complaint)	
18.	Demand letter & reminders	27.01.2018, 14.03.2018, 04.04.2018, 17.05.2018, 15.06.2018 (As per page no. 37-40 of reply)	
19.	Pre-cancellation letter dated	11.07.2018 (As per page no. 41 of reply)	
20.	Cancellation letter dated	05.09.2018 (As per page no. 43 of reply)	

B. Facts of the complaint:

- That the project namely "ATS Marigold" is a residential group housing project (hereinafter, "the project") was being developed by the respondent, situated in Sector 89 A, Gurugram, wherein the complainants booked an apartment admeasuring 2150 sq. ft. (herein after referred as "unit"). The respondent gave advertisement in newspapers as well as through the channel partners and showed a rosy picture about the project.
- That the complainants relied heavily on the representations, affirmations and commitments made by the respondent's staff and representatives and agreed to purchase the unit in the said project having an approximate 2150 sq. ft. The complainants have made payment of Rs. 10,00, 000/- as initial booking amount vide cheque dated 27.07.2013. On the demand, the

complainants further made payment Rs. 29,09,990/- vide cheques dated 18.10.2013 and 10.10.2013 both amounting to Rs. 14, 54, 995/- each.

5. That the respondent again raised demand for more money. They further made payment of Rs. 39,09,990/- i.e. approx. more than 25% of the total consideration amount and the same was acknowledged vide applicant ledger statement dated 13.11.2014.
6. That it cleverly manipulated the statement and has made false entries regarding the payment by entering the first cheque amounting to Rs. 10,00,000/- dated 27.07.2013, on 25.08.2014 i.e. after one year one month and with regard to the cheques dated 18.10.2013 and 10.10.2013 both amounting to Rs. 14, 54, 995/- entry was made on 25.08.2014 i.e. after more than 9 months from the date of issuance of cheques.
7. The respondent issued an allotment letter to the complainants dated 02.01.2015 and allotted them a residential apartment bearing no. 4073 on the 7th floor of tower no. 04 having super area of 2150 sq. ft, which includes a built-up area of 1820 sq. ft.
8. That the respondent also manipulated the date of booking in allotment letter and has stated the date of application to be 01.07.2014 instead of 29.07.2013. The apartment buyer agreement was executed between the parties dated 02.01.2015. The total consideration of the said apartment was Rs. 1,45,89,550/- towards the basic sale price for purchase of the said

unit including PLC, car parking, power back up, maintenance charges and excluding any other statutory / allied charges.

9. That as per said agreement dated 02.01.2015, it was revealed that the respondent not only collected booking amount of Rs. 10,00, 000/- much prior to the getting license no. 87 of 2013 dated 11.10.2013 but also demanded and collected Rs. 29,09,990/- before getting such license. The building plans were approved vide memo no. ZP-941/AD (RA)/2014/12044 dated 06.06.2014 by DGTCP for construction and development of project.
10. That the respondent also issued a payment schedule plan, which mentioned the time and payment to be remitted, by the complainants. The payment plan issued by the respondent was construction linked plan i.e. the complainants were supposed to pay as per the construction and development work to be carried on by the respondent, of the allotted apartment.
11. That the complainants paid Rs. 39,09,990/- i.e., more than 25% till Nov 2013 before entering into any written agreement between the parties. That the respondent not only manipulated dates of payments in account statement and ABA, but also without adhering to the terms of the ABA never stopped demanding payment even after coming of RERA Act without entering into agreement to sell and kept demanding the amounts illegally. Hence, the respondent violated the provision of section 13 of Act of 2016.

12. As per clause 6.2 of the terms, the possession of the project was to be handed over within 42 months with grace period of 6 months from the date of execution of the said agreement. Therefore, the possession was committed in the month of January 2019. There is already delay of more than 3 years and 4 months from date of commitment & project is running behind schedule, thus delaying the possession of apartment deliberately or for reasons known best to them. Such an uncalled act is leaving complainants in a lurch where they are left with no option but to be an aggrieved person/victim in the hands of the respondent.
13. That due to uncertain delay by the respondent in completion of the project and due to certain other valid reasons, the complainants requested to cancel the allotment and to refund the paid amount vide email dated 10.11.2015. Instead of giving response over such requests, it never stopped to demand further amounts even upon non-performance on their part of agreement being timely constructing and completion of the project. The complainants paid Rs. 54,13,043/- till 01.08.2015 but due to unavoidable circumstances, they were not in a position to continue with the said allotment.
14. That the complainants were in continuous contact with Mr. Saurabh Arora, one of the representatives of the respondent. Moreover, when the complainants requested for cancellation on 10.11.2015 then the respondent informed the complainants to meet Mr. Naveen Bahal regarding the same issue and also gave assurances that they would surely

co-operate the complainants to get back their amount paid. But it was all fake assurances which was never heard by the respondent. The complainants explained all such issues vide email dated 04.04.2016 to CMD of company Sh. Getamber Anand but till date no reply has been given by respondent. Multiple requests/reminder mails were made to Sh. Getamber Anand. The complainants again raised their contentions vide email dated 02.06.2016.

15. That in the month of June 2016, the complainant got call from the respondent's office and they fixed the meeting of the complainants with Mr. Naveen Bahal in the 1st week of June where he promised that their refund will definitely be processed by 15.07.2016. By having such assurances, the complainants again spoke to Mr. Naveen Bahal around 15.07.2016, but he assured them to wait till 15.08.2016. The complainant explained all such grievances to the respondent vide email dated 29.07.2016
16. That they again sent their request vide email dated 25.04.2017 where they were requesting since last 18 months. Furthermore, Mr. Naveen Bahal confirmed that the refund requests have been cleared and the process of cancellation shall be initiated soon. Also, he called the complainants to come in the 1st week of April 2017 in order to do some paperwork for the cancellation. Since then, the complainants had been calling him or sending messages for meeting but he neither took any calls nor responded to such messages. Later on, the complainants came to know that Mr. Naveen Bahal

has left the company. Thereafter, the complainants conveyed their concern to the respondent vide email dated 25.04.2017.

17. That the respondent again failed to show his willingness to proceed with the requests of the complainants. The poor complainants again requested the respondent vide emails dated 01.09.2017 & 26.10.2017 but no written response was received. The complainant lost his job in June 2015 resulting into severe financial hardships and it became extremely difficult for them to pay further. The complainants had always obeyed their duties since the time of booking, but it is the respondent who rather than to moving towards agreeing to their requests for refund but were only giving fake assurances.
18. That the complainants have suffered losses and damages due to false and incorrect statement and commitments made by the respondent. Moreover, the respondent failed to handover the possession till date and there is abnormal delay in completion of project. Due to this act of the respondent, the complainants wish to withdraw from the respondent's project and are entitled to get the refund along with interest from the respondent under sec 19(4) and sec 18(1) of the Act of 2016.
19. That the respondent after indulging in unfair trade practice intentionally grabbed the hard-earned money of the complainants and by this way also committed the offence of "criminal breach of trust".

C. Relief sought by the complainants:

20. The complainants have sought following relief(s):

- i. Direct the respondent to return payment made in lieu of unit/apartment till date along with the prescribed rate of interest from the date of first payment till realization as per the provisions of section 18(1) and 19(4) of the Act of 2016.
- ii. To impose penalty upon the respondent as per the provisions of section 60 of Act of 2016 for wilful default committed by them.
- iii. To impose penalty upon the respondent as per the provisions of Section 61 of Act of 2016 for contravention of Section 12, 13, 14, 15 and 16.
- iv. Direct the respondent to pay penalty up to 10% of project cost to the complainants under sec 59 of Act of 2016.
- v. Direct the respondent to refund the amount collected from the complainants in lieu of interest, penalty for delayed payments under rule 21(3)(c) of Rules.
- vi. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in sec 69 of Act of 2016, read with rules.
- vii. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.

D. Reply by respondent:

The respondent by way of written reply made following submissions: -

21. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause under clause 21.1 of the buyer's agreement which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
22. That the complainants, after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to the complaint. Based on the application of the complainants, the respondent company vide its allotment offer letter made the allotment of the unit bearing no. 4073, 7th floor, tower no. 04 having super built up area of 200 sq. meter.
23. That based on it and on the receipt of the requisite amount, the respondent sent copies of the buyer's agreement to the complainants which was signed and executed by them on 02.01.2015. The complainants made the payment towards part-sale consideration out of the total sale consideration amount. However, the complainants made continuous defaults towards remitting the due amount despite several reminders and follow-ups by the respondent. It is submitted that the respondent in accordance with the terms of the allotment raised several demands dated 23.10.2015, 03.05.2016, 12.05.2017 and 11.01.2018. However, the complainants defaulted in adhering to their contractual obligations and failed to remit the demanded amount despite reminders dated 14.03.2018, 04.04.2018, 17.05.2018, 15.06.2018 followed by final notice dated 11.07.2018.

24. That the possession of the unit was supposed to be offered as per clause 6.2 of the buyer's agreement states wherein the developer endeavour to complete the construction within 42 months from the date of this agreement subject to timely payment of all the charges. That from the aforesaid terms of the buyer's agreement, it is evident that the said period was subject to making timely payment towards the due installments.
25. That according to agreed clauses of the booking application form and the apartment buyer's agreement, timely payment of installments within the agreed time schedule was the essence of allotment. The complainants are real estate investors that had booked the unit in question with a view to earn quick profit in a short period. However, their calculations went wrong on account of slump in the real estate market and the complainants did not possess sufficient funds to honour their commitments.
26. That on account of non-fulfilment of the contractual obligations by the complainants despite several opportunities extended by the respondent, their allotment was cancelled and the earnest money deposited by them along with other charges were forfeited vide cancellation letter dated 05.09.2018 in accordance with clause 10.2 read with clause 10.4 of the said agreement and they are now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.
27. 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:

28. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.1 Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

29. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 21: All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be mutually appointed then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties"

30. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the

jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.

31. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and

accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

32. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding entitlement of refund on account of complainants being investors.

33. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that

the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note 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. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs. 53,86,976/- to the promoter towards purchase of an apartment in the project of the promoter. 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;"

34. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and

"allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in *appeal no. 000600000010557 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. Thus, the contention of promoter that the allottee being an investors are not entitled to protection of this Act also stands rejected.

G. Entitlement of the complainants for refund:

- G.1 Direct the respondent to return payment made in lieu of unit/apartment till date along with the prescribed rate of interest from the date of first payment till realization as per the provisions of section 18(1) and 19(4) of the Act of 2016.**
35. The complainants booked the subject unit on 01.04.2014 under construction linked plan. They were allotted unit in the project of the respondent on 02.01.2015 and they have paid an amount of Rs. 53,86,976/- against total consideration of Rs. 1,30,33,300/- constituting 41.33% of total consideration. The complainant vide email dated 10.11.2015 followed by reminders dated 04.04.2016 & 02.06.2019, requested the respondent that due to financial hardship faced by them, they wanted to withdraw from the project. In response, the respondent vide email dated 29.07.2016 stated that the process would take few months.
36. Despite request of the complainant to withdraw from the project, the respondent sent a demand letter dated 27.01.2018 payable on construction of top floor, followed by various reminders dated 04.03.2018, 04.04.2018,

07.05.2018, 15.06.2018 and final cancellation letter dated 05.09.2018 for a default of amount of Rs. 74,91,421.

37. In the present case, it is pertinent to note that the complainants have already raised plea to withdraw from the project way back in 2015 and they did not come forward to pay any further demand showing their willingness to withdraw from the project.

38. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

39. In view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 9.80%

p.a. on the refundable amount, from the date of request of surrender till the date of realization of payment.

G.II To impose penalty upon the respondent as per the provisions of section 60 of Act of 2016 for wilful default committed by them.

G.III To impose penalty upon the respondent as per the provisions of Section 61 of Act of 2016 for contravention of Section 12, 13, 14, 15 and 16.

G.IV Direct the respondent to pay penalty up to 10% of project cost to the complainants under sec 59 of Act of 2016.

G.V Direct the respondent to refund the amount collected from the complainants in lieu of interest, penalty for delayed payments under rule 21(3)(c) of Rules.

G.VI To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in sec 69 of Act of 2016, read with rules.

G.VII To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

40. For the said reliefs, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act of 2016 and rule 29 of rules.

H. Directions of the Authority:

41. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per



HARERA
GURUGRAM

Complaint No. 1455 of 2019

regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 9.80% p.a. on the refundable amount, from the date of request of surrender till the date of realization of payment.

- 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.

42. Complaint stands disposed of.

43. File be consigned to the registry.

V.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2022

(Dr. KK Khandelwal)
Chairman

HARERA
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