


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

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| Complaint no. | : | 4652 of 2022 |
| First date of hearing: | | 17.08.2022 |
| Order Reserve On | : | 23.11.2022 |
| Order Pronounce On: | | 14.02.2023 |

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| 1. Sahil Sridhar R/o: H. no. 16, Sector-12, Part-II, Huda, Panipat-132103 2. M/s Bonanza Infratech Pvt. Ltd. Office at: 36, Shanti Kunj, Vasant Kunj, New Delhi-110070 |  Versus | Complainants |
| M/s Ireo Grace Realtech Private Limited Office at : - C-4, 1 st Floor, Malviya Nagar, New Delhi, South Delhi-110017 | | Respondent |
| CORAM: | | |
| Shri Ashok Sangwan | | Member |
| Shri Sanjeev Arora | | Member |
| APPEARANCE: | | |
| Shri Maninder Singh | | Advocate for the complainants |
| Shri M.K Dang | | Advocate for the respondent |

ORDER

- The present complaint dated 11.07.2022 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 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 thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads | Information |
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| 1. | Project name and location | "The Corridors" at sector 67A, Gurgaon, Haryana |
| 2. | Licensed area | 37.5125 acres |
| 3. | Nature of the project | Group Housing Colony |
| 4. | DTCP license no. | 05 of 2013 dated 21.02.2013 valid upto 20.02.2021 |
| | Licensee | M/s Precision Realtors Pvt. Ltd. and 5 others. |
| 5. | RERA registered/not registered | Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017 (Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3) |
| | Validity | 30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3) |
| 6. | Unit no. | 801, 8th floor, Tower A10 (page no. 20 of complaint) |
| 7. | Unit measuring | 1726.69 sq. ft. (page no. 20 of complaint) |



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| 8. | Date of approval of building plan | 23.07.2013 (annexure R-28 on page no. 84 of reply) |
| 9. | Date of allotment | 07.08.2013 (annexure C-1 on page no. 20 of complaint) |
| 10. | Date of environment clearance | 12.12.2013 (annexure R-32 on page no. 99 of reply) |
| 11. | Date of agreement to sell | 14.09.2013 (page no. 24 of complaint) |
| 12. | Date of execution of builder buyer's agreement | Not executed |
| 13. | Date of fire scheme approval | 27.11.2014 (annexure R-30 on page no. 103 of reply) |
| 14. | Reminders for payment | For Fourth Instalment: 14.03.2015, 04.04.2015 For Fifth Instalment: 05.11.2015, 10.02.2016 For Sixth Instalment: 07.01.2016, 10.02.2016 For Seventh Instalment: 11.02.2016, 04.03.2016 For Eighth Instalment: 28.03.2016, 19.04.2016 For Ninth Instalment: 04.05.2016, 26.05.2016 Final Notice: 28.07.2016. |
| 15. | Date of cancellation letter | 01.09.2016 (annexure R-31 on page no. 104 of reply) |
| 16. | Total consideration | Rs. 1,94,16,103/- (as per payment plan on page no. |



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| | | 34 of reply) |
| 17. | Total amount paid by the complainants | Rs.46,18,424/- (as per cancellation letter on page no. 105 of reply) |
| 18. | Due date of delivery of possession | 23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed. |
| 19. | Possession clause | 13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder (Commitment Period). The Allottee further agrees and understands that the company shall additionally be |

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| | | entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company. (Emphasis supplied) |
| 20. | Occupation certificate | 31.05.2019 (page no. 110 of reply) |
| 21. | Offer of possession | Not offered but cancelled |

B. Facts of the complaint

The complainants have submitted as under:

3. That the complainant Sahil Shridhar was approached by the respondent and being lured its representations applied for allotment of a unit in the project namely 'Ireo Corridors' situated at Sector-67A, Gurugram. The allotment letter of the said unit was issued on 07.08.2013.
4. That the complainant no. 1 suffered tremendous financial constraints and to finance further instalments contacted complainant no. 2. Thereafter, the complainants on consensus ad idem entered into an agreement to sale dated 14.09.2013 wherein the complainant no. 1 agreed to assign and transfer 50% of his right in the allotted unit to the complainant no. 2.
5. That the respondent after a gap of almost 9 months provided the draft of the buyer's agreement. On perusal of various clauses under the draft of the agreement the respondent had the authority to impose an exorbitant rate of interest on the complainants to the tune of 20% on delayed payments whereas, it was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 7.50 per sq. ft. of the super built-up area of the apartment.



6. That due to such arbitrary and unilateral clauses the complainants choose to not execute the said flat buyer's agreement and the same was communicated to the respondent. But the respondent had been ignorant of the fact that they had chosen to not execute the arbitrary buyer's agreement. Instead of revising the terms and condition of the draft of flat buyer's agreement, on the contrary, the respondent kept sending various reminders for payment of the instalments to the complainants without even reaching a particular milestone for demand of such payment. Moreover on 28.07.2016 the respondent with a malafide intent sent a final notice for payment of Rs. 1,36,96,696/- with in a period of 30 days failing which the allotment was to liable cancelled and the amount paid by them to the extent of earnest money, interest on delayed payment, brokerage/commission/charges, service tax and other amount if any to be forfeited to that extent.
 7. That as per clause 13.3 of the said flat buyers' agreement the delivery of the flat was to be done within 42 months from the date of approval of the building plan which comes out latest by January 2017.
 8. That the complainants till date have made a payment of Rs. 46,18,424/- to the respondent but it has failed to complete the construction of the apartment and deliver the same within 42 months.
 9. That the complainants had requested the respondent to deliver the possession of the apartment several times personally and also over telephonic conversation, but the respondent has failed to adhere to the request of the complainants. The complainants are aggrieved since they had already paid a substantial amount of money towards the allotment, and they had till date neither got any refund nor got the possession of the allotted flat.
- C. Relief sought by the complainants:**
10. The complainants have sought following relief(s):

- (i) Direct the respondent to refund the amount of Rs.46,18,424/- with prescribed rate of interest paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
11. 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.

The respondent has contested the complaint on the following grounds: -

12. That the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed. The allotment of the unit allotted to the complainants was terminated prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
13. That there is no cause of action to file the present complaint.
14. That the complainants have no locus standi to file the present complaint.
15. That the present complaint is barred by res-judicata.
16. That the complaint is bad for mis-joinder of parties. The allotment of the unit was not made in the name of complainant no. 2 by the respondent, and it has been wrongly arrayed as such.
17. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
18. The present complaint is barred by limitation.
19. That the complainant no. 1 is estopped from filing the present complaint by his own acts, conducts, omissions, admissions, acquiescence and laches.

20. That the complaint is not maintainable for the reason that the booking application form contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 54 of schedule I of the booking application.
21. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the complaint. The complainants had previously filed identical complaint bearing complaint no.CR/560/2019 titled 'Sahil Sridhar and Bonanza Infratech Pvt. Ltd. Vs. Ireo Grace Realtech Pvt. Ltd.' and the said complaint was dismissed by the Hon'ble Adjudicating Officer on 16.09.2021 as they failed to file the said complaint in proper format despite several opportunities being granted to them. Moreover, costs of Rs. 5000/- were also imposed upon them complainants which they failed to pay. It is pertinent to mention here that the complainants neither filed the amended plaint nor deposited the cost levied upon them and have instead filed the present false, frivolous and baseless complaint again. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
22. That complainant no.1, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of an apartment by filling the application for provisional registration of residential apartment and the booking application form and also deposited the part earnest amount of Rs. 10,00,000/- He agreed to be bound by the terms and conditions of the booking application form.
23. That as per the agreed payment schedule, vide payment request dated 14.04.2013, the respondent raised a demand for the second installment of net payable amount of Rs. 23,46,486/-. Complainant no.1 deposited the part of the

- demanded amount only after a reminder dated 14.05.2013 was issued to him by the respondent and the remaining amount was adjusted in the next payment installment demand as arrears.
24. That based on the application for booking, the respondent vide its allotment offer letter dated 07.08.2013 allotted to complainant no.1 apartment no. CD-A10-08-801 having tentative super area of 1726.69 sq. ft. for a total sale consideration of Rs. 1,94,16,103.61. Vide letter dated 13.12.2013, the respondent sent 3 copies of the apartment buyer's agreement to complainant no. 1. However, he failed to execute the same despite reminders dated 13.01.2015 and 28.03.2016 respectively.
 25. That vide payment request dated 18.03.2014, the respondent had raised the demand of third installment for net payable amount of Rs. 25,89,632.22 followed by reminders dated 13.04.2014 and 04.05.2014. However, the same were never paid by the allottee.
 26. That vide payment request dated 18.02.2015, the respondent had raised the demand of fourth installment for net payable amount of Rs. 38,87,267/- followed by reminders dated 14.03.2015 and 04.04.2015. However, complainant no.1 again failed to pay the due installment amount.
 27. That again vide payment request dated 01.10.2015, the respondent had raised the demand of fifth installment for net payable amount of Rs. 61,79,879.65 followed by reminders dated 05.11.2015 and 10.02.2016. Yet again, complainant no.1 defaulted in abiding by his contractual obligations.
 28. That vide payment request dated 02.11.2015, the respondent had raised the demand of sixth installment for net payable amount of Rs. 84,72,492.63 followed by reminders dated 07.01.2016 and 10.02.2016. However, complainant no.1 again failed to pay the due installment amount.

29. That vide payment request dated 05.01.2016, the respondent had raised the demand of seventh installment for net payable amount of Rs.1,03,09,310.25 followed by reminders dated 11.02.2016 and 04.03.2016. However, the same was never paid by complainant no.1.
30. That again vide payment request dated 01.03.2016, the respondent had raised the demand of eighth installment for net payable amount of Rs.1,20,03,003.20 followed by reminders dated 28.03.2016 and 19.04.2016. Yet again, complainant no.1 defaulted in abiding by his contractual obligations. The respondent had also intimated to complainant no.1 vide letter dated 14.03.2016 about the outstanding amount along with the delayed interest accrued on account of non-payment of the installments by the complainants.
31. That vide payment request dated 04.04.2016, the respondent had raised the demand of ninth installment for net payable amount of Rs. 1,36,96,696.16 followed by reminders dated 04.05.2016 and 26.05.2016 followed by final notice dated 28.07.2016. However, complainant no.1 again failed to pay the due installment amount.
32. That it is pertinent to mention here that timely payment of installments within the agreed time schedule was the essence of allotment. Complainant no.1 is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, his calculations went wrong on account of slump in the real estate market and complainant no.1 did not possess sufficient funds to honour his commitments. Complainant no.1 was never ready and willing to abide by his contractual obligations and he also did not have the requisite funds to honour his commitments.
33. That according to clause 43 of schedule- 1 of the booking application form, the respondent was to offer the possession to the complainants within a period of 42 months + 180 days grace period from the date of approval of the Building

Plans and/or fulfilment of the preconditions imposed thereunder. Furthermore, complainant no.1 had undertaken in clause 44 of schedule- I of the booking application form for an extended delay period of 12 months from the date of expiry of the grace period. From the aforesaid terms of the booking application form, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub-clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. The fire scheme approval was granted on 27.11.2014 and the time period for offering the possession, according to the agreed terms of the booking application form, would have expired only on 27.11.2019. There could not be any delay till 27.11.2019.

34. That on account of non-fulfilment of the contractual obligations by complainant no.1 despite several opportunities extended by the respondent, the allotment of complainant no.1 was cancelled, and the earnest money was forfeited vide cancellation letter dated 01.09.2016 in accordance with clause 7 read with clause 11 of the booking application form and complainant no.1 is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment. The respondent has applied for the grant of occupation

certificate vide application dated 06.07.2017 and the occupation certificate was granted on 31.05.2019.

35. 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 submission made by the parties.

E. Jurisdiction of the authority

36. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

37. 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

38. 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.

39. 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.
40. 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.*** SCC Online SC 1044 decided on 11.11.2021 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."

F. Findings on the objections raised by the respondent.

F.I Objection regarding complainants are in breach of application form for non-invocation of arbitration

41. The respondent submitted that the complaint is not maintainable for the reason that the application form contains an arbitration clause which refers to

the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"54. Dispute Resolution by Arbitration

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

42. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the application form as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be

bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

43. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

*...
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

44. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh*** in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018 has

upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

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

G. Findings regarding relief sought by the complainants.

- (i) Direct the respondent to refund the amount of Rs.46,18,424/- with prescribed rate of interest paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

46. The complainant no. 1-allottee booked a residential apartment in the project of the respondent named as "Corridors" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. 1,94,16,103/-. The allotment of the unit was made on 07.08.2013. Thereafter on 14.09.2013 the agreement to sell was executed between the complainant no. 1 and complainant no. 2 and the complainant no. 1 assigned his 50 percent of rights to complainant no. 2. Moreover, no builder buyer agreement was executed between the parties.
47. As per the payment plan the respondent started raising payments from the complainants but they defaulted to make the payments. The complainant-allottees in total has made a payment of Rs.46,18,424/-. The respondent vide letter dated 18.03.2014 raised the demand towards third instalment and due to non-payment from the complainants it sent reminders on 13.04.2014 and 04.05.2014 and thereafter various instalments for payments were raised but the complainants failed to pay the same. Further the respondent sent final notice dated 28.07.2016. Thereafter the respondent cancelled the allotment the unit vide letter dated 01.09.2016. The occupation certificate of the tower where the allotted unit is situated has been received on 31.05.2019.
48. The respondent-builder took a plea that after the cancellation of allotted unit on 01.09.2016, the complainants filed the present complaint on 11.07.2022 i.e., after more than 5 years and thus, is barred by the limitation. The authority observes that the case of the complainants is not against the cancellation letter issued way back as on 01.09.2016 as the same cannot be agitated as complaint was filed after more than 5 years well beyond the limitation period. But the promoter was required to refund the balance amount as per applicable cancellation clause of the application form. The balance amount has not been refunded which is a subsisting obligation of the promoter as per the booking application form as builder buyer agreement was not executed

between them. The respondent-builder must have refunded the balance amount after making reduction of the charges. On failure of the promoter to refund the amount the authority is of considered opinion that the promoter should have refund the balance amount after deducting 10% of the sale consideration.

49. The Hon'ble Apex Court of land in cases of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 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 provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
50. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-

**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"

51. In view of aforesaid circumstances, the respondent is directed to refund the paid-up amount after deducting 10% of the basic sale price of the unit being earnest money within 90 days along with an interest @ 10.60% p.a. on the

refundable amount, from the date of cancellation i.e., 01.09.2016 till the date of its payment.

H. Directions of the authority: -

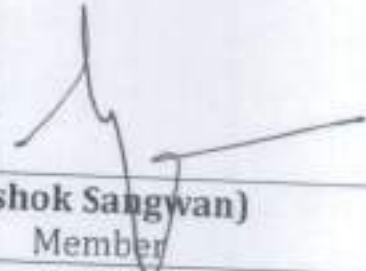
52. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

- i. The respondent/promoter is directed to refund the paid-up amount after deducting 10% of the basic sale price of the unit being earnest money within 90 days along with an interest @ 10.60% p.a. on the refundable amount, from the date of cancellation i.e., 01.09.2016 till the date of its payment.
- 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.

53. Complaint stands disposed of.

54. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2023