

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

Complaint no. : 806 of 2018
First date of hearing: 04.09.2019
Date of order reserved : 13.09.2022
Date of pronouncement of
order 06.12.2022

1. Rashpal Kaur
2. Nichhattar Singh Kabba
Both RR/o: -House no. 507, Sector- 22, Pocket- B,
Gurugram- 122015

Complainants

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj, Western
Avenue, Cariappa Marg, Sainik Farms, New Delhi-
110062

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 22.09.2018 has been filed by the complainant/allottees 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 complainants, 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	"Raheja Vanya", Sector 99A, Gurugram, Haryana		
2.	Project area	2.21 acres		
3.	Nature of the project	Group Housing Project		
4.	DTCP license no. and validity status	64 of 2013 dated 20.07.2013 valid upto 19.07.2017	72 of 2014 dated 01.08.2014 valid upto 31.07.2019	
5.	Name of licensee	Ajit Kaur D/o Pritpal singh		
6.	RERA Registration detail			
	S.No.	Registration No.	Validity of the registration of the project	Area Registered and tower no.
				Registered in the name



	i.	8(a) of 2018 dated 01.02.2018	31.12.2022	2.28 acres and tower-A	Raheja Developers Limited
	ii.	18 of 2017 dated 06.07.2017	5 years from the date of revised environment clearance	2.21 acres and tower-B	Raheja Developers Limited
	iii.	7(a) of 2018 dated 01.02.2018	31.12.2022	2.28 acres and tower-C	Raheja Developers Limited
	iv.	19 of 2017 dated 06.07.2017	5 years from the date of revised environment clearance	4.68 acres and tower-D	Raheja Developers Limited
7.	Unit no.	A-121, tower- A (Page no. 46 of the reply)			
8.	Unit admeasuring area	1252.13 sq. ft. (Page no. 47 of the reply)			
9.	Date of execution of agreement to sell	Not executed			
10.	Date of booking application form	23.03.2017 [Page 45 of reply]			
11.	Welcome letter	28.04.2017 [Page no. 43 of the complaint]			
12.	Possession clause	18. Possession of the Apartment			



		<p><i>"18.1 Schedule for possession of the said apartment: The company agrees and undertakes that timely delivered of possession of the apartment is essence of the Agreement. The Company, based on the approval plans and specifications, assures to handover possession of the apartment in a period of 48 months minus/plus 6 months variable grace period ("Committed period") from the date of execution of the proposed Agreement for sale unless there is a delay or failure due to delay in government clearance or delay in NOC and court injunction or war, flood, drought, fire, cyclone, earthquake, delay in providing necessary external infrastructure such as laying of sewer/water supply line, road, electrification etc. or inadequacy or any other calamity caused by nature affecting the regular development of the real estate project."</i></p> <p><i>[emphasis supplied]</i></p> <p><i>(Page no. 37 of the reply).</i></p>
13.	Due date of possession	23.09.2021 [Note: - Due date of possession calculated by the booking application form i.e., 23.03.2017 in the absence of the agreement to sell + 6 months grace period allowed being unqualified]
14.	Total sale consideration	Rs.58,26,960/-



		(As per payment schedule page no. 31 of the reply)
15.	Basic sale consideration	Rs.46,26,140/- (As per payment schedule page no. 31 of the reply)
16.	Amount paid by the complainants	Rs.4,85,231/- [As per amended CRA dated 21.03.2022, page no. 11 of the CRA form]
17.	Payment plan	Down payment plan (Page no. 31 of the reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Demand letter	25.08.2017 [Page 66 of the reply]
	Reminder - II	23.09.2017 [Page 68 of the reply]
	Reminder - II	05.10.2017 [Page 67 of the reply]
21.	Cancellation request made by the allottee	29.11.2017 [Page 49 of the complaint]
22.	Cancellation/refund request made by the allottees	22.01.2018, 05.03.2018, 03.05.2018 [Page 55 to 57 of the complaint]



B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- I. That in the year March 2017, the complainants received a marketing call from Mr. Sumit (Mobile No. 9599789977) about investment in upcoming project namely "Rajeha's Vanya" a residential group housing colony in sector - 99-A Gurugram, Haryana. Thereafter, sales representative of respondent came to the residence of complainants along with brochure and allured with specification and customer friendly payment plans. The sale representative accompanied the complainants for a site visit. They meet there Mr. Bipin (sales manager of respondent company), who shown them a rosy picture and assured that they would offer customized payment plan and project would be handover within 42 months with all facilities.
 - II. That on date 07.03.2017, sales representative of respondent came to the residence of complainants and get signed an application form. He asked to pay booking amount of Rs.50,000/- by online transaction on immediate basis to avail the rate discount of Rs. 500/- per sq. ft. The complainants paid Rs. 50,000/- as booking amount through credit card by swapping on machine carried by sales representative. The application form for unit was filled by sales representative and signed by complainants in good faith. The

flat was purchased under the special customized payment plan for sale consideration of Rs. 56,01,262/, for an area admeasuring 806.59 sq. ft. with one covered car parking.

- III. That on date 21.03.2017, the complainants issued a cheque of Rs.4,35,231/- vide cheque No. 000012 drawn on HDFC Bank. Thereafter, on date 28.04.2017, the respondent issued a welcome letter for unit no. A-121 in its project and informed that *"We are in receipt of your application and the acceptance of the same will be subject to approval by the screening committee appointed for this purpose"*.
- IV. That on 07.06.2017, respondent issued an allotment letter for the said unit and also send two copies of agreement to sell. The payment plan and terms of agreement to sell were in contravention with assurances given by sales representative of respondent. Thereafter, the complainants contacted with Mr. Bipin and informed about them grievances. He assured to look after the issue and will mace necessary changes in agreement to sell.
- V. That after receiving the agreement to sell, the complainants contacted to Mr. Bipin and Mr. Sumit (sales representative of the respondent company). Thereafter on date 16.09.2017, they send an email to respondent and raised the issue of wrong demand and terms of agreement to sell. In that email, complainants explained the payment plan terms promised by Mr. Bipin and Mr. Sumit.



- VI. That on date 19.09.2017, respondent replied on email dated 16.09.2017 and send a new payment plan which was again disparity with committed and as promised by its sales representative.
- VII. That on 25.09.2017, the complainants went to the office of respondent and raised their concern about the payment plan and asked to change the arbitrary, unilateral, and one-sided clauses of flat buyer agreement. Moreover, complainants again send an email to the respondent and asked to make the payment in end of October, without any late fees. This email was replied by respondent on 26.09.2017 with remarks that "This is in reference to out meeting in Office on 25-Sep-2017, we would like to inform you that we have revised the demand and couriered to you along with the builder buyer agreement today. Further kindly send us the cheque dated 25-10-2017 for the payment as per demand and kindly give your consent that the interest charged to you on the delay payment can be offset with the future compensation towards project delay and the project is not then the interest will be waived off".
- VIII. That complainants wrote several grievance emails and letters for refund, but all are in vain. Till date, the respondent is not in principle agree to refund the booking amount.
- IX. That the sales representative of respondent allured and by making false promises get the booking amount of Rs.50,000/- and thereafter get the cheque of Rs.4,85,231/-. The respondent did not honour the

promises and send wrong demand and tried to misuse the dominant position. They were shocked to know that the interest charged on delay payment would be offset with future compensation towards project delay. There was no question of delay payments, when customized payment plan was promised by Mr. Bipin and Mr. Sumit, before booking of unit. The agent/sales & marketing staff of respondent Mr. Bipin and Mr. Sumit secure the booking with wrong representation and gave wrong commitments. When complainants informed them about the disparity in payment plan and terms of agreement, they started not responding the calls.

- X. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, it is liable to be punished and compensate the complainants along with refund of paid money with interest.
- XI. That due to the acts of the above, the complainants have been unnecessarily harassed mentally as well as financially and therefore, the respondent is liable to compensate them on account of the aforesaid act of unfair trade practice. Without prejudice the above, the complainants reserve the right to file a complaint before the authority.
- XII. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent and much more, a smell



of playing fraud with the complainants and others which makes them liable to answer this authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 1. Direct the respondent to pay the deposited amount with a prescribed rate of interest from the date of payment till the realization of payment.
5. 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.

6. The respondent contested the complaint on the following grounds: -
 - a) That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The complainants booked unit no. A-121, tower A, Sector 99A, Gurugram in Raheja Vanya project on 21.03.2017. Accordingly, the respondent *vide* Letter dated 28.04.2017 issued a welcome letter and on 07.06.2017 issued an allotment letter to the complainants. In pursuance to the allotment letter, a builder buyer's agreement was to be executed between the complainant and the respondent; however, the complainants never came forward to sign the agreement even after the reminders of the respondent. All the terms and conditions were decided upon in the allotment letter between the parties with their free will and consent.



- b) That the instant project is registered under the Act of 2016 and the project bearing registration no. 18/2017, registered on 06.07.2017.
- c) That the agreement sent to the complainant is exactly similar on the format of the agreement provided in the rules of 2017, after going through and agreeing with each and every clause of the agreement. It is pertinent to mention herein that as per Section 13 of the Act of 2016, the agreement needs to contain the details of the schedule of payments. Further, as per Section 19(6) of the Act of 2016, it is clearly specified that the allottee shall be responsible to make the payments at the proper time as specified in the agreement and under section 13 of the Act. Further, as per Section 19(7) of the Act of 2016, the allottee shall be liable to pay interest at the rate as is specified in the agreement for any delay in payment towards any amount or charges that are payable in terms section 19(6), meaning thereby that the builder can levy interest upon the allottee for any delay in payments made by the allottee as per the schedule of payments in the agreement.
- d) That the complainants have approached this authority in a malicious way, in complete derogation as they never came forward to sign the agreement. It has been clearly specified in the Act that the allottee/complainants are bound to make the payments in terms of the schedule of payments/agreement and if default in making any such payment, the builder can charge interest on such amount, and they would be liable to pay such interest. It is therefore submitted that the instant complaint should be dismissed at this ground alone with costs.



- e) That there is no cause of action to file the present complaint. It is submitted that the instant complaint is a pre-mature filed by the complainants in complete derogation to the terms and conditions agreed upon in the agreement and in contravention and violation of the provisions of the Act of 2016. It is submitted that the complainants are trying to change the terms and conditions agreed upon while signing the application form and agreeing to the allotment after approximately 3 years.
- f) That this authority does not have the jurisdiction to change the terms of the agreement after having been approved by the Act of 2016. It is submitted that in accordance with section 71 of the Act, 2016 read with rules 21(4) and 29 of the Rules, 2017, the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in section 2(a) the Act, of 2016 who has the power and the authority to decide the claims of the complainants.
- g) That as per clause 33 of the agreement (which is based on the model agreement specified in the rules of 2017), it has been clearly stated that in case of any dispute between the parties regarding the terms and conditions of the agreement, the dispute should be ***settled amicably with mutual discussions, by holding 3 meetings mutually recorded, failing which the same shall be settled through the adjudicating officer appointed under the Act.*** It is therefore pertinent to mention herein that the complainants have wrongly approached this authority by filing the complaint.



Therefore, it is respectfully submitted that the instant complaint is not maintainable and should be outrightly dismissed on this ground alone.

h) That the complainants have not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows.

- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- That the Vanya project is one of the greenest group housing projects of Gurugram which is bordering continuous green belt (Delhi & Gurugram Master Plans). It is spread over 12.48 acres. The project consists of 3 towers of Ground + 19 floors and 1 tower of Ground + 34 floors. Vanya is a stimulating fusion of eclectic thinking, structural dynamism, and international parameters. The magnificent edifice owes its conceptualization



to Aedas Singapore, the world renowned architectural and design powerhouse.

- That the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market, and they are now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such *mala fide* tactics of the complainants cannot be allowed to succeed. It is further submitted that the complainants are not adhering to the schedule of payments as agreed upon in the agreement and are not making the payments. It is imperative to note that the complainants have agreed in clause 5 that time is the essence of the contract and therefore he is bound to agree with the terms and conditions of the agreement and make payments on time instead of filing this vexatious complaint.
- That the agreement to sell was send to the complainants along with the letter dated 07.06.2017 for signing which they never came forward to sign. As per clause 7.1 of the agreement, the respondent was to handover the possession of the apartment within 48 months plus minus a 12 months variable grace period from the date of execution of the agreement subject to receipt of timely payments by the allottees and *force majeure* conditions. It is submitted that therefore, the respondent has to handover the possession of the apartment within 48 months by 15.02.2023. It is shocking to note that the complainants have filed this premature complaint and are praying to this authority



that they be given a refund along with the compensatory interest without even making the payments as per the schedule of payments. It is submitted on 23.09.2017, a letter was sent to the respondent clearly stating that *"the non-receipt of 2 copies of the Buyers agreement that were dispatched to you vide our communication dated 26-sept-2017. We regret to note that despite a reminder dated 06-Sept-2017 sent thereafter, we did not receive the signed copy of the agreement. We request you to sign the same at all designated places and send them back to us immediately. After the receipt of the same at our end, we shall send back one executed copy for your records."* Further, a reminder letter was sent to the complainants on 05.10.2017 again informing the due installments and delayed interest. It is submitted that the complainants have filed this complaint without any grievance and without any cause of action and therefore the instant complaint be dismissed with costs.

- That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and they made the payment of the earnest money and part-amount of the total sale consideration and are bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage. It is submitted that the as per clause 5 of the Agreement, time is the essence of the agreement and therefore, they shall adhere with the schedule of payments and make the necessary payments.



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 complainants 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 reiterated in case of ***M/s Sana Realtors Private Limited & other Vs 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."

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 objections raised by the respondent

F. I Objections regarding the complainants being investors.

14. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of the consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if 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 complainants are buyer and they have paid a sum of **Rs.4,85,231** /-to the promoter towards purchase of an apartment in its project. 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;"

15. In view of above-mentioned definition of "allottee" it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 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.

G. Findings on the relief sought by the complainants.



G.1 Direct the respondent to pay the deposited amount with a prescribed rate of interest from the date of payment till the realization of payment.

16. The complainants were allotted a unit in the project of respondent "Raheja Vanya" situated in sector- 99A, Gurugram vide welcome letter dated 28.04.2017 for a total sum of Rs.46,26,140/-. Though no buyer's agreement was executed between the parties, but the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.4,85,231/-. The complainants did not pay the remaining amount as per schedule of payment and which led to issuance of demand notice and reminder notice by the respondent/builder dated 25.08.2017. Thereafter, the complainants sent an email to the respondent/builder and raised an issue of wrong demand and terms of agreement to sell. The respondent/builder further sent reminder notices on 23.09.2017, and 05.10.2017.
17. Thereafter, the complainants decided to withdraw from the project and made the request for cancellation of notice i.e., 29.11.2017, and 22.01.2018, 05.03.2018, and 03.05.2018.
18. The clause 18.5 of the application form dated 23.03.2017, provides about cancellation by an allottee. The relevant part of the clause is reproduced as under for ready reference: -

***"18.5 Cancellation by Applicant(s)/intending Allottee(s)-
The Applicant(s)/Intending Allottee(s) shall have the right to cancel/withdrawal his allotment in the Project, if the Company fails to comply or is unable to give possession of the Apartment in accordance with the terms of the proposed Agreement for sale barring failure of Government/other***

statutory bodies in providing the external infrastructure such as laying of sewer/water supply line, road, electrification or due to discontinuance of his business as a developer on account of suspension or revocation of its registration.

*Provided that where the Applicant(s)/Intending Allottee(s) proposed to cancel/withdraw from the project without any fault of the company, **the company herein is entitled to forfeit the Application fee, Government dues, and taxes, default interest and dealer commission paid for the allotment. The balance amount of money, if any, paid by the Applicant(s)/Intending Allottee(s) within 45 days of such cancellation after submission of the equivalent amount from the next purchaser as the amount may have been gone into the construction or subject to provisions of balance in the escrow account without affecting the phase - 1, of the project execution including compensation.***

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. It is evident from the above mentions facts that the complainants paid a sum of Rs.4,85,231/- against basic sale consideration of Rs.46,26,140/-of the unit allotted to them on 28.04.2017. They failed to pay a remainder amount despite a number of notices and ultimately



moved for withdrawal from the project vide notices dated 29.11.2017, 22.01.2018, 05.03.2018, and 03.05.2018 respectively. There is nothing on the record to show that the respondent acted on those representations of the complainants. Though the amount paid by the complainants against the allotted unit is about 10% of the basic sale consideration but the respondent was bound to act and respond to their pleas for cancellation and refund. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to cancel the same in view of clause 18.5 of the booking application form for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount if any, along with interest at the rate of 10.35% (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 surrender i.e., 29.11.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

21. 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 is directed to refund the paid-up amount of Rs.4,85,231/- after retaining 10% of the basic sale consideration of Rs.46,26,140/- and that amount should have been made on the date of surrender i.e., 29.11.2017. Accordingly, the interest at the prescribed rate i.e., 10.35% is allowed on the balance amount if any, from the date of surrender till date of actual refund.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stands disposed of.

23. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.12.2022