BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**5927 of 2019**
Date of filing	:	**03.12.2019**
First date of hearing:		**31.01.2020**
Date of decision	:	**02.09.2022**

Smt. Mini Goel W/o Sh. Sunil Kumar Goel **R/o:** A-012 , Belvedere Tower, DLF Phase 2, Gurugram	**Complainant**
Versus	
Aaliyah Real Estate Private Limited **Regd. office:** 271, Udyog Vihar, Phase-2 , Gurgaon	**Respondent**

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:	
None	Complainant
Shri Somesh Arora (Advocate)	Respondent

ORDER

1. The present complaint 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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:

S.n.	Particulars	Details			
1.	Name of the project	"Baani City Centre"			
2.	Project location	Sector 63, Village Maidawas, Gurugram, Haryana			
3.	Nature of the project	Commercial Colony			
4.	DTCP license no. and validity status	80 of 2010 dated 15.10.2010			
		Valid up to 14.10.2023			
5.	Name of licensee	M/s Aaliyah Real Estate Pvt. Ltd. (BIP Holder vide order dated 04.01.2016)			
6.	RERA registration details	Applied on 28.01.2022			
7.	Application dated	01.12.2012 [As per allotment letter on page A-2 of complaint]			
8.	Allotment letter	10.12.2012 [As per page A-2 of complaint]			
9.	Unit details				
	S.no.	Unit No.	Unit Area	Documentary proof	

	a.	10008, 10th floor	1203 sq. ft.	As per provisional allotment dated 10.12.2012 page no. A-2 of complaint
	b.	1003, 10th floor in IKON tower	1224 sq. ft.	As per receipt information on page 3A of complaint
	c.	1001, 10th floor	1180 sq. ft.	As per revised unit letter dated 14.08.2013 page no. A-5 of complaint & BBA
10.	Date of apartment buyer's buyer agreement			BBA annexed but not signed
11.	Possession clause			***2. Possession*** ***2.1*** *The intending seller, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the commercial space* ***within a period of forty-two (42) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement, whichever is later ("commitment period").*** *Should the possession of the commercial unit not be given within the commitment period due to any reason (except delays mentioned in clause 9 below), the intending purchaser* ***agrees to an extension of one hundred and eighty (180) days ("grace period") after expiry of the commitment period for handing over the possession of the commercial unit.***

		[As per sample BBA of similar project annexed as annexure P-3 of complaint]
12.	Date of building plan	24.01.2013 [As per annexure R-3, page no. 33 of the reply]
13.	Due date of possession	**24.01.2017** [Note: In the last proceeding dated 04.05.2022, the due date of possession is inadvertently calculated from allotment letter dated 10.12.2012 whereas per clause 2.1 of sample ABA, the due date of handing over of possession is to be calculated as 42 months from the date of approval of building plans of the commercial complex or the date of execution of this agreement, whichever is later. In the present case, no buyer's agreement has been executed inter-se parties. Therefore, the due date of possession is calculated from date of building plan approval i.e. 24.01.2013.] ***Grace period of 180 days is allowed.***
14.	Total sale consideration	Rs. 1,18,70,000/- (BSP) Rs. 1,34,61,937.46/- (TSC including tax) [As per statement of account dated 12.02.2021 annexed at page no. 32 of the reply]
15.	Amount paid	Rs. 50,62,429/-

		[As per statement of account dated 12.02.2021 annexed at page no. 32 of the reply]
16.	**Demand letter** & reminders dated	**20.05.2014** & 04.07.2014, 12.10.2015, 14.06.2016, 06.07.2016, 27.09.2016, 20.09.2017, 19.01.2017, 30.03.2018 [As per page no. 19-30 of reply]
17.	Final notice letter dated	30.03.2018
18.	Cancellation letter dated	13.02.2019 [As per page no. 29 of reply]
19.	Part occupation certificate	16.01.2018 [As per page no. 55 of reply]
20.	Offer of possession	Not offered

B. Facts of the complaint

3. That the respondent by various means including newspapers, hoardings, agents and sales representatives has advertised the project of commercial complex namely `Baani City Center' in Sector-63, Gurgaon and described rosy picture of the project. The respondent with an intention to cheat the complainant, in the end quarter of year 2012 induced her to invest in the said project and assured to get hefty returns within 2-3 years. At the time of initial enquiry about the said project the respondent and the concerned officials gave false assurances and also provided wrong details to the complainant and assured that the project

would be completed in time i.e. within three and a half years from booking.

4. That believing on the said advertisements, assurances, allurement and inducement, regarding the above said project, the complainant in the month of October, 2012 agreed to invest in the said commercial space project under development/construction linked payment plan and paid booking amount of Rs.10,00,000/-.

5. That the respondent issued acknowledgement receipt for a service apartment no.1001 having super area 1203 sq. ft. and subsequently, issued receipt in respect of serviced space no.1003 (changed), on 10th floor of block - IKON, Baani City Center, Sector-63, Gurgaon at the rate of Rs.10,000/- per sq. ft. for super area 1224 sq. ft. to the complainant vide receipt no. 559 dated 26.10.2012. At the time of booking the concerned officials of the respondent assured to handover the possession of the allotted space within the agreed time. Later on, the respondent as per own whims and fancies issued the provisional allotment letter in respect of service apartment no. 1001 on 10th floor having approximately super area of 1203 sq. ft. at the rate of Rs. 10,000/- per sq. ft. and assured to forward a copy of space buyer's agreement in due course.

6. That again, a sum of Rs. 2,00,000/- was paid by her and against the same this time, it issued receipt no. 590 dated 12.12.2012 in respect of space

no. 1003 having super area 1224 sq. ft. Further, vide another receipt no. 589 dated 12.12.2012, it acknowledged receipt of total sum of Rs.12,00,000/- i.e. Rs. 2,53,973.81/- towards booking amount, Rs.9,10,057.62/- towards amount payable `within 60 days' and Rs. 35,968.57/- towards service tax in respect of space no. 1003 having super area 1224 sq. ft.

7. That despite not starting the work at site, it put unreasonable demand on the allottee, and she was forced to pay another sum of Rs. 13,97,029/- vide cheque bearing no. 102432 dated 14.05.2013 (wherein Rs.1,19,937.14 was payable `within 60 days', Rs.12,24,000/- `within 100 days', Rs.3,856.87/- on `commencement of work at site' and Rs.49,234/- on `service tax') and the same was duly acknowledged by the respondent vide receipt no. 836 dated 14.05.2013 in respect of space no. 1003 for super area admeasuring 1224 sq. ft.

8. That again despite not starting the work at site, it put another unreasonable demand on the complainant, who was once again forced to pay another sum of Rs. 12,65,400/- (paid Rs. 10,44,667.53/- to the respondent on account of towards `commencement of work at site', Rs. 1,75,489.06/- towards `on laying of raft' and Rs. 45,243.41/- as `service tax' and the same was acknowledged by the respondent vide receipt no. 944 dated 12.08.2013, but now in respect of space no. 1001 for super area 1180 sq. ft. The respondent as per own whims and fancies without

any justification made entries of the amounts received by it, against different apartment/spaces and by mentioning the different space areas. Thus, it was succeeded in receiving a sum of Rs. 50,62,429/- from her till 12.08.2013, in violation of agreed terms and conditions of payment.

9. That after receipt of above said amounts, the respondent as per the own whims and fancies firstly send a letter dated 27.01.2014 along with buyer's agreement of unit no. 1001, which was never signed by her due to delay in project, and thereafter, issued a letter dated 14.08.2013 thereby informing about the alleged revised building plans and change of unit from 1003 [area measuring 1224 sq. ft. (113.71 sq. mtr.)] to 1001 [area measuring 1180 sq. ft. (109.62 sq. mtr.)]. Vide the said letter, it further issued the new payment plan as per its own convenience. Thus, it is crystal clear that without starting of work at site, the respondent succeeded to illegally extract a huge amount of Rs. 50,62,429/- from the complainant.

10. That subsequently, on the one hand, the respondent has failed to complete the project and handover the possession of the subject unit within the agreed time i.e. on or before April, 2016 and on the other hand, started putting unreasonable demands and later on, even started extending threats of cancellation of allotment of unit. During the period 2013 to 2017 as and when the complainant herself and through her

representative approached the respondent and the concerned officials to enquire about the progress of the said project, they always provided false information and assured to complete the project within the stipulated time.

11. That despite not completing the project in time and offering handing over the possession of the subject unit, it sent a final notice dated 19.01.2017 thereby without any justification putting unreasonable and unethical demand of Rs. 39,93,652/- with interest upon the complainant.

12. That the respondent defaulted in completing the super structure of the project and on revealing that it was not be in a position to give the possession of the subject unit in near future. The complainant against the above said unreasonable and unethical demand of respondent filed a suit for decree of declaration for declaring the said final notice as null and void and also prayed for permanent injunction restraining the respondent for creating any third party right in the subject unit.

13. That during the pendency of the said suit, the respondent before the Hon'ble Court disclosed the intention not to cancel the allotment and rather disclosed about issuance of the alleged possession letter dated 04.07.2018, which was never served upon the complainant and was never acceptable to her. Believing the alleged contention of the respondent, the Ld. ACJ(SD) Gurgaon dismissed the application of

interim injunction of the complainant and subsequently, the suit filed by the complainant was also dismissed as default on 15.11.2018.

14. That the respondent without supplying the copy of alleged notice of possession dated 04.07.2018 and affording an opportunity to the complainant to give response to the same, as per own whims and fancies issued one cancellation notice (which was received in the end of February, 2019) thereby cancelled the allotment letter dated 01.01.2013 in respect of unit no.1001 and further forfeited the earnest money to the tune of 15% of the total consideration, despite default on its behalf. The payments received by the respondent were incorrectly shown in the said cancellation notice. On receipt of the said malicious cancellation notice, she met the concerned officials of the respondent, and time and again requested them to return back the entire deposited amount with interest, who assured to return the same. But till date, the complainant is running pillar to post, and it has failed to return the amount with interest. From the above said acts and misdeeds of the respondent, it is crystal clear that despite of request of the complainant to refund the amount deposited by her with the respondent of Rs. 50,62,429/- along with interest in respect of the above said allotted unit, the respondent in a pre-planned hatched conspiracy neither refunded the same nor complied with their assurances/promises,

thereby misappropriating the huge hard earn money of the complainant.

15. That as the respondent has failed to discharge its obligation to handover the possession of the allotted unit within the stipulated time and thus, cheated the complainant to invest her hard earn money on believing upon their false assurances. The respondent in a master minded and scripted way to succeed to the ulterior motive and cause wrongful losses to the complainant and wrongful gains to it. Thus, the respondent has not only breached the trust but cheated/defrauded the complainant. The respondent involved in the swindling and embezzlement of funds. The said illegal, conduct and misdeeds acts of the respondent caused mental agony, sorrow, trauma and apathy to her.

16. That the respondent had hatched the conspiracy with a deliberate and calculated move and thus, committed a fraud upon the complainant by playing deception and by inducing her to part with her money believing upon their wrongful misrepresentations and assurances of hefty profits, etc. and thus, committed offences punishable under various provisions of law and is liable to be punished in accordance with law.

C. Relief sought by the complainant:

17. The complainant has sought following relief:

i. Direct the respondent to refund the entire amount of Rs. Rs.50,62,429/- paid by the complainant to the respondent along with prescribed rate of interest.

18. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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:

19. That in October 2012, she booked a unit in the project namely "Baani City Center" launched by the respondent and was allotted service apartment no. 10008 admeasuring 1203 sq. ft. vide the provisional allotment letter dated 10.12.2012. It was clearly stated that the allotted unit was a tentative unit.

20. Further on 14.08.2013, the complainant was informed through a letter about the change in unit to 1001 admeasuring 1180 sq. ft, and the complainant did not raise any objections regarding change in unit.

21. That the respondent sent the buyer's agreement to the complainant on 27.01.2014 which she refused to sign for reasons unknown. It made multiple requests to the complainant to sign the agreement.

22. That it issued several demand letters and repeated reminders for due payments, but the complainant chose to kept quiet and unreachable during all these years. The respondent was left with no other option but

to serve a final notice dated 19.01.2017 for clearing outstanding amount within 15 days of the notice and failing which the allotment was to be cancelled and earnest money to be forfeited. The respondent even served the final notice for possession dated 30.03.2018. The complainant on one hand did not duly pay the demanded instalments and on the other hand, harassed the respondent with the present complaint.

23. That she filed a suit for decree of declaration for declaring the final notice dated 19.01.2017 as null and void and prayed for permanent injunction restraining the respondent from creating any third party right against the subject unit. She did not sought refund or raise objections, about any of the acts including change of unit or area or construction quality or delayed possession and rather, she admitted allotment of unit and delay in payment of instalments. It is pertinent to mention that the complainant's suit for declaration filed in Hon'ble Court of ACJ(SD), Gurugram has already been dismissed vide order dated 15.11.2018 which she did not challenge and has achieved finality. Now, she is trying to pressurize it before this authority for refund. It is crystal clear that this is complainant's way of forum shopping leading to multiplication of litigation on same cause of action. It is relevant to mention that the present matter is barred by Res Judicata Section 11 of

Code of Civil Procedure, 1908 as well as principles of natural justice as when the issue once settled cannot be decided again.

24. That the complainant was running away from her obligations to pay the balance instalment and take possession. Hence, the respondent after serving several payment reminders, sent a final notice for possession and ultimately had to cancel the allotment through a cancellation notice dated 13.02.2019. She then filed the present complaint in HRERA on 29.04.2019. But she didn't want to stop harassing the respondent. Hence, she filed a police complaint in Police Station, Sector-65, Gurugram for which it received notice on 16.09.2019. The unit is still available, and she should pay balance instalments along with interest and receive possession.

25. That there has been no delay and the possession has been offered but it is the complainant who is refusing to take possession and claiming refund. It is pertinent to mention that as per RERA provisions, the Complainant is not entitled to refund if the Possession is offered on time and there is no fault on part of the respondent. It is important to point out that even under section 18(1) of Act of 2016 mainly dealing with refund and compensation, the basis for refund is if the promoter fails to give possession which is not being fulfilled in the present matter and in fact, it has been requesting the complainant to take possession since 2018 which was offered well within contractual period of possession.

26. That the respondent sent several demand letters to her for clearing the dues, but she chooses to ignore them. It is evident that she has only paid Rs. 50,62,429/- i.e. 36% of the total sale consideration and presently, the complainant is liable to pay a sum of Rs. 1,33,18,939.90/- (principle and interest) to it. Thus, she has violated the provision of section 19(10) of the Act of 2016. Further, the occupation certificate of the project was received on 16.01.2018 and she has violated the provision of above-mentioned section by not accepting the possession offered by it\.

27. That the complaint filed in 2019 is an after-thought because if the reason for delay was a ground for refund then the complainant would have communicated through e-mails/letters/notices etc. for refund and would had filed petition prior to offer of possession dated 30.03.2018 whereas she being investor after paying initial amount waited to watch the market sentiments and when found that it is not in her favour, then asked for refund after the possession was offered.

28. That the complainant neither paid due installments as per terms of allotment letter nor the respondent had the opportunity to allot the unit to any other third party. Thus, the respondent suffered loss both on non-payment as well as blocking of the unit. Now, the complainant is demanding refund after so many months which puts an additional burden as the possession of the unit was offered in 2018 and newness of the unit/building has also lost to some extent. To add further, the

complainant should not be entitled for multi-benefits of her wrongs as to non-payment during construction, holding the unit for years altogether and due to own failure, demanding refund. Moreover, RERA is a balanced legislature and treat both allottee and builder at par. The intent of legislature is to penalize the defaulter and the penalty is for both the allottee and the builder.

29. 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 based on these undisputed documents.

E. Jurisdiction of the authority

30. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act of 2016 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.

31. 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 and followed in M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding entitlement of refund on account of complainant being investor.

32. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, she is 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 observes 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, 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 he 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 complainant is buyer and she has paid total price of Rs. 50,62,429/- to the promoter towards purchase of a unit 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;"*

33. 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 complainant, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her 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. 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 allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings regarding relief sought by the complainant.

Relief sought by the complainant:

G.I Direct the respondent to refund the entire amount of Rs. Rs.50,62,429/- paid by the complainant to the respondent along with prescribed rate of interest.

34. The project detailed above was launched by the respondent as commercial colony. The complainant booked the subject unit in October 2012 and paid booking amount of Rs. 10,00,000/- and the same was acknowledged by the respondent in respect of service apartment No. 10008 admeasuring super area of 1208 sq. ft. Subsequently, a receipt was issued with respect to service apartment No. 1003 admeasuring 1224 sq. ft. Whereas, allotment letter dated 10.12.2012 was again issued in favour of unit no 10008 i.e. the first unit. Later on, receipt dated 12.08.2013 was issued with regard to new third service apartment bearing No. 1001 & admeasuring 1180 sq. ft. along with a copy of agreement to be executed between the parties for the said third unit. Due to repetitive change in unit no.s, the complainant refused to

sign the buyers' agreement. A letter dated 14.08.2013 was also sent by the respondent acknowledging the change of unit no. from 1003 to 1001 and change of payment plan. It is observed that a consideration of Rs. 50,62,429/- was paid by the complainant towards total basic sale price of Rs. 1,18,70,000/- which constitutes 42.65% of total consideration.

35. The respondent-builder raised a demand of Rs. 11,28,670/- payable on laying of raft against which only an amount of Rs. 1,75,489.06/- was paid by the complainant. Further, various demand cum reminder letters dated 04.07.2014, 12.10.2015, 14.06.2016, 06.07.2016, 27.09.2016, 20.09.2017, 19.01.2017, 30.03.2018 were sent to the complainant, followed by a final notice dated 30.03.2018 and cancellation letter dated 13.02.2019. But there is nothing on the record that the said amount after deduction of 10 % of sale consideration has been returned back to the complainant. As per section 19(6) and (7) of Act of 2016, the allottee is under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. The respondent has given sufficient time and opportunity to the complainant to make payment towards consideration, of allotted unit. Hence, the said cancellation is valid in eyes of law. The respondent was under an obligation to refund the amount paid by the complainant after deduction of earnest money upon cancellation. However, there is nothing on record to substantiate the fact that the respondent has returned the amount to the complainant and thus, is using her funds.

36. 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"*

21. In view of aforesaid circumstances, the respondent is directed to refund the paid-up 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 @10 % p.a. on the refundable amount, from the date of cancellation till the date of realization of payment as the cancellation of the allotted unit was made on 13.02.2019 after the Act of 2016 came into effect.

22. During the proceeding of the complaint, the counsel for respondent stated at bar that it is willing to withdraw the said cancellation and offer

the possession which was also offered earlier. The authority is of considered view that in case, the allottee is willing to take possession then she is directed to make payments to the respondent and the above order regarding refund in that eventuality will not operate.

H. Directions of the authority:

37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

i. The respondent-promoter is directed to refund the paid-up 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 along with an interest @ 10% p.a. on the refundable amount, from the date of cancellation till the date of realization of payment as the cancellation of the allotted unit was made on 13.02.2019 after the Act of 2016.

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.

iii. In case, the allottee is willing to take possession, then she is directed to make payments due towards sale consideration to the respondent and the above order regarding refund in that eventuality would not operate.

iv. In furtherance of direction no. (iii), the respondent shall not charge anything which is not part of buyer's agreement and the rate of interest chargeable from the allottee by the promoter, in case of default shall be at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, i.e., the delayed possession charges as per section 2(za) of the Act.

38. Complaint stands disposed of.

39. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Vijay Kumar Goyal)
Member

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

Dated:02.09.2022