

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

Complaint no. :	3268 of 2019
Date of filing complaint:	20.08.2019
First date of hearing:	11.12.2019
Date of decision :	18.10.2022

Kashmiri Lal Puri R/O: 118, 1 st Floor, Edmonton Mall, Hotel Bristol, Mg Road, Gurugram, Haryana-122002	Complainant
Versus	
Haamid Real Estate Private Limited Regd.office:232-B, Fourth Floor, Okhla Industrial Estate, Phase-III New Delhi-110020	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
None	Complainant
Sh. Harshit Batra (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 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"The Peaceful Homes" Sector 70A, Gurugram, Haryana
2.	Project area	8.38 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA registration valid up to	31.12.2019
8.	Re-allotment Letter	31.03.2015 (Page 89 of complaint)
9.	Unit no.	C-103, 10 th floor, Tower- C (Page 34 of complaint)
10.	Unit area admeasuring	1565 sq. ft. (super area) (Page 34 of complaint)
11.	Date of execution of Flat Buyer's Agreement	23.09.2014 (Page 32 of complaint)



12.	Possession clause	11(a) Schedule for possession of the unit The company endeavors to hand over the possession of the unit to the allottee within the period of 36(Thirty-Six) months, from the date of commencement of construction of the project , which shall mean the date of commencement of the excavation work at the project land and this date shall be duly communicated to the allottee ("commitment period"). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 6(six) months after the expiry of the said period to allow for any contingencies or delays in construction including for obtaining occupation certificate of the project from the Government Authorities.
13.	Date of commencement of construction	25.04.2014 (Taken from project details)
14.	Due date of possession	25.04.2017 (Calculated as per date of excavation)
15.	Total sale consideration	Rs.1,13,48,872/- (As alleged by respondent in facts on page 4 of reply)
16.	Amount paid by the complainant	Rs.56,44,326/- (As alleged by the complainant)
17.	Occupation certificate	29.10.2019 (As alleged by respondent in his written submission)
18.	Offer of possession	Not Offered



19.	Reminder Letters	21.05.2014, 12.05.2014, 27.05.2014, 19.06.2014, 27.10.2014, 13.05.2017, 26.06.2017 (Page no. 61 to 69 of reply)
20.	Pre termination letter	16.04.2019 (Annexure R-13 page 69 of reply)
21.	Termination Letter	13.06.2019 (Annexure R-14 page 71 of reply)

B. Facts of the complaint:

3. That a project by the name of "The Peaceful Homes" situated in sector 70 A, Gurugram, Haryana was being developed by the respondent. The complainant coming to know about the same booked a unit in it vide application dated 11.07.2012 for a total sale consideration of Rs. 1,13,48,872. A booking amount of Rs. 9,00,000 was paid by him. The complainant was unaware and had no knowledge, that, the above stated project is being owned by the respondent, at the time of making of the said application.

4. That allotment of the unit was made by the respondent on 04.09.2013 of a unit bearing no. C-103, having super Area 145.39 (approximately 1565 square feet) on 10th floor. The buyer's agreement was executed between the parties on 23.09.2014, The unit was to be delivered within a period of 36 months, from the date of commencement of construction of the project. The respondent further demanded an amount of Rs. 4,11,534.00/- from the complainant, and accordingly, the said payments were made by him. A receipt no. 0844 dated 17.12.2014, was issued by the respondent.

5. The complainant as per the demands raised by the respondent, made a payment of Rs. 4,50,000/-, Rs. 4,50,000/-, Rs. 4,80,000/- vide a cheque



bearing no 000392 drawn on Ramgarhia Co-operative Bank Ltd. Pahar Ganj, Delhi against which receipts bearing no. 369, 559 and 330 dated 27.08.2012 and 17.01.2013 respectively were issued.

6. The respondent in accordance to the payment plan further demanded an amount of Rs. 6,00,000/- from him and, paid that an amount vide a cheque bearing no. 005456 drawn on Ramgarhia Co- operative Bank Limited, , on the payment made by the complainant, a receipt bearing no. 0933 was issued to him. Further, the respondent demanded an amount of Rs. 5,00,000/- from the complainant. The complainant due to his concerns regarding delay in the possession of the said project approached the respondent and expressed his concerns. It is needless to state that the payment plan which was agreed upon between the parties, had to adhered to by both the parties. But, upon physical inspection of the project site, the complainant was astonished to see, that the works were much delayed and are much behind the payment schedule being demanded by the respondent.

7. The complainant raised his concerns before the respondent and in order to re- assure him, requested him to make the payment of the said amount of Rs. 5,00,000/- and that after the said payment, no further demands shall be raised before handing over of the possession, he also assured that the project would be delivered within the agreed timeframe itself. Thus relying upon the promises and assurances made by the respondent, the complainant made the payment of Rs. 5,00,000/- vide a cheque bearing no. 005508 drawn on Ramgarhia Co-operative Bank Limited, for which a receipt bearing no. 0942 was issued.

8. The respondent, in order to address the grievances of the complainant, assured him and, a fresh allotment letter having Ref No. GTPH0170 dated 31.03.2015, was issued suppressing the previous allotment letter dated 04-09-2013 and changing the payment plan and thereby confirming that



amount of an Rs. 47,17,930/- as having been received by the respondent from him and the balance amount would be payable only at the time of offer of possession.

9. That in accordance to the terms of re-allotment letter, a demand of Rs. 9,26,396/- was made and accordingly the same was paid by the complainant and thus a receipt bearing no. TPH/1042 for an amount of Rs. 9,26,396/- was issued.

10. The complainant after a period of 8 months, visited the project site. He was astonished to see that the construction work has been put to halt. Neither the construction was on-going nor the building at the project site was completed. The complainant contacted the respondent, but he kept on re-assuring him, that the unit booked by him shall be delivered soon.

11. The complainant visited the project site again and was astonished and shocked to see that even the structure of the building was incomplete and hardly any work was seen on-going on the project site. The complainant met one of the representative of the company at the project site and he informed him that the remaining works would not take long time and project would be completed within 3-4 months. The complainant being an aged person got re-assured by the assurances given to him by the representatives of the respondent.

12. The complainant has till date made the payment of Rs. 56,44,326/- to the respondent in a hope that he would give the possession as stipulated, but, it has utterly failed to give the possession within the assured time period.

13. That the respondent has not offered the possession till date. Thus, the complainant was left with no other option but to file the present complaint seeking refund of the entire amount paid against allotment of the unit.



C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire amount and interest thereof.
- ii. Direct the respondent to pay compensation of Rs. 10,00,000/- for mental harassment and trauma.

15. While filing the complaint besides Haamid Real Estate Pvt. Ltd., the complainant also added the name of Advance India Projects Ltd. as one of the respondent. Though it was pleaded by the complainant that he is seeking a relief against both of them but buyer's agreement with regard to the allotted unit was executed between him and r answering respondent on 23.09.2014. Even the payments receipts against the allotted unit were also issued by the answering respondent. Then during the course of hearing the answering respondent also moved an application for deletion of the name of Advance India Project Limited being an unnecessary party. So keeping in vie all these facts, there is no need to proceed against Advance India Projects Ltd. and its name is ordered to be deleted added as a respondent while generating Performa B .

D. Reply by respondent:

The respondent by way of written reply made the following submissions

16. That the complainant is an allottee of the above-mentioned unit for a total sale consideration of Rs.1,13,48,872/-and had applied for allotment of an apartment vide the booking application form.

17. That the respondent allotted the unit vide allotment letter dated 04.09.2013, unit no. C-103 having tentative super area of 1565 sq.ft . The



buyer's agreement was executed between the parties on 23.09.2014. A new allotment letter dated 31.03.2015 was issued by respondent in supersession of the earlier allotment letter dated 04.09.2013.

18. That the respondent raised payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and he made some payments in time and then started delaying and committing defaults. The respondent had raised the payment demand dated 21.04.2014 and the payment towards the demanded amount was made only after reminders dated 12.05.2014, 27.05.2014, 19.06.2014 and 27.10.2014 which were issued it.

19. That the respondent had raised the payment demand on 08.02.2017 for the net payable amount of Rs. 35,76,848/-. However, despite reminders dated 13.05.2017 and 26.06.2017, the complainant failed to remit the due amount towards the total sale consideration of the unit allotted to him. So a pre-termination letter dated 16.04.2019 was also sent by respondent to the complainant.

20. That it is pertinent to mention here that according to the booking application form and the buyer's agreement, timely payment of installments within the agreed time schedule was the essence of allotment.

21. That the possession of the unit was supposed to be offered to the complainant in accordance with clause 11(a) of the buyer's agreement dated 23.09.2014 and which comes to 25.04.2017. The respondent was also entitled to a grace period of six months after the commitment period to allow for any contingencies or delay in construction including for obtaining the occupation certificate of the project.

22. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute



resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 57 of the buyer's agreement.

23. Despite failure of the complainant to adhere to his contractual obligations of making payments and executing the buyer's agreement, the respondent has completed the construction of the tower in which the unit allotted to the complainant was located and the photographs of the same are attached. It is pertinent to mention herein that respondent has even applied for the grant of the occupation certificate vide application dated 18.03.2019 and the same was obtained on 29.10.2019.

24. That the respondent has throughout acted strictly as per the terms of the allotment, rules and regulations and the provisions laid down by law. However, there have been several unforeseeable events which were beyond the reasonable control of the respondent which have materially and adversely affecting the timely completion of the project. It is submitted that more than 60% of the allottees to the instant project have defaulted in their payments, leading to unrealized amount of more than Rs. 150 Crores as on date in the Project. Due to defaults on part of the allottees, the respondent was constrained to approach financial institutions to raise funds to complete the construction of the project. Further, the said financial institutions have their own internal compliances before such funds are disbursed to entities like the respondent which lead to further delay in procurement of funds. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the Civil Contractors of the respondents viz. Shri Balaji Buildmate Private Limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time (around 6 months). During this period, Shri Balaji Buildmate Private Limited did not allow any other contractor to carry on with the construction as was contemplated in the



buyer's agreement, and the project was put to a complete standstill. A police complaint was also filed by the respondent against the aforesaid civil contractor. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and deploy its personnel and carry forward the work from the previous contractor.

25. Furthermore, there was a major accident at the project site which resulted in the untimely death of two laborers and three laborers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, as the labour union had started raising various demands etc. after the unfortunate incident. The respondent was accordingly constrained to make payments to the said labourers as compensation towards the aforesaid incidents and arrive at an amicable settlement, it further took considerable time and resulted in delay in completion of the project. It is pertinent to mention herein that the demonetization of currency notes of Rs 500 and Rs 1000 announced vide executive order dated 08.11.2016, further affected the pace of the development of the project. Due to the said policy change by the Central Government, the pace of construction of the project was severely affected for a period of approximately six months from November 2016 to April 2017 due to the withdrawal of money was restricted by Reserve Bank of India as the availability of new currency being limited and unavailable with the banks. The effect of such demonetization was that the labour was (on some occasions) not paid within the stipulated time which consequently resulted in a huge labour crisis in Delhi and NCR region.

26. That beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which

further affected the timely completion of the said project. It is pertinent to mention herein that various approach roads to the said project which are to be constructed by the relevant civic authorities have not been completely developed affecting the timely completion of the project. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities.

27. That the aforesaid circumstances fall within the ambit of the definition of the 'force majeure' conditions as stated in Clause 46 of the buyer's agreement.

28. That however, on account of non-fulfillment of the contractual obligations by the complainant despite several opportunities extended by respondent, his allotment was cancelled and the earnest money deposited by the complainant along with other charges was forfeited vide cancellation letter dated 13.06.2019.

29. Copies of all the relevant do have been filed and placed on 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:

30. The plea 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

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

31. 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.

32. 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.

33. 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 judgements passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 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."

34. 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 Objection regarding complainant is in breach of agreement for non- invocation of arbitration.

35. The respondent raised an objection that the complainant has not invoked arbitration proceedings as per application form which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause 57 has been incorporated w.r.t arbitration in the application form:



57 "All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The award of the Sole arbitrator shall be final and binding on the Parties. The company and the allottee will share the fees of the Arbitrator in equal proportion".

36. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of



judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506* and followed in case of *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. A similar view was taken by the Hon'ble apex court of the land in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* and has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, that the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

37. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F. II. Objection regarding delay due to force majeure

38. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as, slow pace of construction due to a dispute with the contractor, and non-payment of instalment by different allottee of the project but all the pleas advanced in



this regard are devoid of merit. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

39. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal and Hon'ble Apex Court banning the construction activity on the recommendations of Central Pollution Control Board in Delhi NCR Region which was partially lifted. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11(a) of the buyer's agreement. Though there have been various orders issued but these were for a short duration and are annual features. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project and the plea raised in this regard is devoid of merit.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the entire amount.

40. The subject unit was allotted to the complainant on 31.03.2015 under the construction linked payment plan on the basis of booking application form. A buyer's agreement was executed with regard to the allotted unit between the parties on 23.09.2014 and the complainant started making payments against the allotted unit and paid a sum of Rs.56,44,326/- against total sale consideration of Rs. 1,13,48,872/-. He approached the authority seeking relief of refund of the paid-up amount on the ground that the



respondent has not offered the possession till date after completion of the project and does not want to continue with the same.

41. It is an admitted fact that the buyer's agreement was executed between the parties on 23.09.2014. So, the due date for completion of the project and handing over possession of the allotted unit is taken from clause 11(a) and the same comes to be 25.04.2017. Though the respondent is seeking a grace period of six months in completion of the project but the same is disallowed due to the fact that before expiry of the due date, it did not apply for obtaining occupation certificate of the project. Hence the due date for completion of the project and offer of possession comes to be 25.04.2017 i.e. thirty six months from the date of excavation of the project as the allotment of the unit was made in favour of the complainant on 31.03.2015.

42. The complainant also served a surrender notice dated 14.05.2019 on the respondent but that was after the due date has expired. The respondent raised various demands against the complainant which were not cleared by him. So, the respondent cancelled the allotted unit vide its letter 13.06.2019.

43. The due date of completion of project expired on 25.04.2017. Thus, it is evident from the facts mentioned above that the complainant is no longer interested in the project and is seeking refund of the paid-up amount as per the provisions of Act of 2016.

44. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land. But in the case in hand, after cancellation of the unit, the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against



the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India*, AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors*, Civil Appeal No. 7266 of 2009 decided on 01.12.2015 , followed in *Jayant Singhal v/s M3M India ltd*. Consumer case no. 27669 2017 decided on 26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to return the balance amount after deducting 10% of the sale consideration (inadvertently mentioned as basic sale price in the proceedings of the day)from the date of cancellation of the unit i.e, 13.06.2019 till the date of refund along with interest @ 10.25 % per annum within a period of 90 days.

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- for mental harassment and trauma.

45. The the complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the



factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

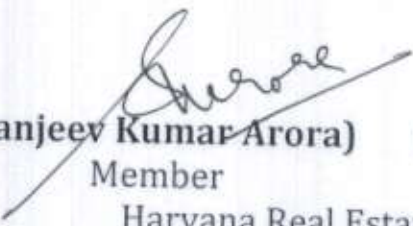
H.Directions of the Authority:

46. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the amount of Rs. 56,44,326/- after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.25% p.a. on the refundable amount, from the date of email of cancellation i.e 13.06.2019 till the actual date of refund of the amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

47. Complaint stands disposed of.

48. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.10.2022