

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

Complaint no. : 738 of 2018
First date of hearing: 18.12.2018
Date of decision : 14.09.2022

Mr. Naveen Kumar Suman
R/o: -Flat No. 101, House No. RZF-777/20, Gali No. 16,
Raj Nagar, Part – II, Palam Colony, New Delhi- 110075

Complainant

Versus

M/s Emaar MGF Land Limited.
Office at: 306-308, Third Floor, Square One, C-2,
District Centre, Saket, New Delhi-110017

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Sh. Pradeep Sharma (Advocate)
Sh. Dheeraj Kapoor (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 14.09.2018 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Gurgaon Greens", Sector 102, Gurugram, Haryana
2.	Total area of the project	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012
	Validity of license	30.07.2020
	Licensee	Kamdhenu Projects Pvt. Ltd. and anr.
	Area for which license was granted	13.531 acres
5.	Registered/not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	Registration valid up to	31.12.2018



	Extension of registration vide no.	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Applied for occupation certificate on	11.02.2019 [annexure R7, page 167 of reply]
7.	Occupation certificate granted on	16.07.2019 [annexure R7, page 167 of reply]
8.	Provisional allotment letter	03.04.2013 [annexure P1, page 19 of complaint]
9.	Unit no.	GGN-27-GF-02, ground floor, building no.27 [annexure P2, page 26 of complaint]
10.	Area of the unit (super area)	1650 sq. ft.
11.	Date of execution of buyer's agreement	06.06.2013 [annexure P2, page 23 of complaint]
12.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all</i>



		<p><i>the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied)</i></p> <p>[page 39 of complaint]</p>
13.	Date of start of construction as per the statement of account dated 29.09.2016 at page 69 of complaint	18.10.2013
14.	Due date of possession	18.10.2016



		[Note: Grace period is not included]
15.	Total consideration as per the statement of account dated 29.09.2016 at page 69 of complaint	Rs.1,57,20,577/-
16.	Total amount paid by the complainant as per statement of account dated 29.09.2016 at page 69 of complaint	Rs.31,15,064/-
17.	Cancellation letter issued by the respondent on	28.12.2018 [annexure R6, page 116 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent had been proclaiming in general public through newspaper advertisements, marketing emails, SMS, and telemarketing that they had launched an integrated residential township in Gurugram (Haryana). The said integrated township as claimed was being set up after necessary approvals of all the competent authorities. It was further claimed that all the necessary approvals, clearances and procedures had been duly obtained and sanctioned as regards the proposed integrated township and further proclaiming that the location of such site, which is under



development, was prime land and centrally located. The other terms of the scheme, eligibility, registration, and mode of allotment was also prescribed in the brochures.

- II. That lured by these open proclamations through publication in the local newspapers and various advertisements the complainant booked a flat in the project, namely 'Gurgaon Greens', Sector-102, Village Dhankot, Tehsil and District Gurgaon, Haryana, for an amount of Rs.1,49,55,900/- on which service tax amounting to Rs.6,92,561.73/- was payable. Thus, the total cost of the flat (as mentioned in the buyer's agreement dated 06.06.2013) was Rs.1,56,48,461.73/- in this regard the respondent issued a provisional letter dated 03.04.2013 whereby flat bearing unit no. GGN-27-GF-02, admeasuring 153.29 sq. mtrs. (1650 sq. ft.) was allotted to Sh. Arun Kumar Suman, the brother of the complainant.
- III. That thereafter, a buyer's agreement was jointly executed between the respondent on one hand and Sh. Arun Kumar Suman and the complainant on the other hand on 06.06.2013. According to the buyer's agreement dated 06.06.2013, the possession of the flat was to be handed over within 36 months from the date of start of construction with a grace period of 5 months for applying and obtaining the completion/occupation certificate in respect of the unit and/or the project. That the schedule of payment was appended



as Annexure-III at page 33 of the buyer's agreement and in that schedule except for the date of booking no other date was mentioned therein. Therefore, the Allottees had no option but to depend on the intimations from the respondent from time to time regarding the progress of the project.

IV. That the brother of the complainant namely Sh. Naveen Kumar Suman no longer wanted to remain the allottee of the said flat. Therefore, on the request of Sh. Arun Kumar Suman the said flat was transferred in the name of the complainant, who is the real brother and was also the co-applicant along with Sh. Arun Kumar Suman when the buyer's agreement dated 06.06.2013 was signed. In this regard the respondent issued a letter dated 18.11.2013 confirming the change of nomination in favour of the complainant. That in the letter dated 18.11.2013 it was also intimated to the complainant that the next installment amounting to Rs. 21,42,875/- shall be due and payable within 6 months from the start of construction slab. It was also mentioned in the same letter that a separate demand letter shall be sent by the respondent 15-20 days prior to due date. Vide the same letter the respondent also acknowledged that a payment of Rs. 21,42,875/-.

V. That to the utter shock and surprise of the complainant, when on 18.11.2013, the brother of the complainant handed over the



statement of account dated 13.11.2013 to the complainant, the complainant after going through the same came to know that despite the fact that the construction had not started on that date, an amount of Rs.9,97,625/- had already been raised by the respondent under the head start of the construction. Therefore, it is amply clear that the respondent had raised the demand prior to the start of construction.

- VI. That the complainant thereafter visited the office of the respondent and pointed out that the demand was made without starting the construction, the officials of the respondent assured the complainant that they would make the corrections in the statement of account, accordingly, raise the demand of the amount of Rs.9,97,625/- as and when the construction starts and further assured that no penal interest would be charged on amount of Rs.9,97,625/-. In the meanwhile, the complainant after being assured the corrections would be made in the statement of account, made another payment of Rs.3,50,000/- through cheque dated 06.01.2014.
- VII. That despite the assurances by the officials of the respondent, the respondent not only maintained the demand of Rs.9,97,625/- w.e.f. 18.10.2013 but also levied penal interest on the aforesaid amount, which was totally illegal, which is clear of the statement of account

dated 09.02.2015. The repeated protests by the complainant by visiting the office of the respondent and meeting the officials have been to no avail. The complainant within his rights stopped making further payments till the illegal demands were set right by the respondent, however, the respondent continued to charge the penal interest @ 24% by incorporating and maintaining the illegal demand and penalty which is clear from the statement of account dated 09.02.2015.

VIII. Later, the respondent unilaterally increased the price of the said flat to Rs.1,57,20,577/- apart from raising illegal and unsustainable penal interest, which is violation of the Act of 2016 and Rules of 2017 and bylaws framed thereunder.

IX. That the project has not been completed and the promoter has indulged in numerous violations which run contrary to the provisions of the Act and rules and regulations framed there under entitling the complainant to stop making the payments and claim for refund along with interest.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund the amount of Rs.31,15,064/- paid by the complainant to the respondent along with interest at prescribed rate w.e.f. 06.01.2014 till the date of actual realization.

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 filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds.

- I. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable in law or in facts and the authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
- II. That prior to 12.09.2019, the complaints pertaining to refund, possession, compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act, 2016 were required to be filed before the authority under rule-29 of the Rules, 2017 read with Section 31 and Section 71 of the said Act and not before the authority under Rule-28 as the authority had no jurisdiction whatsoever to entertain such complaint and such complaint was liable to be rejected.

- III. Thereafter, the Haryana Real Estate (Regulation & Development) Amendment Rules, 2019 were notified on 12.09.2019, whereby inter alia amendments were made to rules-28 and Rule-29 and the authority was given the jurisdiction to entertain and adjudicate the complaints seeking the relief of refund. That the corresponding amendments were also made to Forms CRA and CAO.
- IV. That the complainant has filed 2 separate complaints with the same title of "Naveen Kumar Suman vs Emaar MGF Land Ltd." for two separate units i.e., complaint no. 737/2018 for unit no. GGN-26-GF-01 and other complaint no. 738/2018 for unit no. GGN-27-GF-02. However, at the time of issuing the notice, before the authority, perhaps inadvertently, incorrectly issued the notice for the present complaint i.e., complaint no. 738/2018 along with the copy of the complaint for unit no. GGN-26-GF-01. In compliance of the said notice, the respondent, through its counsel Sh. Dheeraj Kapoor, filed the reply for unit no. GGN-26-GF-01 on 05.11.2018, along with an application for rejection of the complaint on the ground of jurisdiction, and after being adjourned for several hearings, the said matter is now listed on 26.11.2021 before this authority.
- V. That similarly, in the complaint no. 737/2018 also, the respondent, through its counsel Sh. Ankit Mehta, filed the reply for unit no. GGN-27-GF-02, along with an application for rejection of the complaint on the ground of jurisdiction, and the said matter was disposed off vide order dated 21.09.2019, wherein this Authority, on page-9 of the order made a remark that "the Complaint pertains

to Unit No. GGN-26-GF-01 while the reply pertains to GGN-27-GF-02”.

The contents of the said reply and application may kindly be read as a part and parcel of the present reply as well, though the same are not being repeated herein for the sake of brevity.

- VI. That in the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e. "Gurgaon Greens", Sector 102, Village Dhankot, Tehsil & District Gurugram, Haryana is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the authority under the amended rule-28 of the said Rules and not before this authority under the amended rule-29 as the authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- VII. That it is also submitted that the complaint is not supported by any attested affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
- VIII. Statement of objects and reasons as well as the preamble of the said Act clearly state that the Act of 2016 is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. Further, the complainant is not an "Allottee" / "Consumer" but an investor who has booked the apartment in question as a speculative investment in order to earn rental

income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as his residence. Therefore, there is no equity in favour of the complainant. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not a consumer as explained herein below.

- a) The complainants are not consumers and nowhere in the present complaint have the complainants pleaded as to how the complainants are consumers as defined in the consumer Protection Act, 1986 qua the respondent. The complainants have deliberately not pleaded the purpose for which the complainants entered into an agreement with the respondent to purchase the apartment in question. The complainants, who are already the owners and residents of B-21, Shivlok Co-operative Group Housing, Plot No.6, Sector-6, Dwarka, New Delhi-110075 (address mentioned in the application for provisional allotment and apartment buyers agreement) having a sale deed in their favour and also Flat No. 101, House No. RZF-777/20, Gali No. 16, Raj Nagar Part-II, Palam Colony, New Delhi-110077 (address mentioned in the present Complaint) having a sale deed in their favour, are investors, having invested in 2 apartments in the same project of the respondent, and never had any intention to buy the apartment

for their own personal use and kept on avoiding the performance of their contractual obligations of making timely payments and have now filed the present complaint on false and frivolous grounds.

- IX. That the complainants are investors and also defaulters, having deliberately failed to make the payment of various installments within the time prescribed which resulted in outstanding dues and delay payment charges and subsequent cancellation as per clause 13 of the buyer's agreement.
- X. That from the date of booking till the filing of the present complaint i.e., for more than 5 years, the complainants had never ever raised any issue whatsoever and on the contrary the complainants kept on making the payment of installments, though not within the time prescribed, which resulted in outstanding dues and delay payment charges and subsequent cancellation.
- XI. That the complainants have concocted a false story to cover up their own defaults of having deliberately failed to make the payment of dues within the time prescribed which resulted in outstanding dues and delay payment charges and subsequent cancellation and have now raised false and frivolous issues and have filed the present complaint on false, frivolous, and concocted grounds. This conduct of the complainants clearly indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainants have failed to perform its contractual obligations of making timely payments.

- XII. That despite several adversities, the respondent has continued with the construction of the project and has already obtained the occupation certificate for the apartment in question and had the complainant made the payments in time, the respondent would have offered the possession as well. However, as the complainants were only speculative investors and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainants failed to make the payments in time. It is apparent that the complainants are mere short term and speculative investors who had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession, the complainants could not make the payments in time and now has developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.
- XIII. That the respondent, this authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainant/ offered to them. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between both the parties. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 06.06.2013, executed much

prior to coming into force of said Act or said Rules. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.

- XIV. That the respondent has made huge investments in obtaining approvals and carrying on the construction and development of 'Gurgaon Greens' project and despite several adversities has already obtained the OC for the apartment in question and had the complainant made the payments in time, the respondent would have offered the possession as well. The complainants persuaded the respondent company to allot the said apartment in question with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.

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

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. 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

9. 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.

10. 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.
11. 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. (Supra) 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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.

13. The respondent has taken a stand that the complainant is the investors and not consumer and 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 consumer 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 complainants are buyers and paid total price of **Rs.31,15,064/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of above-mentioned definition of "allottees" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee 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 allottee being investor is not entitled to protection of this Act also stands rejected.

E. Findings on the relief sought by the complainant

E. I Direct the respondent to refund the amount of Rs.31,15,064/- paid by the complainant to the respondent along with interest at prescribed rate w.e.f. 06.01.2014 till the date of actual realization.

15. 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 paid an amount of Rs. 31,15,064/- out of the total amount of Rs. 1,57,20,577/-. The complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice of cancellation by the respondent on 09.11.2019. Now the question before the authority is whether this cancellation is valid?
16. As per clause 13(ii) of the builder buyer agreement, the allottee was liable to pay the Installment as per payment plan opted by the complainant. Clause 13(ii) of the builder buyer agreement is reproduced under for ready reference:

Clause 13. DELAY IN PAYMENTS

- I. *Notwithstanding anything contained in clause 20, in case of delay in making any payment reserved herein by the Allottee, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money alongwith the Non-Refundable*

Amounts. However, the Company may in its sole discretion, waive its right to terminate this Agreement, and enforce all the outstanding payments and seek specific performance of this Agreement. The Company shall be entitled to charge delayed payment charges @ 24% p.a. at the time of every succeeding installment from the due date of installment, till the date of payment as per the Schedule of Payments. In such a case, the Parties agree that the possession of the Unit will be handed over to the Allottee only upon the payment of all outstanding dues, penalties etc., along with interest by the Allottee to the satisfaction of the Company.

- II. *Without prejudice to the generality of the above, incase of any delay in payment of any other [i.e. other than the installments due in terms of Annexure -III] amount or charge as reserved in this Agreement including without limitation to enhancements in EDC and IDC in terms of clause 1.2 (f) and 1.2 (g), payment of charges towards PLC under clause 1.2 (e) (ii), electricity or water meter deposits etc, the same shall be paid by the Allottee on demand being raised by the Company. On failure of such payment being made by the Allottee, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money along with the Non-Refundable Amounts. Without prejudice to the above, the Company shall also be entitled to charge delayed payment charges @ 24% p.a. at the time of every succeeding installment from the due date of installment, till the date of payment as per the Schedule of Payments.*

17. The respondent had issue various reminders dated 06.02.2018, 31.08.2018, and 24.09.2018. Thereafter, the respondent issued cancellation notice dated 28.12.2018. That the OC for the unit of the complainant was granted on 16.07.2019. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.

18. 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."

19. Keeping in view the aforesaid facts and legal position, the cancellation of the allotted unit is held to be valid and forfeiture of the 10% of the earnest money of basic sale price cannot be said to be wrong or illegal in any manner. However, after forfeiting that amount to the extent of 10% of the basic sale consideration, the respondents are directed to return that amount to the complainant within a period of 90 days from the date of this order, if any.

H. Directions of the authority

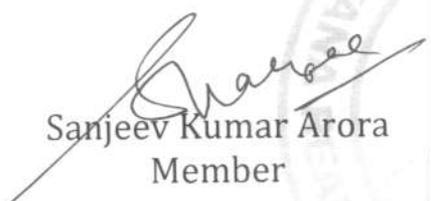
20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to refund the balance amount after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the

balance amount to the complainants. The refund should have been made on the date of cancellation i.e., 28.12.2018. Accordingly, the interest at the prescribed rate i.e., 10% is allowed on the balance amount from the date of cancellation to date of actual refund.

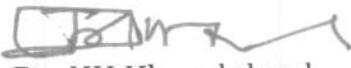
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.



Sanjeev Kumar Arora
Member



Dr. KK Khandelwal
Chairman



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022

HARERA
GURUGRAM