BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3233 of 2019
First date of hearing: 04.12.2019
Date of decision: 30.08.2022

Minto Yadav
Address: - U-73/32, DLF Phase-3, Gurgaon **Complainant**

Versus

Emaar MGF Land Limited
Address: - ECE House, 28 Kasturaba Gandhi Marg,
New Delhi-110001 **Respondent**

CORAM:
Shri K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Akash Gupta Advocate for the Complainant
Shri Saurabh Kumar Advocate for the Respondent

ORDER

1. The present complaint dated 13.08.2019 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.	Occupation certificate granted on	05.12.2018 [annexure B, page 50 of reply]
3.	Provisional allotment letter	27.01.2013 [page 63 of reply]
4.	Unit no.	GGN-17-0601, 6th floor, Tower-17
5.	Area of the unit (super area)	1650 sq. ft.
6.	Date of execution of buyer's agreement	03.04.2013 [page 82 of reply]
7.	Possession clause	***14. POSSESSION*** ***(a) Time of handing over the Possession*** *Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all 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), for applying and obtaining the completion certificate/occupation certificate*** *in respect of the Unit and/or the Project.* (Emphasis supplied)
8.	Date of start of construction as per the statement of account dated 20.08.2019 at page 192 of reply	14.06.2013
9.	Due date of possession	14.06.2016 [**Note:** Grace period is not included]
10.	Total consideration as per the schedule of payment at page 113 of reply	Rs. 1,20,38,641/-
11.	Total amount paid by the complainant as per the statement of account dated 20.08.2019 at page 192-193 of reply	Rs. 34,37,013/-
12.	Complainant send a letter to the respondent for cancellation of unit	23.07.2014 [page 94 of complaint]
13.	Offer of possession	**13.12.2018**

		[annexure C, page 53 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

i. That the complainant booked a flat in Emaar MGF Land Limited the promoter/developer of the real estate project namely " Gurgaon greens" after seeing an advertisement which is located at sector-102, Dwarka expressway, tehsil and district Gurugram. That buyer's agreement was signed through authorized representative, on 03/04/2013, in which the completion period of the project as per clause 14 (a) was 36 months with a grace period of 5 months i.e., October 2016.

ii. The complainant submitted that to utter shock and surprise of the complainant, that the respondent started sending the demand notice prior to the start of construction of the project and further kept sending demand whereas the demand had to be raised as per the construction.

iii. The complainant submitted that thereafter he visited the respondent's office and pointed out that the demand is not being raised as per construction linked plan.

iv. That the complainant has made payments of total sum of Rs. 30,54,870.00/-. That despite repeated calls, meetings with the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. The complainant further requested several times to terminate the agreement due to inconsistent and lack of commitment to

complete the project on time as the complainant needed a house of his own as he was staying in a rented house.

v. That on 23.07.2014 the complainant wrote to the respondent for refund of payment which was received and stamped by the respondent as the construction had not started and demands were being raised. That the project was booked on 25/08/2012 and no work started till 2014, thereafter the complainant purchased another property after taking loan and paying an EMI of a sum of Rs. 79,190/- per month to ICICI housing finance loan as she had to pay heavy rent.

vi. That after making the down-payment in 2013, the complainant continuously requested for updates regarding the project and received no response from the respondent. The complainant visited the project site and noticed the project was massively lagging behind on its completion deadline. Thereafter, the complainant contacted the respondent seeking a refund but received no response.

C. Relief sought by the complainant:

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

i. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest at the rate of 24%.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -

i. It is submitted that without prejudice, after the enforcement of the Act, each developer was required to register its project if the same was an "ongoing project" and give the date of completion of the said ongoing project in terms of section 4(2)(1)(c) of the Act. Accordingly, the respondent had duly registered the said project, in which the apartment in question is situated having registration No. 36(a) of 2017 dated 5.12.2017. It is pertinent to mention herein that the respondent has already obtained the occupation certificate (oc) in relation to the tower in which the apartment in question is situated on 5.12.2018 and accordingly made an offer of possession to the complainant vide offer of possession dated 13.12.2018 subject to completing the formalities including pending payments due with a reminder letter dated 14.1.2019.

ii. The fact that the respondent has received the said occupation certificate and has offered possession to the complainant, the main relief sought by the complainant is infructuous as on date of filing of the present complaint. The fact that the complainant, despite being offered possession of the apartment in question, that too prior to filing of the present complaint, is still praying for refund with exorbitant and unreasonable interest @, 24% is not only frivolous but abuse of process of law. In fact, it is the complainant who has failed to comply with his obligations. The complainant, who has failed to pay any instalment post 29.05.2014, despite receiving the offer of possession qua the apartment in question, has not come forward to make the necessary payments and to

complete the possession formalities instead is seeking refund. It may also be mentioned that the project is in liveable condition and all the basic amenities are in place. The complainant ought to be directed to make the requisite payment and take possession of the apartment in question. On this score alone, the present complaint deserves to be dismissed at the very threshold. The complainant has suppressed material facts and documents in the present complaint, which are extremely relevant for a proper adjudication of the present complaint. As such, apart from suppression of material facts and documents, the averments of the complainant are also false and incorrect.

iii. It is submitted that despite non-payment of the pending dues by the complainant, and there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question As mentioned above, the respondent has completed the construction of the apartment, obtained the occupation certificate (OC) in relation to the tower in which the apartment in question is situated and accordingly made an offer of possession to the complainant.

iv. That the complaint is also liable to be dismissed for the reason that for the apartment in question, the agreement was executed on 03.4.2013 i.e. prior to coming into effect of the act and the rules. As such, the terms and conditions of the agreement dated 03.4.2013 executed prior to the applicability of the act and the rules, would prevail and shall be binding between the parties. in view thereof, this hon'ble authority has no jurisdiction to entertain the present

complaint as the complainant has no cause of action to file the present complaint under the act/rules.

v. It is settled law that the Act and Rules are not retrospective in nature. Therefore, the application of the sections/rules of the act/rules relating refund along with interest cannot be made retrospectively. As such, the complainant does not have any right whatsoever. That it is submitted that the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to provide definite commitment towards timely completion of the project are manifestly false and baseless. On the contrary, it is the complainant who is in clear breach of the terms of the agreement by not paying the instalments despite repeated request and reminders and possession of the apartment in question.

vi. The complainant was provided with the booking application form containing the terms and conditions of provisional allotment and the complainants were given the opportunity to familiarize themselves with the same. Clause 35 of the terms and conditions of booking as well as clause 15 of the agreement was specifically brought to the complainants notice which provided that timely payment of amounts payable by the complainant shall be the essence of the contract. It was specifically emphasized by the respondent that interest @ 24% per annum, shall be levied on delayed payments and that in the event of delay in payment with interest, the allotment was liable to be cancelled and earnest money

along with delayed payment interest and other applicable charges was liable to be forfeited. Therefore, it does not now lie in mouths of the complainant to allege default on part of the respondent. The non-payment of instalments on time directly impacts the ability of the developer to complete construction works. Default on part of the allottees who fail to make timely payment of instalments leads to delay in delivery of possession. Therefore, the developer cannot be faulted for such delay which is directly attributable to the defaults committed by the allottees.

vii. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects, as defined therein, which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking refund with interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement.

viii. The complainant is conscious and aware of the defaults in timely remittance of the instalments on her part. The complainant is fully aware of the fact that she is not entitled to any compensation or interest on account of the defaults in terms of the buyer's agreement and has filed the present complaint to harass the respondent and compel respondent to surrender to her illegal

demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

ix. The complainant on one hand is claiming her right of refund without fulfilling her duty of timely payment of instalment. The conduct of the complainant is a classic illustration of speculative intention of the complainant who is not able to pay the outstanding amount due to her financial incapacity/difficulty and now under the garb of the present act is trying to unjustly enrich herself by seeking refund with unreasonable and uncalled interest @ 24%.

x. It is submitted that the complainant failed to fulfil her duties in terms of the agreement. It is submitted that timely payment of instalment was essence of the agreement which has been blatantly ignored by the complainant. Despite not paying any instalment since May,2014 and having received the offer of possession of the apartment, the complainant is trying to wriggle out of its contractual obligation by seeking refund instead of remitting the outstanding amount and taking possession of the apartment. The complainant has not paid any instalment since May, 2014 and is now estopped from raising any claim whatsoever. The complainant has neither sought possession nor refund since 2014 and is now estopped from raising frivolous allegation.

xi. Apart from the aforesaid objections, this hon'ble authority may also consider the following objections, which go to the root of the maintainability of the present complaint:

i. That the complainant has no locus standi or cause of action to file the present complaint. The bare perusal of the complaint will make it evident that the complainant has miserably failed

to make a case against the respondent of contravention of any provision of the act or any of the rules made thereunder.

ii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. Moreover, most of the allegations made in the complaint are also barred by limitation.

iii. That it is pertinent to mention here that any complaint in respect of any matter/grievance covered under sections 12, 14, 18 and 19 of the said Act is required to be filed only before the adjudicating officer under Rule-29 in Form 'CAO' of the said Rules read with Section 31 and Section 71 of the said Act. However, the notice issued by the Ld. adjudicating officer is also to be under Rule-29. It may be submitted that the complainant filed the complaint initially praying for refund of the amounts. Thereafter, it transpires that the complainant also filed an application for amendment of the complainant, on the basis that she does not wish to withdraw from the project and would like to take possession of the apartment in question, along with compensation and interest. It is pertinent to point out that the complainant is neither entitled to any refund, as claimed or otherwise, nor is she entitled to any kind of interest or compensation with possession. Further, it is submitted that in any event there is no power conferred under the Real Estate (Regulation and Development) Act, 2016 or Rules framed thereunder for allowing for amendment of pleadings. Without a specific provision in this regard, amendments of pleadings cannot be permitted.

iv. That it is submitted that the complaint is not supported by any verification. The complaint is also not supported by any proper attested affidavit with a proper verification. In the absence of a proper signed, verified and attested complaint and affidavit supporting the complaint, the complaint is liable to be rejected.

v. That disputed and complicated questions of fact are involved which shall require leading of evidence and cannot be decided in summary proceedings under the Act and the Rules thereunder. Hence, the present complaint cannot be decided by this hon'ble authority.

vi. That, without prejudice to the above, it is stated that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. 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 complainant is not a consumer and nowhere in the present complaint, has the complainant pleaded, as to how the complainant is a consumer as defined in the consumer protection act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainants have entered into an agreement with the respondent to purchase the apartment in question. the

complainants, who is already the owner and resident 21 of house no. U 73/32, DLF Phase III, Gurgaon, Haryana (address mentioned in the present complaint and affidavit supporting the complaint) are investors, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that the Ld. adjudicating officer has no jurisdiction to entertain the present complaint as the complainants have not come to the ld. adjudicating officer with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complainants not being 'consumers' within the meaning of section 2(1)(d) of the consumer protection act, 1986, the complaint itself is not maintainable under the said Act. This has been the consistent view of the hon'ble national consumer disputes redressal commission.

vii. That it is submitted that several allottees like the complainant have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite

default of several allottees including the complainant, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situate is complete and the respondent has already got occupation certificate. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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.

8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement quoted above, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings

dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and it is observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra),** the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties proceeded further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the facts mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

12. 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.*

13. 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.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** *and reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

F. Findings on the relief sought by the complainant.

F.I. Direct the Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest at the rate of 24%.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

17. As per clause 14 of the flat buyer agreement dated 03.04.2013 provides for handing over of possession and is reproduced below:

> **14. POSSESION**
>
> ***(a) Time of handing over the Possession***
>
> *Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all 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), for applying and obtaining the completion certificate/occupation certificate*** *in respect of the Unit and/or the Project.*

18. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such

mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 5 for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project. The date of execution of buyer's agreement is 03.04.2013. The period of 36 months expired on 14.06.2016 (as per the date of start of construction), as a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 5 months cannot be allowed to the promoter at this stage.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by it in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate*

prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

22. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

23. The attention of the authority was drawn by the complainant regarding his letter dated 23.07.2014 of page 94 off the complaint where in the allottee communicated to the promoter regarding cancellation of the unit and refund of the amount. The allottee was having financial problem and did not intend to continue. The counsel for the respondent was specifically asked as why the request of the complainant was not considered regarding cancellation and if he intends to get the unit cancelled then the promoter should have refunded the amount after deducting 10% of the total sale price. Accordingly keeping in view, the request of the complainant, the respondent/promotor directed to refund the balance amount after deducting 10% of the total sale price

communicated at the time of allotment or BBA along with interest from the date of request of cancellation till the date of its actual realization.

24. 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."*

25. The rule 15 of the rules has determined the prescribed rate of interest and it provides that for the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. Consequently, as per website of the State Bank of India i.e., **https://sbi.co.in**, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

G. Directions of the authority

26. 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 of the unit by deducting the earnest money which shall not exceed the 10% of the sale consideration and shall return the balance amount to the complainant within a period of 90 days from the date of this order. The refund should have been made on the date of request of cancellation i.e., 23.07.2014, accordingly interest at the prescribed rate i.e., 10% is allowed on the balance amount from the date of request of cancellation till the date of its actual realization.

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.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.08.2022