



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

Complaint no.	773 of 2021
Date of filing complaint	19.02.2021
First date of hearing	19.04.2021
Date of decision	02.11.2022

1. Pratik Data 2. Jyoti Data  <b>both R/o:</b> P-5-A, Circular Road, New Colony, Gurugram-122001	<b>Complainants</b>
Versus	
New Look Builders and Developers Pvt. Ltd. (Formerly known as Ansal Phalak Infrastructure Pvt. Ltd.)  <b>Registered Office:</b> 1 <sup>st</sup> floor, The Great Indian Centre, 70, Nehru Place, Behind IFCI Tower, New Delhi-110019	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Uma Shankar (Advocate)	Complainants
Shri Deeptanshu Jain (Advocate)	Respondent

**ORDER**

1. The present complaint 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 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 allottees 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Versalia", Sector 67-A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no.	81 of 2013 dated 19.09.2013 valid upto 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017 valid upto 31.08.2020
7.	Promoter-Developer	M/s Ansal Phalak Infrastructure Pvt. Ltd.
8.	Allotment Letter	26.08.2014 (Annexure C-4 at page 31 of complaint)
9.	Unit no.	3135, First Floor (As per BBA on page 38 of complaint)
10.	Unit area admeasuring (super area)	1685 sq. ft. (As per BBA on page 38 of complaint)
11.	Date of Floor Buyer Agreement	10.09.2014 (Page 37 of complaint)



12.	Possession clause	<p><b>5. Possession of Floor</b></p> <p><i>5.1. Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony naking timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals &amp; permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the agreement and subject to fulfillment of the Terms and Conditions of the Allotment, Certificate &amp; Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons. However, if the Buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The Buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to Environment &amp; Forest</i></p> <p><b>(Emphasis supplied)</b></p>
13.	Due date of possession	10.03.2018  (calculated as 36 months from the date of execution of Floor Buyer's Agreement plus 6

		months of grace period as the same is unqualified) <b>Note:</b> Grace Period is allowed.
14.	Total sale consideration	Rs. 1,29,51,500/- (As per payment plan at annexure 2 of BBA on page 67 of complaint)
15.	Amount paid by the complainant	Rs. 40,34,065/- (As mentioned by complainant on page 23 of CRA)
16.	Surrender letter	26.08.2017 (Page 71 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint:

- That the respondent through its marketing representation allured and approached the complainant to book a unit in the project being developed by the respondent. the respondent had claimed that the project is one of the finest one and the complainant did not have to face any form of hindrances if booked any unit/flat in the project of the respondent. the respondent represented that project is situated at prestigious and direct access from Sohna Road and nearby to golf course extension road. the same claims were made under the brochure provided to the complainants.
- That relying upon the representations, assurances, brochures, the complainant booked a unit no. 3135 on first floor, admeasuring super area of 1685 sq. ft. for agreed total sale consideration Rs. 1,34,86,928/- (Rupees One Crore Thirty-Four Lakh Eighty-Six Thousand Nine Hundred Twenty-Eight only) which is inclusive of preferential location charges,



- EDC and IDC. It is submitted that the complainant has made a payment of Rs. 12,12,670/- (Rupees Twelve Lakh Twelve Thousand Six Hundred and Seventy only) towards the booking of the flat and subsequently acknowledged by the respondent vide receipt no. 3495 dated 26.08.2014
5. That the allotment letter was issued by the respondent on dated 26.08.2014 wherein the complainant was allotted unit no. 3135 FF, admeasuring super area 1685 sq. ft. It is worthwhile to mention here that complainants opted for construction link payment plan. It is worthwhile to state here that respondent has further informed the complainant vide letter dated 26.08.2014 that a timely payment rebate of Rs. 250/- would be given at the time of offer of possession subject to all payments made before or by due dates.
  6. That the flat buyer's agreement (hereinafter referred to as "Agreement") was executed on 10.09.2014 inter se the parties. It is pertinent to note that as per the clause 5.1 of the agreement, the respondent agreed to deliver the possession of the allotted unit within 36 months along with a grace period of (6) six months from the date of signing of the agreement. However, the respondent has failed to deliver the possession as per the clause 5.1 of the agreement.
  7. That the complainants have made total payment of Rs. 40,34,065/- (Rupees Forty Lakh Thirty-Four Thousand and Sixty Five only) against the demand raised by the respondent which the respondent even acknowledged.
  8. That the complainant visited the site of the project several times to see the status of the project and was shocked to see that there was no progress in construction activity at site and also the project was way behind than the agreed development schedule. The claims and

- assurances made by the respondent at the time of booking of the unit and under brochure are falsified and incorrect. That, startled by the unlawful, dishonest and malafide act of the respondent, the complainant visited the office of the respondent and raised his concern about the progress of the construction activity but could not see anything getting constructed over the site. The complainant also asked them to refund the amount paid along with interest as the project was delayed. The complainant was assured that construction activities will resume in next 60 days. The respondent further assured that in case there is failure to resume construction activity within next days over project then the entire money paid by the complainants will be refunded along with interest @18% per annum.
9. That the complainants sent an email dated 19.06.2016 to the respondent again raising concern over the delay in construction. The same was acknowledged and the respondent even admitted to the delay in construction in reply to the email vide email dated 20.06.2016.
  10. It is humbly submitted that on visiting the site of the project over a period, the complainants again found that there was no development on site. Astonished by the act of the respondent, the allottees again visited the office of their and asked to redress his concern and refund the amount paid along with interest but to no avail.
  11. The complainants personally visited the office of the respondent on 26.08.2017 raised their concern over delay in project. However, no satisfactory answer was given by the representatives of the respondent. Thus, they handed over a letter dated 26.08.2017 whereby they sought a refund of money paid by the complainant along with interest as construction activity was not resumed.

12. That as per clause 5.1 of the agreement, the respondent was liable to handover the unit within 36 months along with (6) six months grace period from date of execution of agreement i.e., on or before 09.03.2018 however, they miserably failed to offer the unit. It is further submitted that the respondent again and again made false promises and commitments that the construction over the site will resume very soon, however the same was not done.
13. That it is submitted that the complainant did not get any form of response on the part of respondent in regard to refund of the money along with interest, after making repetitive requests by visiting to the office of the respondent and also over telephonic conversation.
14. That to safeguard the interest of justice the refund of the payment along with interest shall be allowed to the complainant as they have incurred immense loss and has suffered tremendous mental agony because of the delay in possession with no mistake of his own and without any reasonable justification from the side of the respondent.

**C. Relief sought by the complainants:**

15. The complainants have sought following relief(s):

- i. Direct the respondents to refund the entire paid-up amount along with interest at the prescribed rate.
- ii. Direct the respondent to pay compensation and litigation costs.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

16. It was stated at the outset that all the averments made in the complaint under reply may be considered to have been replied to and all the



allegations contained therein may be considered to have been specifically denied and controverted, unless admitted hereinafter.

17. It was submitted that the complainant through the captioned complaint has prayed for directions of refund under section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 of 40,34,065/- (Rupees Forty Lakh Thirty Four Thousand and Sixty Five Only) along with interest to the respondents, which were paid by the complainant towards the allotment of unit no. 3135, first floor in the project "Avante Floors, Versalia" in Sector 67, Gurugram, Haryana (hereinafter referred to as "unit").
18. It was further submitted that the complainant has made a total payment of Rs. 40,19,793/- (Rupees Fifty Lacs Nineteen Thousand Seven Hundred and Ninety-Three Only) till date toward the allotment of the Unit out of basic sale consideration of Rs. 1,24,46,000/- (Rupees One Crore Twenty-Four Lakh and Forty Six Thousand Only) excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges. Therefore, the complainants are liable to pay Rs. 84,26,207/- (Rupees Eighty Four Lakh Twenty Six Thousand Two Hundred and Seven Only) to the respondent towards the unit along with the delayed interest and as such he has miserably defaulted in its payments.
19. That the instant complaint deserves to be dismissed at the threshold in view of the conduct of the complainant. It is the first and foremost principle of law that the party approaching any legal forum/court for dispensation of justice must approach with clean hands. The complaint under reply is not only gross abuse of process of law but the same is filed with mala fide intentions of maligning the reputation and goodwill of the respondent. The contents of the instant complaint would reveal that the





complainant has suppressed material facts that are extremely relevant to the adjudication of the instant complaint. The courts have on all occasions come down heavily on litigants who have approached courts suppressing material facts. That the complainant by way of the present complaint is attempting to mislead this Hon'ble Authority by fabrication and concealment of facts which never existed and trying to unduly gain at the cost of the answering respondent, for which the complainant is not entitled under the law.

20. That the true and correct facts of the present case are mentioned below for proper adjudication of the captioned complaint:

- a. That the complainant approached respondent submitted application for allotment of unit in the upcoming project of the respondent namely 'Avante Floors, Versalia" **situated at Section 67/67A, Gurugram, Haryana** of the respondent company.
- b. The respondent while considering the application of the complainant, executed a flat buyer agreement dated 10.09.2014 (hereinafter referred as "FBA") and allotted the unit no. 3135, first floor in the project for basic sale consideration of Rs. 1,24,46,000/- (Rupees One Crore Twenty Four Lakh and Forty Six Thousand Only) excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.
- c. In terms of the FBA the respondent was obligated to deliver the possession of the unit to the complainant within a period of 42 months from the date of receiving the sanction plan for the project, subject to timely payment of dues by the complainant and force majeure circumstance.

- d. That the project commenced before the enforcement/ commencement of the Real Estate Regulatory Authority (RERA) Act, 2016 and as such prior to RERA, the parties were bound by the agreed terms of the said agreement.
- e. That the complainants failed to pay the due instalments as per the payment schedule agreed thereupon, in respect of the said dwelling unit. It is pertinent to mention here that the payment schedule was never adhered to by the complainants. It is submitted that the non-timely payment by the allottees is a major contribution to the non-timely delivery of the project.
- f. It is clearly mentioned in the call notices and the FBA, any delay in payment of the instalments as per the FBA the complainant shall amount to breach of the terms of the FBA and the complainant be liable to pay interest at 24% p.a. for the period of delayed payment. Further, in the event the complainant slept upon his duty to pay the instalments for 3 years, he does not have the right to claim compensation/ interest on the consideration paid to the respondent.

It was humbly submitted that the respondent is ready and willing to allot an alternate unit to the complainant in the same location and pay the delayed possession charges after the adjustment of delayed interest to be paid by the complainant for non-payment against the demand notices.

21. Without prejudice to the above, it was submitted that the construction of project of the respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of instalments by the allottees. However, it was submitted that



during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent henceforth, causing a delay in the construction work of the project.

22. Furthermore, it is pertinent to state that the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the answering respondent vide clause 5.2 of the floor buyer agreement, the complainants have agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainants in terms of the FBA have agreed and undertook to waive all his rights and claims in such a situation.
23. It is pertinent to state that the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. However, despite all odds, still, the respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the present situation of pandemic 'Covid-19' gets over and situation normalizes.
  - a. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f.



25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent no.1 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of the year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the respondent are not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due to the reasons mentioned hereinabove.

- b. That owing to the present situation, the real estate sector is severely affected due to the implementation of nationwide 'lockdown' w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the respondent. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide 'lockdown' to contain the spread of 'Covid-19', the Govt. of India has already extended the project completion deadlines of all the projects across the nation, by another six (6) months from the scheduled deadline of completion as per the agreements. Therefore, the respondent expects to complete the entire project within the said extended time period and expects to deliver the flat/ unit to the complainant very soon.



- c. The natural life cycle was about to come back on track which was derailed in March 2020 the sudden outbreak of the second wave of the pandemic of COVID in April 2021 in the nation made the situation worst from worse and the country once again was under the grip of COVID and subsequently, a lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and the real estate sector is no exception was hit the worst.
- d. It is pertinent to mention that it is the complainant who is at fault in making timely payment of due instalments because of which the construction of the said project became delayed. Non-payment of the instalments by the allottees is a 'force majeure' circumstance.
- e. It is further submitted that the delay in handing over the possession of the dwelling unit/ apartment has been caused only due to the various reasons which are beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble Court.
- i. **Non-booking of all apartments seriously affected the construction:** It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the number of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of

launch of the project. That, the reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing a delay in the construction work of the project.

ii. **Other various challenges being faced by the Respondent:**

The following various problems which are beyond the control of the respondent seriously affected the construction:

- a. Lack of adequate sources of finance;
- b. Shortage of labour;
- c. Rising manpower and material costs;
- d. Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played a major role in delaying the offer of possession:

- a. There was an extreme shortage of water in the region which affected the construction works;
- b. There was a shortage of bricks due to restrictions imposed by the Ministry of Environment and Forest on bricks kiln;
- c. The unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours;
- d. Recession in the economy also resulted in the availability of labour and raw materials becoming scarce;



- e. There was a shortage of labour due to the implementation of social schemes like the National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
- f. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in the NCR region.
- iii. Apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985* titled as "*M.C. Mehta-Versus-Union of India & Ors*" ("*Writ Petition*") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide Order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e. construction activities were only allowed between 6:00 AM to 6:00 PM. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble courts and tribunals.
24. All the above problems are beyond the control of the developer i.e., the respondent It may be noted that the respondent company had on many occasions orally communicated to the complainant that the construction

activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.

25. All other averments made in the complaint were denied in toto.
26. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

**E. Jurisdiction of the authority:**

27. 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:





**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.*

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.

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. 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."*

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 respondents:**

**F.I Objection regarding force majeure**

28. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, COVID-19, non-booking of apartments among others. The plea of the respondent regarding various orders of the NGT are devoid of merit. The orders passed by the NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding COVID-19 is also devoid of merit since the due date of possession expired in 2018 itself. Also, non-booking of all apartments by the allottees cannot be taken as plea for delay in completion of the project. It is understood that some units might not be booked by the allottees however, the allottees who have booked their units cannot be expected to suffer because of that. 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.



**G. Entitlement of the complainants for refund:**

**G.I Direct the respondents to refund the entire paid-up amount along with interest at the prescribed rate.**

29. In the present case, the complainants booked a plotted unit in the project of the respondent named as "Versalia" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. Rs. 1,29,51,500/-. Thereafter, they were allotted unit no. 3135 on 1<sup>st</sup> floor. The complainants have in total paid an amount of Rs. 40,34,065/-.
30. The buyer's agreement between the parties was executed on 10.09.2014. As per clause 5.1 of the BBA, the company endeavoured to complete the development of residential colony and the floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this floor buyer agreement. Thus, the due date of possession comes out to be 10.03.2018. However, the complainant even before expiry of the due date requested for refund of the deposited amount vide letter dated 26.08.2017. Thus, the complainant requested to withdraw from the project evn before due date had expired hence, it is a case of surrender of the unit by complainant.
31. The surrender of the unit was made by the complainant after coming into force of the Act of 2016. So, the respondent at the most can deduct 10% of the basic sale price of the unit and not more than that. Even the Hon'ble Apex court of land in case of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs. Vs. Sarah C. Urs, (2015) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attached and the party

so forfeiting must prove actual damage. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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."*

32. Keeping in view the above-mentioned facts and since the allottees' requested to withdraw from the project vide letter dated 26.08.2017, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount after forfeiture of 10% of sale consideration 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., 26.08.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**G.II. Direct the respondent to give compensation and also award litigation costs.**



33. The complainants in the aforesaid relief are seeking 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.* (decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

34. Hence, the authority hereby passes this order and issue 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.

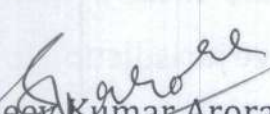
- i. The respondent-promoter is directed to refund the paid-up amount to the complainant after deducting 10% of the basic sale consideration of the subject unit being earnest money as per regulation 11(5) of Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.35% p.a. on the refundable amount, from the date of surrender i.e., 26.08.2017 till the date of actualisation of amount.

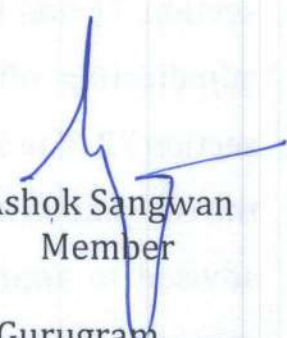


- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 02.11.2022**