



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

Complaint no. : 1867 of 2022
First date of hearing: 14.07.2022
Date of decision : 07.10.2022

1. Mr. Ravi Kumar Kejriwal
 2. Ms. Rajni Kejriwal
- Both RR/o: -392, Shree Awas, Sector- 18B, Dwarka,
New Delhi- 110078

Complainants

Versus

1. Roshni Builders Private Limited.
Regd. office: - LGF, F-22, Shushant Shopping Arcade
Sushant Lok Phase- I, Gurugram- 122002, Haryana
2. M3M India Private Limited
Regd. office: - 6th Floor, M3M Tree Point, Sector- 65,
Golf Course Road (Extn.) Gurugram - 122101

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Sh. Parteek Agarwal (Advocate)
Ms. Shriya Takkar (Advocate)

Complainants
Respondents

ORDER

1. The present complaint dated 05.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in



short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	Roshni Builders Pvt. Ltd., and Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Unit no.	R5, K215, 2 nd floor, block - 5 (Page no. 93 of the reply)
8.	Unit area admeasuring	816.29 sq. ft.

		(Page no. 93 of the reply)
9.	Date of booking application form	07.03.2020 (Page no. 75 of the reply)
10.	Welcome letter	01.08.2020 (Page no. 77 of the reply)
11.	Allotment letter	20.07.2020 (Page no. 78 of the reply)
12.	Date of execution of agreement to sell	24.09.2020 (Page no. 38 of the complaint)
13.	Possession Clause	<p>7. Possession of the unit</p> <p>7.1 Schedule for possession of the said unit: - The developer agrees and understands that timely delivery of possession of the unit along with the Car parking space(s), if any, to the Allottee and the Common areas to the Association of Allottees or the competent Authority, as the case may be, as provided under this Act and Rule 2(1)(f) of the Rules of 2017, is the essence of the agreement.</p> <p>7.2 It is further agreed between the parties that the Allottee shall not raise any objection or refuse to take possession of the Unit on ant pretext whatsoever, if the possession of the same is being</p>



		offered duly completed with all specifications, amenities, Facilities, as mentioned in 'Schedule E' hereto, any time prior to the commitment period.
14.	Due date of possession	31.10.2023 [as per mentioned in the RERA registration]
15.	Total sale consideration as per agreement for sale dated 24.09.2020 pat page no. 141 of the reply	Rs.1,18,96,153/-
16.	Total sale consideration as per applicant ledger dated 27.06.2020	Rs.1,28,98,220/-
17.	Amount paid by the complainant	Rs.59,48,986/- (As alleged by the complainant page 21 of the complaint)
18.	Occupation certificate /Completion certificate	13.12.2021 (Page no. 152 of the reply)
19.	Offer of possession	16.12.2021 (Page no. 154 of the reply)
20.	Pre cancellation notice	17.01.2022 (Page no. 161 of the reply)
21.	Cancellation letter	01.02.2022 (Page no. 162 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants have been allotted a commercial space and invested their hard-earned money in booking the space in the commercial project known as "M3M Broadway". It is evident to mention that they purchased the property from their own savings in order to augment his income by using this property for livelihood.
- II. That the respondent no 1 i.e., promoter through respondent no 2 launched a commercial project named M3M Broadway project in Village Fazilpur Jharsa, Sector 71, District Gurgaon with the assurance of payment of "Assured Return" @ 18% on rented property.
- III. That the complainants upon the representation of respondent had purchased a unit in the project and were allotted a commercial space vide unit no. R5-K215 on second floor in tower/block/building No. 05 having carpet area of 10.45 sq. mtrs. (112.48 sq. ft.) and super area of 75.84 sq. mtrs. /816.29 sq. ft. space in the said complex for use as food court in the aforesaid project. There is no rational to inflate super area more than 7 times and is not permissible under law.

- IV. That the complainants had made the payment of Rs. 59,48,076/- out of total consideration of Rs. 1,18,96,153/- for allotment of the unit.
- V. That before the allotment of unit in the above-mentioned project of respondents to the complainants, they had booked a residential unit in the project "M3M Woodshire" of the respondents located at Sector 107, Gurgaon upon the representation made by them. That for booking in M3M Woodshire, complainants had made a payment of Rs. 13,10,000/- on 11.08.2018 for which respondent no. 1 i.e., promoter had issued a receipt no. 63593 dated 17.08.2018. Thereafter, upon the demand of the respondent/promoter for further payment to the tune of 10% of the total sale consideration, an amount of Rs.1,81,078/- was paid on 01.09.2018 for which receipt no. 72225 was issued. Thus, a total amount of Rs. 1,491,078/- has been paid to the respondent no. 1 on 11.08.2018 and 01.09.2018 respectively.
- VI. That vide several correspondences dated 27.08.2018, and 18.09.2018, the complainants had continuously informed the respondent/promoter about various deficiencies and incorrect promises made regarding the M3M Woodshire project. It is evident to mention that complainants after visiting the site had observed that there were serious quality issues with respect to the

construction being carried out by respondent no 1. Finally, after receiving no reply, vide email dated 04.10.2018, complainants requested for cancellation and asked for refund of amount paid but to no avail. That respondent no 1 has also not informed the complainants about the impact of Najafgarh Drain and hazard to health due to foul smell and emission of toxic gas throughout the day in the M3M Woodshire project. That upon inspection in the project, there appear to be cracks in the wall and basement was also waterlogged. Despite informing the respondent no 1 of the above-mentioned facts and for cancellation and refund due to that, it has unilaterally forfeited the amount paid by the complainants. A legal notice was also sent to the respondent no 1 vide email and registered post. But no reply was given for legal notice. They allured the complainants to shift another project instead of refund, therefore, there was no option left with them but to shift to other projects.

- VII. Thereafter, on 23.02.2020, complainants paid an amount of Rs. 1,00,000/- towards the booking in another project corner walk of the respondent which was debited on 25.02.2020. But after further discussions with the sales department of respondents, it was decided to book the unit in M3M Broadway and adjust all the amount from other project in it.

- VIII. Then on 11.03.2020, the complainants had paid an amount of Rs. 50,000/- towards the booking in the project "M3M Broadway" of the respondents upon their representation of assured return and other information. The complainants were allotted a unit no. R5 122 in the project. But same was requested for cancellation and refund by the complainants owing to difference in clauses in allotment letter and also amount already paid in M3M Woodshire not being adjusted in the cost of unit no R5 122 of M3M Broadway. The carpet area was also offered much lower compared to super area. All these issues were communicated to the respondents but to no avail.
- IX. Thereafter, several correspondences and negotiations, complainants requested the respondent/promoter vide letter dated 10.07.2020 for cancellation of unit allotted in M3M Woodshire and adjust the amount paid in it towards booking of unit no. R5 K215 in M3M Broadway of the respondent no 1. That vide allotment letter dated 01.08.2020, complainants were allotted unit no. R5 K215 in M3M Broadway. It is evident to mention that complainants had requested for booking in the M3M Broadway project upon the representation made by the respondent and also as per the information in newspaper about assured return @ 18% on rented property. It is submitted that after the payment of

booking amount, complainants were sent the provisional allotment letter which contains clauses prejudicial to the interest of buyers.

- X. That in pursuant to it, respondent no. 2 had adjusted the amount paid by the complainants of Rs.14,91,078/- towards booking in M3M Woodshire and Rs.1,00,000/- towards booking in corner walk and Rs.50,000/- towards booking in M3M Broadway, total amounting to Rs.16,41,078/- towards the booking for unit no. R5 K215 in M3M Broadway, for which receipts were also issued. Further, that upon several demands for payment, complainants had made a payment of Rs.39,830/- on 09.09.2020, Rs.14,00,000/- on 09.09.2020 and Rs.28,67,168/- on 09.09.2020 to the respondent for which receipts were issued by the respondent no 2. Thus, the complainants have paid in all Rs.59,48,076/- to the respondent.
- XI. That as per law, a builder cannot accept a sum more than ten per cent of the cost of the unit, as an advance payment without first entering into a written agreement for sale and the register the said agreement for sale. But despite that the respondents have collected more than 10% of the total sale consideration from the complainants, being in complete contravention of the provisions of

the act applicable and amounts deficiency of service as per consumer protection Act, 2019.

- XII. That on 21.08.2020, respondent had sent the draft of agreement to sell for the unit in question in M3M Broadway for signing and execution and also vide email dated 21.08.2020 had sent the commitment letter/comfort letter regarding the assured return for signing. It is evident to mention that the agreement to sell was signed as per the instructions for signing by the complainants and signed copy was provided to the respondent. But due to non-agreeing with the terms of commitment letter for assured return and in accordance to what was promised, the same was not signed by the complainants.
- XIII. That after the signing of the agreement to sell and providing the signed copy to the respondents by the complainants, several correspondences and reminder were sent for getting the agreement registered via WhatsApp messages and emails since September 2020 till August 2021 but to no avail. That respondents have kept the registration of the agreement to sell pending on one pretext or another for more than 9 months after receiving the signed copy of it by the complainants.
- XIV. That the respondents have failed to disclose the true stage of the project and its situation, which would affect the decision of

purchase of the complainants with the object to lure on the basis of incomplete information and thereby misleading. The respondents have failed to disclose the fact that carpet area is only 12.5% whereas during discussion before purchase, it was promised that carpet area would be around/below 35%. That respondents during discussion have also failed to even explain how the value of property was calculated and complainants got to know only through allotment letter after deposit the amount as demanded by respondents. The respondents even during the discussion regarding the terms and conditions of assured return informed that there are no terms and conditions, despite which sent a commitment letter with many terms not informed earlier through WhatsApp chats.

- XV. That as per clause 25.1 of the buyer's agreement, "*the allottee and the promoter have an obligation to execute the Agreement and also register the said Agreement within the prescribed timelines as per applicable law*". That as per Section 13 of the Act, 2016, "*a builder cannot accept a sum more than ten per cent of the cost of the unit, as an advance payment without first entering into a written agreement for sale and the register the said agreement for sale*". Now, in the present case, the respondents have collected more than 10% of the total sales consideration from the complainants, without being

agreement to sale registered within the prescribed timeline as per applicable law and thus, the act amounting to deficiency of services and defect by not acting in accordance with the applicable laws.

- XVI. That the complainants have filed a consumer complaint before the District Consumer Commission, Gurugram but due to amendment in 2021 in Consumer Protection Act, 2019 regarding the pecuniary jurisdiction, the same is not maintainable and has been withdrawn.
- XVII. That during the pendency of the consumer complaint, respondent no 1 had issued a letter for offer of possession vide email dated 27.12.2021 and the same was replied by the complainants vide email dated 29.12.2021 and via speed post received on 03.01.2022 to the respondents. That, thereafter, vide letter dated 17.01.2022, respondents have issued a precancellation notice in accordance with the builder buyer agreement. It is evident to mention that builder buyer agreement was never executed by the respondents as mentioned above.
- XVIII. Thereafter, vide letter dated 01.02.2022, respondents have cancelled the allotment of the unit and had also forfeited the entire amount paid by the complainants illegally, arbitrary in contravention of the provisions of the Act, 2016.
- XIX. The cause of action to prefer the present complaint arose in and around 01.02.2020 when respondent cancelled the allotment of

unit and forfeited the full amount arbitrarily. The cause of action is a continuous one and would continue to subsist till such time as this authority will pass an order as prayed below.

C. Relief sought by the complainants:

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

I. Refund the total amount of Rs.59,48,076/- deposited by the complainants along with interest as per the provisions enumerated under section 18 of the Act of 2016.

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 respondents.

6. The respondents have contested the complaint on the following grounds.

I. That the complainants have neither any cause of action nor any *locus standi* to maintain the present complaint against them especially when they have defaulted in making payments and now are seeking the complete amendment/ modification/re-writing of the terms and conditions of the application form/allotment letter. This is evident from the averments as well as the prayer sought in the complaint. It is submitted that the complaint filed is baseless,

vexatious and is not tenable in the eyes of law and deserves to be dismissed at the threshold.

- II. That the complainants had earlier booked a unit in M3M Woodshire and paid an amount of Rs.14,91,078/- bifurcated as Rs.13,10,000/- on 11.08.2018 and thereafter Rs.181,078/- on 01.09.2018. Subsequently, due to non-payment of dues, the allotment was cancelled. The complainants again approached the respondent/promoter and paid an advance sum of Rs. 1,00,000/- for booking a unit at M3M Corner Walk project. They later changed the decision and decided that they do not want to purchase any unit in M3M Corner Walk.
- III. That after changing the decision to purchase a unit in M3M Corner Walk, the complainants after conducting their own due diligence again requested and applied for allotment of a commercial unit in the project 'M3M Broadway' in Sector 71 Gurugram, being developed in a phased manner by the respondent company by shifting the amounts earlier paid, without any deductions of earnest money, brokerage, taxes etc towards the amount payable for unit in M3M Broadway. The complainants had also duly signed and understood the indicative terms and conditions of the allotment along with the application form dated 14.03.2020 and paid an amount of Rs. 50,000/- towards the booking amount for the unit in M3M Broadway.
- IV. That in the consideration of the booking amount paid by the complainants and commitments to comply with the terms of the booking/allotment and make timely payments, the respondent

company provisionally allotted the unit bearing no. R5 K215 on 2nd floor in Block-5 admeasuring with a super area of 816.29 sq. ft. in their favour vide provisional allotment letter dated 20.07.2020 for an agreed cost of Rs.1,18,96,513/- (including applicable GST).

- V. That on the insistence of the complainants, the respondent/promoter changed the payment plan to 50:50 i.e., 50% of the total consideration on booking and 50% on offer of possession. The demand note was issued on a specific request of the complainants.
- VI. That thereafter, the respondent company in furtherance of the allotment sent copies of the buyer's agreement to the complainants for the execution at their end along with the covering letter dated 21.08.2020 and the same was executed between the parties on 24.09.2020. It is pertinent to mention that the buyer's agreement duly covered the liabilities and rights of both the parties.
- VII. That respondent/promoter being a customer-oriented company, on the request of the complainants transferred the amount paid to the unit no. R5K215. The said amount was transferred in the month of September 2020 and accordingly, receipts dated 09.09.2020 were issued by the promoter.
- VIII. That the complainants have failed to make out a case under section 18 of the Act of 2016 as the possession was offered before the agreed possession timeline in accordance with the buyer's agreement is 31.10.2023. The respondent company completed the construction and development of the complex were before the agreed timeline and applied to the competent authority for the grant of occupancy certificate on 31.08.2021 after complying with

all the requisite formalities. Thereafter, the occupation certificate was granted after due verification and inspection by the competent authorities on 13.12.2021

- IX. That the respondent company fulfilled its promise and constructed the said unit of the complainants and sent an offer of possession dated 16.12.2021 to them well before the agreed timeline.
- X. That even after continuous reminders the complainants failed to come forward to clear outstanding dues and take over the possession of the unit. Therefore, the respondent was constrained to issue a pre-cancellation notice dated 17.01.2022. However, the complainants failed to avail that opportunity and continued to breach the terms of buyer's agreement.
- XI. That on account of wilful breach of terms of buyer's agreement by failing to clear the outstanding dues despite repeated requests, the respondent company was constrained to cancel the allotment of unit vide cancellation notice dated 01.02.2022. It is submitted that the complainants have till date made a payment of Rs.69,14,779/- as raised by the respondent company in accordance with the payment plan and the terms of the buyer's agreement.
- XII. That the respondent/promoter was constrained to cancel the unit on account of non-payment of the demands as raised by them. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the agreement by the complainants, for which they are liable to pay as per the terms of the agreement.

- XIII. That the terms of agreement were entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. The agreement was duly acknowledged by the complainants after properly understanding each and every clause contained in the agreement. The complainants were neither forced nor influenced by them to sign the said agreement. It was the complainants who after understanding the clauses signed the said buyer's agreement in complete senses.
- XIV. That as per clause 5 of the agreement entered into between the parties, time was the essence of the agreement and the allottees were bound to make timely payments of the instalments due as per the payment plan opted by them.
- XV. That the complainants have failed to fulfil the obligations in terms of the agreement executed between the parties and are trying to take the benefit of their own wrong of not making payment of pending dues. As per the terms of agreement, the complainants were under an obligation to make payments in a timely manner as and when demanded from them. The complainants were requested to clear outstanding dues and various demand notices were sent as per the payment plan opted by them. Despite repeated requests the complainants did not come forward to clear dues and the respondent was constrained to issue cancellation notice dated 01.02.2022.
- XVI. That the complainants have defaulted in making payment on time contrary to the agreed terms. It is further submitted that various

reminders were issued and follow ups were made with the complainants for complying with the obligations under the terms of buyer's agreement to make further payments. Even after repeated demands, the complainants were not ready to come forward and comply with the obligations to make payments. Hence, they are not entitled to get any reliefs from the authority.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11

.....

(4) *The promoter shall-*

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs*

Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

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

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

F. Findings on the relief sought by the complainant

F.I Refund the total amount of Rs.59,48,076/- deposited by the complainants along with interest as per the provisions enumerated under section 18 of the Act of 2016.

13. The complainants submitted that they earlier booked a residential unit in "M3M Woodshire" and made a payment of Rs.14,91,078/- towards total sale consideration. Thereafter, upon inspection, they observed various deficiencies ultimately resulting in cancellation of the said unit.

The respondent no. 1 unilaterally forfeited the entire amount paid by them for which a legal notice was also issued against respondent no. 1. Thereafter, the complainants booked a unit in "M3m Broadway" and paid an amount of Rs.50,000/- as a booking amount. But again, they requested for cancellation and refund of the entire amount, as the amount of Rs.14,91,078/- already paid against the unit in the project M3M Woodshire was not adjusted by the respondent in the present project i.e., M3M Broadway. Furthermore, after various correspondences made between the parties, the respondents adjusted the amount of Rs.16,41,078/- already paid by in the present project with respect to the unit no. R5, K215, 2nd floor, block - 5. Till date, the complainants have paid an amount of Rs.59,48,076/- to the respondents.

14. On consideration of the documents available on record and submission made by both the parties, the authority is of the view that the application form for the provisional allotment issued by the respondent company i.e., **Roshni Builders Private Limited** and the same was signed by the complainant/allottee. Further, the allottees failed to abide by the terms of agreement for sale by not making the payments in timely manner as per the payment plan opted by them. They paid an amount of Rs.59,48,986/- towards the total sale consideration of the unit as per the statement of account annexed with offer of possession dated



16.12.2021. Accordingly, the complainants failed to abide by the terms of the agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. This reluctant behavior of complainants led to issuance of notice of cancellation by the respondent on 01.02.2022. Now, the question before the authority is whether this cancellation is valid?

15. As per clause 9.3 of the agreement to sell, the allottees have a right to cancel/withdraw from the project. Clause 9.3 of the agreement to sell is reproduced as under for a ready reference:

Clause 9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- (i). *In case the Allottee fails to make payments for two consecutive demands made by RBPL despite having been issued notice in that regard the Allottee shall be liable to pay interest to RBPL on unpaid amount at the rate prescribed in the Rules.*
- (ii). *In case of default by the Allottee continues for a period of 90 (ninety) days after notice from RBPL in this regard, RBPL may cancel the allotment of the Unit along with the parking (if applicable) if any, in favour of the Allottee and refund the money paid by the Allottee after forfeiting the Earnest Money (being 10% (ten percent) of the Total Consideration) and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to RBPL in terms of Clause 1.16 herein before) and brokerage/ any rebates availed earlier/ margin/ incentive paid to a "Indian Property Associate" ("IPA")/"Channel Partner") in case booking is made through a "Indian Property Associate" ("IPA")/"Channel Partner"). The balance amount of money paid by the Allottee shall be returned by RBPL to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation. On such default, the Agreement and any liability of RBPL arising out of the same shall thereupon, stand terminated. Provided that, RBPL shall intimate*

the Allottee about such termination at least 30 (thirty) days prior to such termination."

16. The respondents had issue pre-cancellation letter and thereafter, issued cancellation letter to the complainants. The occupation certificate for the project of the allotted unit was granted on 13.12.2021. The respondent cancelled the unit of the complainants with adequate notices. Thus, the cancellation of unit is valid.
17. 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."

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

F. II To pay the litigation expenses of Rs.1,25,000/-.

19. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. 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. (supra)*, 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 complaint in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed to refund the balance amount after deducting the earnest money which shall not exceed the 10% of the



basic sale consideration of the said unit and shall return the balance amount to the complainants. The refund should have been made on the date of cancellation i.e., 01.02.2022. Accordingly, the interest at the prescribed rate i.e., 10% is allowed on the balance amount from the date of cancellation to date of actual refund.

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

21. Complaint stands disposed of.

22. File be consigned to registry.

Ashok Sangwan
Member

V.I - 3
Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.10.2022

HARERA
GURUGRAM