

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

Complaint no. : 4895 of 2020
Date of decision : 05.05.2022

1. Jyoti Baswal
2. Jitendra Rajora

Address:- D-83, Street no. 21, Sai Kunj, New Palam
Vihar, Phase-3, Gurgaon-122017, Haryana

Complainants

Versus

1. M3M India Pvt. Ltd.
2. CRM Team

Both registered address:- 6th floor, M3M Tea Point,
Golf Course extension road, Sector-65, Gurugram

Respondents

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Siddhart Sharma
Ms. Shriya Takkar

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 21.01.2021 has been filed by the complainants 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	M3M Woodshire, Sector-107
2.	Land area	18.88125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License no.	33 of 2012 dated 12.04.2012 valid upto 11.04.2018
5.	Building Plan approved on	12.10.2012 revised on 12.12.2014
6.	Rera registration	Not registered
7.	OC received on	20.04.2017 (Page 3 of the promoter information)
8.	Unit no.	MW TW-B10/0703, TowerB10 (As per notice of possession, Page 96 of the reply)
9.	Unit area	1366 sq. ft.
10.	Date of allotment	24.01.2013 (Page 76 of the complaint)
11.	Date of builder buyer agreement	Not executed
12.	Possession clause	Clause 46. <i>Possession of the apartment may be offered within a period of 36 months</i>

		<p><i>from the date of commencement of construction which shall mean the date of lying of the first plain cement concrete/mudmat slab of the tower in which the apartment is located or execution of the agreement, whichever is later (Commitment Period). In case the company is unable to offer possession within such time due to any reason, the applicant agrees that the company shall be entitled to an extension of 180 days after the expiry of the commitment period.....</i></p> <p><i>(Emphasis supplied)</i></p>
13.	Due date of possession	30.10.2016 (Due date of the possession is calculated from the date of first mud slab i.e., 30.10.2013)
14.	Total sale consideration	Rs. 1,08,74,598 /- (As per statement of account, page 98 of the complaint)
15.	Amount paid by the complainant	Rs. 33,04,463/- (As per statement of account, page 98 of the complaint)
16.	Notice of offer of possession	25.08.2017 [Page 96 of complainant]
17.	Delay in handing over of possession till the date of offer of possession	6 months 26 days
18.	1. First pre- cancellation letter issued on	29.04.2014

	2. Last and final opportunity letter issued on	29.09.2014 (Page 84 of reply)
	Intimation of termination	20.10.2014 (Page 87 of the reply)
	3. Pre-cancellation notice	23.08.2015 (Page 89 of reply)
	5. Last and final opportunity notice issued on	10.12.2015 (Page 91 of reply)
	Pre-cancellation notice	23.11.2017 (Page 104 of reply)
	6. Intimation of termination	23.03.2018 (Page 105 of reply)
19.	Grace period utilization	Not allowed

B. Facts of the complaint

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

- i. That the complainants submitted that the respondents carrying on business in the real estate sector under the name and style of M3M India Private limited end carrying on project in the name of M3M Woodshire. The complainants applied for booking a flat in M3M Woodshire project sector 107, Gurugram on 03.12.2012. The flat details are tower b-10, unit number 703. The complainants paid a booking amount of rupees 5,00,000/- initially and the same is confirmed by the allotment letter dated 03.12.2012.

ii. That the complainants submitted flat no: B10/703 was allotted to his wife Jyoti Baswal on 3 Dec 2012 in project M3M Woodshire, sector-107, Gurgaon, Haryana. The complainants have requested for some amendments in the builder buyer agreement along with correction of name spelling and address through e-mail. Builder refused to make any changes in the builder buyer agreement, and we never got corrections done. That the complainants stopped paying further payments after having paid 43 % of the flat cost as they were not getting any resolution from the builder. Builder kept on adding interest as penalty against us even in the absence of any signed B.B.A. Builder on its own discretion terminated our allotted unit and sold it to someone else. They made several requests to builder to refund the amount, but builder only made them run from pillar to post for several years. Due to this, the complainant went into depression and lost well-paying job. He took clinical treatment for over 18 months and ended up draining savings in medical treatment. This resulted into huge financial loss which the complainant not able to recover even till date. All events, communication records and evidence have been attached with this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:
- i. Refund the entire amount of Rs. 33,04,463/- along with interest.

D. Reply filed by the respondents

5. The respondents-promoter had contested the complaint on the following grounds:

- i. That the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law and therefore the complaint deserves to be dismissed at the very threshold. That the present complaint is not maintainable as this hon'ble adjudicating officer has no jurisdiction to entertain the present complaint. That the complainants have failed to make out a case under section 12,14,18 and 19 of the RERA Act 2016 and thus the complaint is liable to be dismissed at the very threshold.
- ii. The complaint relating to cancellation of allotment by a promoter, is specifically reserved for consideration by the hon'ble authority under Section 11(5) of the RERA Act. That Section 11(5) is reproduced herein below for the ready reference:

"11(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause."

- iii. That the complainant no.1 herein had submitted an Expression of Interest dated 14.05.2012 for preferential allotment in any of the projects of the respondents herein. That the complainant no.1 along with the EOI also tendered a sum of Rs. 5,00,000/- towards the confirmation of her booking vide cheque dated 14.05.2012. That the complainant no.1 thereafter had submitted an application for allotment dated 03.12.2012 for booking/allotment unit no. MW TW- B10/0201 having super area 1366 sq.ft in the project M3M Woodshire, a group housing project of the

respondent. That the complainant had signed and submitted the application form after duly understanding all the clauses stipulated under the application form. That thereafter through mutual understanding between the both the parties the unit of the complainant no.1 was changed from MW TW- B10/0201 to MW TW- B10/0703 having the same super area of 1366 sq. ft. That in due consideration of the complainant no.1 commitment to make timely payments, apartment No. MW TW- B10/0703 (hereinafter referred to as apartment) in M3M Woodshire was provisionally allotted to complainant vide allotment letter dated 24.01.2013. That the complainant no.1 being an allottee, on her own free will and after due understanding of the legal import and effect had opted for a specific payment plan. That in furtherance of the allotment, the respondents had sent the apartment buyers agreement to complainant due execution at her end along with covering letter dated 01.04.2013. That the terms and conditions contained in the application form dated 03.12.2012 were the indicative terms and conditions of the agreement to be executed between the parties. That the complainant no.1 for the reasons best known to her did not perform her contractual obligation and did not execute the apartment buyer's agreement. That since the complainant No.1 did not come forward to execute the agreement, the respondents company sent a reminder letter dated 07.05.2013.

iv. That despite sending the reminder letter dated 07.05.2013 the complainant no.1 did not come forward to execute the agreement, constrained by which the respondents again dispatched two sets

of the agreement with a cover letter dated 30.07.2013. that the complainant no.1 for the reasons best known to her once again did not perform her contractual obligation and did not execute the apartment buyers agreement and the respondents was constrained to issue reminder requesting the complainant no.1 to comply her obligation and execute the apartment buyers agreement and make further payments. That the respondents sent a reminder for payment letter dated 23.04.2014 to the complainant. That despite repeated follow ups and communications by the respondents to complainant no.1, she did not come forward and complied further with her obligations and therefore the respondents were constrained to issue a pre-cancellation notice dated 29.04.2014. Even after the issuance of the pre-cancellation notice, the complainant did not come forward to clear her outstanding dues and execute the agreement, pursuant to which the respondents were constrained to issue last and final opportunity dated 29.04.2014. that after the issuance of the last and final opportunity letter dated 29.04.2014, the complainant no.1 came forward to make a payment of Rs. 4,00,000/- and the receipt of the same was duly sent to the complainant no.1. That the complainant still did not execute the buyer's agreement. Further since the complainant again defaulted in making the payment of the Installment due, the respondents were constrained to issue last and final opportunity letter dated 29.09.2014 to the complainant no.1 herein submitted that instead of performing her obligation to execute the agreement and clear her dues, the complainant no.2 started to raise objections regarding the clauses of the apartment buyer's agreement,

various licenses received by the respondents. That vide email dated 07.10.2014 the complainant no.2 sought for information regarding building plan approval, ownership record etc. and also demanded changes in certain clauses of the apartment buyer's agreement. that the email of the complainant no.2 was duly responded to by the respondents vide email dated 17.10.2014 in which it was clarified by the respondents company that all the sanctions and approvals for the project are in place and the same shall be shared with the complainant after they execute a non-disclosure agreement.

- V. It was further clarified in the same email that the buyer's agreement is the broad manifestation of the application form which has been duly accepted and signed by the complainant no.1 at the time of the booking and that the agreement was of standard format and hence cannot be altered. The complainant was also duly informed that the buyer's agreement has been prepared as per the details tendered in the application form and the complainant can make manual amendments in the spelling of the name. that despite duly providing all the clarifications to the complainants, the complainants still did not come forward to clear their dues and execute the apartment buyer's agreement due to which the respondents were constrained to issue intimation of termination dated 20.10.2014. That the termination dated 20.10.2014 was as per the application form and the allotment letter. That yet again, the complainant no.2 sent an email dated 22.10.2014 to the respondents herein raising frivolous issues which had already been clarified by the

respondents vide their email dated 17.10.2014. That thereafter the respondents herein duly replied to the complainant's email dated 22.10.2014 vide email dated 05.11.2014. It is submitted that vide email dated 05.11.2014 the respondents duly replied to all the queries of the complainant no.1 and also offered to revoke the cancellation on assurance that the complainant would clear all the dues and execute the buyer's agreement at the earliest.

- vi. That after due inspection and verification of each and every aspect occupancy certificate was granted by the competent authority on 20.04.2017. That after the receipt of the OC the respondents herein in discharge of its duties under the application for allotment sent the offer of possession to the complainant no.1 vide letter dated 25.08.2017. That on the request of the complainants, the respondents sent an email dated 21.11.2017 for 100% waiver of delayed interest, however, till this day the complainants have not communicated their acceptance of the said offer. That despite the notice for offer of possession having been sent, the complainant no.1 still chose to restrain from performing her obligations. The respondents herein issued reminder letters dated 22.09.2017 and 02.11.2017 to the complainant no.1 herein, requesting her to come forward to clear her dues, execute the agreement and take possession of the unit, but to no avail submitted that the terms and conditions contained in the application form dated 03.12.2012 were the indicative terms and conditions of the agreement to be executed between the parties. it is pertinent to state that the complainant no.1 for the reasons best known to her did not perform her contractual obligation and did

not execute the apartment buyer's agreement and the respondents was constrained to issue reminders requesting the complainant no.1 to comply her obligation and execute the apartment buyer's agreement and make further payments.

- vii. It is submitted that despite repeated follow ups and communications by the respondents to complainant no.1, she never came forward and complied further with her obligations and therefore the respondents were constrained to issue a pre-cancellation notice dated 23.11.2017. Even after the issuance of the pre-cancellation notice, the complainant never came forward to clear her outstanding dues and execute the agreement, pursuant to which the respondents were constrained to issue the termination letter dated 23.03.2018. That in the present case the respondents have not only completed the construction of the apartment but has also completed the construction of the various apartments in the complex and thereafter obtained occupancy certificate(s) from the competent authority and also offered the possession to the complainant no.1 on 25.08.2017.
- viii. That the respondents were constrained to cancel the unit on account of non-payment of the demands raised by the respondents and non-execution of the agreement despite sending repeated reminders. That it is the respondents company which has suffered financial losses for no fault of theirs by way of the instant complaint the complainant is trying to take advantage of his own wrongs. It is submitted that the complainant no.1 has paid an amount of Rs. 33,04,463/- out of the total consideration of

Rs. 76,59,365/- (inclusive of tax and other charges but not inclusive of interest accrued).

- ix. That the provisional allotment letter was issued to complainant no.1, and she remains bound by the terms and conditions mentioned in the said booking application. the said application was duly signed by the complainant no.1 after properly understanding each and every clause contained therein, and all the issues and concerns of the complainant no.1 were duly addressed to and satisfied by the respondents before the said booking application was considered and accepted for the allotment of an apartment in the project. the complainant no.1 was neither forced nor influenced by the respondents to sign the said application. it was the complainant no.1 who after understanding the clauses acted further, signed and submitted the said application in her complete senses. the act of the complainant no.1 to make the booking application was an independent decision.
- x. That it is trite law that the terms of the agreement are binding between the parties. The hon'ble supreme court in the case of "**Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract

disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

- xi. That the hon'ble supreme court in the case of "**Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699**" held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.
- xii. That the complainant no. 1 was well aware about the fact that in the event of failure on her part to comply with the terms and conditions of allotment pursuant to the application form, the respondents is entitled to terminate the provisional allotment and forfeit the amount paid by the complainant no. 1 instead of performing her contractual obligations the complainant has chosen to approach this honourable adjudicating officers with a frivolous complaint only with a malafide intention to unjustly and enrich herself and in one way or other cover of her own breach and non-performance of her contractual obligations. Hence the complainant is not entitled to any relief whatsoever from the hon'ble adjudicating officer.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

8. Section 11(4)(a) of the Act 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.

9. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided

by the adjudicating officer if pursued by the complainant at a later stage.

10. 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.*** " SCC Online SC 1044 decided on 11.11.2021 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."

11. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of

interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondents

F.1 Objection regarding complainant is not a consumer

13. The respondents have taken a stand that the complainant is the investor and not consumer, 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 respondents are 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 preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the 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 it 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 buyer's agreement, it is revealed that the complainant is buyers and they have paid a total price of Rs. 33,04,463/- to the promoter towards purchase of a plot 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;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoters and complainants, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to them by

the promoters. 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. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

14. Relief sought by the complainants:

i. Refund the entire amount of Rs. 33,04,463/- along with interest.

15. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by them in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at

such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." (Emphasis supplied)

16. On consideration of the documents available on record and submission by both the parties, the authority is of the view that the allottee has failed to abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by him, the complainant as per the statement of account paid an amount of Rs. 33,04,463/- out of the total amount of Rs. 1,08,74,598 /-. The complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice of termination by the respondents on 23.03.2018. Now the question before the authority is whether this cancellation is valid?
17. As per clause 18 of the application for allotment the unit, the allottee was liable to pay the Installment as per payment plan opted by the complainant. Clause 18 of the agreement is reproduced under for ready reference:

Clause 18 of the application for allotment the unit

"The Applicant hereby agrees that due performance of all the obligations under this Application Including the timely payment of the Total Consideration and other applicable dues and charges under the opted Payment Plan shall be the essence of this Application. The Applicant shall also be liable to make timely payment of maintenance charges as and when demanded by the Company/ nominated maintenance agency. If the Applicant neglects, omits, ignores, or fails in the timely performance of the obligations agreed and stipulated herein for any reason whatsoever or to pay in time to the Company any of the instalments or other

amounts and charges due and payable by the Applicant by the respective due dates for such payments, the Company shall be entitled to cancel the provisional allotment and terminate the Agreement, if executed, at its sole discretion and forfeit the Earnest Money and other amounts due and payable to the Company including any interest accrued on delayed instalments, late payment charges and any brokerage/commission/margin that may have been paid by the Company to a Channel Partner (in case the Application is made through a Channel Partner and no objection certificate (NOC) from such Channel Partner foregoing its right to brokerage/commission/margin claim is such not submitted) and thereafter, refund the balance amount, if any, without any interest or any other compensation of any nature whatsoever, from the sale proceeds of the further sale/resale of the Apartment. Upon such cancellation, the Applicant shall be left with no right, title, lien or interest over the Apartment and the parking spaces in any manner whatsoever."

18. The respondents had issue various reminders letter, pre-cancellation letter dated 23.08.2015 and last and final opportunity letter dated 10.12.2015 to the complainant. That the Occupancy Certificate for the unit of the complainant was granted on 20.04.2017 that upon receipt of the Occupancy Certificate the respondents issued the notice of possession dated 25.08.2017. The respondents were obtained Occupancy Certificate from the competent authority thereafter issuing offer of possession letter dated 25.08.2017 it is a valid offer of possession in the eyes of law. The respondents cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.

19. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

20. The rule 15 of the rules has determined the prescribed rate of interest and it provides that for the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.05.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40%.

21. Directions of the authority

22. 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. Keeping in view the aforesaid legal provisions, the respondents are directed to refund the balance amount of the subject unit by deducting the earnest money which shall not exceed the 10% of the consideration of the amount of the unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order. The refund should have been made on the date of termination i.e., 23.3.2018, accordingly interest at the prescribed rate i.e., 9.40% is allowed on the balance amount from the date of termination to date of actual refund. It has been confirmed by the counsel of the respondents that the property has been sold and transferred to the third party.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman

Dated: 05.05.2022

HARERA
GURUGRAM