

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

Complaint no. : 1960 of 2018
Date of decision : 12.05.2022

Siddharth Thakur
R/o A-55, Villa Omaxe Green Valley,
Gurukul Road, Gurugram, Haryana

Complainant

Versus

M/s Emaar MGF Land Limited.
Registered office at: - 306- 308, 3rd Floor, Square One,
C2, District Centre Saket, New Delhi- 110017
Corporate office at: - Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sector- 28, Sikander Pur
Chowk, Gurugram- 122002

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Complainant in person with
Shri Gaurav Goswami

Advocate for the complainant

Sh. J.K. Dang (Advocate)

Advocate for the respondent

ORDER

1. The file present complaint dated 26.11.2018 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details	
1.	Name of the project	Marbella, Sector 65 & 66, Gurugram, Haryana	
2.	Total area of the project	107.9 acres	
3.	Nature of the project	Residential plotted colony	
4.	DTCP license no.	97 of 2010 dated 18.11.2010	41 of 2011 dated 03.05.2011
	Validity of license	18.11.2022	03.05.2024
	Licensee	Foyer Propbuild Pvt. Ltd. and ors.	Foyer Propbuild Pvt. Ltd. and anr.
	Area for which license was granted	106.86 acres	1.063 acres
5.	Registered/not registered	Registered in two phases i. 307 of 2017 dated 17.10.2017 for 41.86 acres [Valid up to 16.10.2022] ii. 8 of 2021 dated 01.03.2021 (Phase II) for 66.059 acres [For 12.609 acres- Valid up w.e.f.	



		01.03.2021 till 31.12.2023 For 53.45 acres- Valid up w.e.f. 01.03.2021 till 31.12.2027]
6.	Occupation certificate granted on	03.06.2019 [annexure R19, page 93 of reply]
7.	Provisional allotment letter	08.08.2014 [annexure R2, page 39 of reply]
8.	Unit no.	MAR-BE-051 [annexure R16, page 80 of reply]
9.	Area of the unit (super area built-up area)	2872.92 sq. ft. on 267 sq. yds. plot
10.	Date of execution of buyer's agreement	12.11.2014 [annexure R16, page 61 of reply]
11.	Possession clause	10. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Villa within 36 (thirty-six) months from Start of Villa Construction. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the occupation certificate</i>

		<i>in respect of the Villa.</i> (emphasis supplied) [page 69 of reply]
12.	Date of start of construction	Cannot be ascertained
13.	Due date of possession	12.11.2017 Note: Grace period is not included. The due date is calculated from the date of execution of agreement as date of start of construction cannot be ascertained on the basis of documents placed on record by both the parties.
14.	Consideration as per payment plan annexed with the buyer's agreement at page 80 of reply	Rs.6,60,10,772/-
15.	Total consideration as per the statement of account dated 13.12.2018 at page 47 of reply	Rs.6,97,59,872/-
16.	Total amount paid by the complainant as per the statement of account dated 13.12.2018 at page 48 of reply	Rs.1,68,15,373/-
17.	Offer of possession	Not offered
18.	Cancellation letter issued by the respondent on	14.12.2018 [annexure R15, page 59 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- i. That while entering into the agreement and while accepting the payments from the complainant it was always assured and

committed by opposite parties that opposite parties shall fulfil their commitment on time.

- ii. As per the builder buyer agreement dated 12th November 2014 an amount of Rs. 1,78,22,500/- was to be remitted in the account of opposite party no. 1 only upon "completion of structure" and to verify the claims of opposite party no. i after receiving the 'payment requests' the complainant had raised repeated requests for the site visit before making any further payment, as the project was running behind the schedule as the possession of the villa in question was to be handed over in 36 months.
- iii. That after various requests and follow-ups the complainant was taken for the site visit on 27th July, and upon visiting the site the complainant was shocked to see that the structure unit no. MAR-BE-051 IN MARBELLA, in question was not complete and still the opposite party no. 1 had the audacity to seek a further payment of nearly rs.1.9 crores from him without even the structure being completed clearly in contravention of the terms and conditions as stipulated in builder buyer agreement. That the shuttering work in the unit was underway and the final slab was still pending, plots on the side of complainant's unit were lying absolutely vacant clearly demonstrating the fact that the project shall not be entirely developed in years to come and the executives of the respondent that accompanied him to the site were clueless about the fate of the vacant plots adjacent to complainant's unit and the demand notice was raised clearly against the stipulated terms and conditions as stated out in the (builder) buyer's agreement.

iv. That it is of utmost importance to mention herein that the complainant had categorically stated his concerns in his mail dated 28.07.2017 along with the images of the incomplete unit/villa and mail dated 21.09.2017. Moreover, the complainant had also enquired about the banks that are willing to provide loan in the project in question as both HDFC and Axis Bank had refused to sanction loan in the present project as they had blacklisted the Emaar group which also came as an utter shock to the complainant. However, now it has come to complainant's knowledge through other aggrieved persons that the respondent was not having such sanctions/permissions/approvals from the concerned departments, and they had shown some false and fabricated permissions/sanctions to allure and induce the public at large, to invest in their project to take wrongful gain for themselves and to give wrongful loss to the innocent public investors at large. In the meanwhile, the complainant has constantly been in touch over phone-calls/whatsapp/messages/mails with various executives/representatives of respondent who have merely been passing his matter from one executive to another under the guise of working upon his concerns and questions. The complainant's mails/concerns were addressed by one Ms. Aekta Jain vide mail dated 14.12.2017 wherein she had requested for a meeting after the complainant' constant follow-ups and literally 'begging' for a meeting.

- V. That finally on 27.12.2017 the meeting with her Senior Manager Mr. Alok could see the light of the day and in the said meeting the complainant was assured that his grievances should be finally addressed by 05.01.2018, but as usual this promise also met with the same fate and the complainant's ordeal seemed to have no end as his prayers fell upon deaf ears of the respondent and their executive who are working under their instructions and guidelines.
- vi. That the complainant had also sent various mails to withdraw demands of notices of the respondent as their no delay in payments from complainant part and moreover the delay was on the part of the respondent both in terms of construction of the structure and addressing the complainant grievances concerns and enquires. Moreover, as the matter was pending, the demand notice was deemed to be withdrawn from the end of respondent on account of lackadaisical approach on their part in terms of handing complainant' grievances and completion of the structure coupled with assurances from Ms. Namita Mehta CCO that these mails should not concern him as the same were sent in a routine manner while complainant's grievances are being worked upon.
- vii. That it is pertinent to mention herein that during complainant series of correspondence with Ms. Namita Mehta, he was also offered relocation in other projects situated at Golf Course Extension Road, Gurugram and was shown inventory on 06.04.2018, it took him efforts to convince himself and his family for relocation as from past so many years they were looking

forward to shifting in the project as it was projected to be a world class one for the purpose of living luxuriously. Accordingly, the complainant gave his nod for relocation on 18.04.2018 in the project titled as Emerald hills and all the commercials were discussed but this was no end to complainant's perils on account of respondent and he was informed on 25.04.2018 that 'relocation has been refused'.

- viii. That the ordeal the complainant has been subjected to on account of lackadaisical approach accompanied with fraudulent scheme of delayed construction, demand notice and accompanied with interest sought on the amount demonstrates the deficiency on the part of respondent as they chose neither to honor the terms of builder buyer agreement nor their words of working upon the grievances of the complainant. That the fraudulent scheme of respondent is furthered concreted by the fact that when the complainant sought 'refund' of his hard-earned money he was told only 'relocation' was the option and when the complainant mentally prepared himself and his family for the same he was told 'relocation has been refused' as if it was the complainant who had requested for relocation and not respondent and its management who had requested the complainant to accept relocation proposal. That the ordeals and agony emanating from the acts/conducts of respondent to the complainant seems to be endless as neither his grievances were sorted nor his request seeking audience with CEO/ was accommodated least to say about the mails addressed to them.

- ix. That after knowing the factual position the complainant felt deceived and cheated. That despite visiting the office on numerous occasions the complainant never received any satisfactory feedback and he was handled by officials of various hierarchy who never presented actual situation and kept on making tall claims and false promises. That the complainant was always allured by the representatives of respondent that he need not worry, and his concerns/queries/grievances shall be addressed very soon. That at every step the complainant was misrepresented, lured and deceived by respondent in active conspiracy of their sales executives/management/administration, who always acted as authorized agents/executives/representatives of respondent.
- x. That the complainant has already paid Rs.1,68,15,373/- towards the unit/villa out of total consideration of Rs.6,35,69,672, well within the time frame, without any delay and default. This clearly demonstrates the way in which the respondent has fraudulently exploited complainant financially, physically as well as mentally and caused deficiency in services and defect. Therefore, the respondent is also liable to compensate the complainant for the mental, physical as well as the financial agony and hardships faced by complainant. That a legal notice dated 14.08.2018 was also sent to the respondent through speed post but that also did not entail any reply.

C. Relief sought by the complainant/allottee:

4. The complainant has sought following relief(s).

- i. Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs. 1,68,15,373/- along with interest at the rate of 24% from the date of making payment till the date of realization.**
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent/promoter**
6. The respondent contested the complaint on the following grounds: -
 - i. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 12.11.2014, as shall be evident from the submissions made in the following paras of the present reply.
 - ii. That the complainant had approached the answering respondent sometime in the year 2014 for purchase of a unit in its upcoming residential project "Marbella" (hereinafter "the project") situated in sector 65 & 66, Gurgaon. It is submitted that the complainant prior to approaching the answering respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the answering respondent to undertake development of the same, that the

complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the answering respondent.

iii. That thereafter the complainant vide application form dated 02.08.2014 applied to the answering respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no MAR-BE-051 in the project vide provisional allotment letter dated 08.08.2014. the complainant consciously and wilfully opted for a possession linked plan for remittance of the sale consideration for the unit in question and further represented to the answering respondent that the complainant shall remit every installment on time as per the payment schedule. The complainant further undertook to be bound by the terms and conditions of the application form. That the complaint is bad for non-joinder of necessary parties. it is submitted that the complainant had availed a housing loan from HDFC bank. The aforesaid letter confirms the lien of HDFC bank ltd. on the unit allotted to the complainant. Therefore, no orders pertaining to refund, compensation etc. can be legally passed without HDFC being impleaded as a party to the proceedings.

iv. Furthermore, such a dispute is clearly beyond the jurisdiction of this authority and can only be decided by a civil court. Thus, it is most respectfully submitted that the prosecution of the instant complaint in absence of HDFC is bad in law. That the complainant had booked the apartment in question as a speculative investment. the complainant never intended to reside in the apartment in question and had admittedly booked the same with a view to earn a huge profit from

resale of the same. It is submitted that the complainant was not able to effectuate a beneficial transaction in respect of the unit in question and consequently refrained from remitting any further payment to the respondent. thus, the complaint has been filed, not by an "allottee" under the act but an Investor and thus the present complaint is not maintainable for this reason as well.

- v. That without prejudice to the foregoing it is respectfully submitted that the complainant has defaulted in adhering to the schedule of payment incorporated with the buyer's agreement. the answering respondent issued provisional allotment letter dated 08.08.2014 calling upon the complainant to make payment of instalment number 1 under the schedule of payment specifically requesting to the complainant to remit the amount mentioned in the aforesaid letter not later than 07th October 2014. However, the complainant chose to ignore the legitimate request of the answering respondent. That there was default in remittance of amount pertaining to instalment number 2 which is evident from perusal of the said statement of account. furthermore, the answering respondent was constrained to issue several payment requests letters, reminders etc to the complainant on account of his default in timely remittance of instalment envisaged in the schedule of payment.
- vi. The complainant despite receipt of the letters had maliciously and consciously chosen to ignore the legitimate and valid requests of the respondent and wilfully and wantonly defaulted in timely remittance of the instalments as per the schedule of payment and in due observance of the terms and conditions of the buyer's agreement. In

fact, the complainant has wilfully refrained from making any payment in respect of the unit in question after instalment no. 2. The complainant has an outstanding amount of Rs. 2,21,40,624/- to his account as on date. The instant complaint preferred by the complainant is nothing but an abuse of process of law.

- vii. That since the complainant was not forthcoming with the payments even after receipt of several payment request letters, reminders etc. sent on behalf of respondent, consequently, the respondent was constrained to issue a notice cancellation notice dated 28th of July 2018 requesting the complainant to remit the outstanding amount on his account along with the delayed payment charges levied in terms of the buyer's agreement to the respondent within a period of 30 days from the date of the notice.
- viii. It was categorically brought to the notice of the complainant that if the complainant failed to remit the outstanding amounts due on his account, the respondent would proceed to cancel the allotment of the unit in question in his favour in accordance with the buyer's agreement. It is respectfully submitted that even after receipt of the aforesaid notice the complainant consciously and wilfully withheld and desisted from remitting the outstanding amount to the respondent and consequently the allotment in favour of the complainant in respect of the unit in question has been cancelled by the respondent vide cancellation letter dated 14.12.2018 in accordance with the terms and conditions of the buyer's agreement. It is pertinent to note that the complainant is left with no right, title or entitlement in respect of the unit in question after cancellation of the allotment in favour of the



complainant. furthermore, the complainant was informed that an amount of Rs. 50,72,437/- was recoverable from him in terms of the buyer's agreement. it is pertinent to mention that in terms of tripartite agreement dated 02.01.2015 in event of cancellation of the unit booked by the complainant, any amount payable by the complainant, is liable to be paid to HDFC Bank Ltd. The complainant was requested to pay the aforesaid amount to HDFC Bank Ltd. The respondent reserves its right to initiate appropriate proceedings against the complainant in case the complainant has failed to do the needful.

- ix. That the complainant does not have adequate funds to remit the outstanding amounts due on his account and consequently in order to needlessly linger on the matter, the complainant has preferred the instant complaint. The complainant has needlessly filed the instant complaint with the intent of evading the consequences as enumerated in the buyer's agreement. The present complaint is nothing but an abuse of process of law.
- x. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the complainant has consciously, knowingly, wilfully and maliciously refrained from performing his obligations as envisaged in the buyer's agreement and consequently the allotment in favour of the complainant had been cancelled by the respondent. Therefore, the complainant is not entitled to contend that any interest or refund or compensation for the alleged delay in delivery of possession is liable to be paid to the complainant by the respondent



especially when the complainant is not an allottee in the project in question after cancellation of his allotment. That clause 12 of the buyer's agreement dated 12.11.2014 provides that only such allottees, who have complied with all the terms and conditions of the buyer's agreement including making timely payment of instalments are entitled to receive any compensation under the buyer's agreement dated 12.11.2014. furthermore, it has been categorically expressed that in the event of any delay in delivery of possession due to delay or non- he competent authorities, then in such an event no compensation or any other compensation shall be payable to the allottees. In the present case, the complainant had delayed payment of instalments and is consequently not eligible to receive any compensation from the answering respondent. moreover, construction of the unit in question is already complete and the answering respondent had applied for application for grant of occupation certificate to the competent authority on 09.04.2019. thus, no fault or lapse can be attributed to the respondent in the facts and circumstances of the case.

- xi. That the project of the answering respondent is an "ongoing project" under RERA and the same has been registered under RERA Act, 2016 and HRERA Rules, 2017. It is pertinent to mention that construction of the unit in question is already complete and the answering respondent had applied for application for grant of occupation certificate to the competent authority on 09.04.2019. The authorities had granted occupation certificate on 03.06.2019. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions



of the answering respondent, it is respectfully submitted that the complaint preferred by the complainant is devoid of any cause of action.

- xii. It is submitted that the registration of the project is valid till 16.10.2022 and construction of the unit in question is already complete and the answering respondent had applied for application for grant of occupation certificate to the competent authority on 09.04.2019. The authorities had granted occupation certificate on 03.06.2019. Therefore, no cause of action can be construed to have arisen in favour of the complainant to file a complaint for seeking any relief as alleged. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account that the contractor hired by the respondent.
- xiii. That it is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously



as possible. It is submitted that construction of the unit in question is already complete, and the answering respondent had applied for application for grant of occupation certificate to the competent authority on 09.04.2019. The authorities had granted occupation certificate on 03.06.2019. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022*



(1) RCR (Civil), 357” and followed in case of **Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021** wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant/allottee.

F.1 Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs.1,68,15,373/- along with interest at the rate of 24% from the date of making payment till the date of realization.

14. The authority observes that the complainant has made paid an amount of Rs.1,68,15,373/- towards the first two instalments and has raised dispute w.r.t. the 3rd instalment raised by the respondent on account of 'Completion of Structure'. However, as the queries/concerns of the complainant was not addressed by the respondent, the complainant was left with no option but to approach the authority by filing the present complaint on 26.11.2018 claiming relief under section 18(1) of the Act. It is thereafter that the respondent had issued a cancellation letter 14.12.2018 to pressurise the complainant to clear the outstanding dues which seems to be an afterthought. Therefore, the complainant is well within his rights to approach the authority under section 18(1) of the Act and cancellation made by the respondent cannot be termed as valid.
15. In the present case, the allottee intends to withdraw from the project under section 18(1) of the Act, 2016 and the authority is well within its jurisdiction to proceed further in the matter to grant refund to the complainant in view of the recent judgement of the Hon'ble Apex court in the case of *Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (11.11.2021) MANU/SC/1056/2021* and wherein it was observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute



*right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement **regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer**, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate Prescribed.* (Emphasis supplied)

16. While considering the view on the basis of the aforesaid reasonings, the authority elucidated the above facts and establishes the entitlement of the allottee for refund as the respondent-promoter has defaulted in fulfilling his obligations and responsibilities as per the buyer's agreement to hand over the possession of the allotted unit within the stipulated period. Keeping in view the facts of the present matter, the authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which was allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established.
17. Furthermore, the hon'ble Apex Court in **civil appeal no. 12238 OF 2018 titled as Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan**, wherein it was held that the flat purchaser cannot be compelled to take possession of the flat even though it was



offered almost 2 years after the grace period under the agreement expired. The relevant para is reproduced as under:

"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant - Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent - Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent - Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e., refund of the entire amount deposited by him with Interest."

18. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 9.40% 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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount received by it from the complainant-allottee along with interest at the rate of @ 9.40% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - 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.
20. Complaint stands disposed of.
21. File be consigned to registry.

v.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.05.2022