

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

Complaint no.	:	3275 of 2020
Date of filing complaint:		08.10.2020
First date of hearing:		13.11.2020
Date of decision	:	28.10.2022

1. Smt. Kusum Lata W/o Sh. Somnath 2. Sh. Somnath S/o Sh. Raghunath Both R/O: D 169, Rosewood City, Sector 50, Gurugram	Complainants
Versus	
M/s Ashiana Dwellings Private Limited Regd. office: Vatika Tower, Block B, 8th Floor, Sector 54, Gurugram	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. G.S Jarodia (Advocate)	Complainant
Sh. Deeptanshu Jain (Advocate)	Respondent

ORDER

- The present complaint 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.no.	Particulars	Details
1.	Name of the project	Ashiana Mulberry, Sector-2, Gurgaon
2.	Project type	Group Housing Project
3.	RERA registered/not registered	Registered vide registration no. 44 of 2017 dated 11.08.2017
	Validity status	30.06.2020
4.	DTPC License no.	16 of 2014 dated 10.06.2014
	Validity status	09.06.2014
	Licensed area	10.25 acres
	Name of licensee	Ashiana Dwellings Private Limited
5.	Provisional allotment dated	27.10.2015 (As per page no. 19 of complaint)
6.	Unit no.	A-111 on 1 st floor, tower T3 (As per page no. 45 of the complaint)
7.	Unit area admeasuring	1730 sq. ft. (As on page no. 45 of the complaint)
8.	Date of apartment buyer agreement	27.10.2015

		(As per page no. 43 of the complaint)
9.	Possession clause	<p>Clause 11.2 of agreement</p> <p><i>The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within <u>a period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date")</u> and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee.</i></p>
10.	Date of start of construction	Not available on record
11.	Due date of possession	<p>27.07.2019</p> <p>(Calculated from date of agreement i.e. 27.10.2015 as date of start of construction is not available on record + 6 months grace period)</p> <p>Grace period of 6 months is allowed</p>
12.	Payment plan	Construction linked payment plan (As on page no. 24 of the complaint)
13.	Total sale consideration	BSP- Rs. 73,99,210/- TSC- Rs. 97,45,960/- (As per schedule of payment on page no. 24 of complaint)
14.	Amount paid by the complainants	Rs. 19,82,608/- (As per reminder dated 14.08.2018)

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		on page no. 105 of reply)
15.	Demand letter and reminders dated	28.06.2017, 17.10.2017, 04.11.2017, 01.12.2017, 15.12.2017, 10.01.2018, 25.01.2018, 14.02.2018, 05.03.2018, 14.08.2018, 29.10.2018 (As per page no. 101-130 of reply)
16.	Pre-cancellation letter dated	20.12.2018 & 22.01.2019 (As per page no. 98 & 99 of reply)
17.	Notice of cancellation dated	10.10.2019 (As per page no. 97 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants were in dire need of residential apartment at Gurugram, Haryana which may have good infrastructure and all basic facilities/amenities for residential purposes and brought up with prospectus of his own and his family's better purpose.
4. That after going through the advertisement published by the respondent in the newspaper and on the basis of its representation and persuasion that it would provide state-of-the-art infrastructure with all basic facilities/ amenities in residential apartment situated at Sector-02. Sohna, Gurugram, Haryana and further assured the complainant that the said project would be completed and physical possession of the individual units of the same would be delivered by

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the end of 2019. It further laid emphasis on the clause 4.2 of agreement wherein providing that the project would be completed and handed over to the complainant within 39 months from the date of signing the BBA.

5. That believing, trusting the representation, persuasion, assurances of the respondent, the complainant applied for allotment of residential apartment in the project namely "Ashiana Mulbery" of M/s Ashiana Dwelling Pvt. Ltd. situated at Sector 2, Sohna, Gurugram, Haryana. In view of application made they were allotted, a residential apartment bearing no. A-111 on 1st floor, tower-T-3. floor admeasuring 160.72 sq. mt (1730 sq. ft) for inaugural price of Rs. 97,45,960/- including sale consideration, EDC/IDC/AC etc. They made a payment of Rs. 19,82,608/- against the allotted unit and the same was acknowledged by the respondent vide various receipts.
6. That in the month of July 2015, the respondent showed him the site and submitted that the construction will start next month. Further, as per clause no. 4 of the aforesaid application of advance registration, it had been undertaken by the respondent that it would offer residential apartment within period of 39 months from the date of signing the buyer's agreement by the both parties. However, the same is yet not executed between the parties.
7. That the act and conduct of the respondent has caused a lot of physical harassment, mental agony and huge financial loss to the complainants.

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They have paid a total sum of Rs 19,82,608/- from 14.07.2015 to 24.12.2015, as and when demanded by the respondent.

8. That the respondent-builder has failed to fulfil its committed of delivering the possession of the unit with a period of 39 month along with grace period of 180 days grace period from the date of execution agreement/booking i.e., 30.07.2015, which come out to be end 2019.
9. That the respondent cancelled the allotment of the said unit vide mail conversation of Asst. Manager of the respondent and has illegally forfeited a sum of Rs. 97,45,960/- against total paid amount of Rs. 19,82,608/-.
10. That the respondent has committed fraud upon them by way of not refunding the amount of 19,82,608/- to them till date despite of several request and this action of the respondent tantamount to cheating, unfair trade practices and deficiency in service on their part.
11. That due to the illegal and deliberate wrongful act of the respondent, the complainants suffer mental pain, agony and physical harassment and thus, it liable to compensate the complainant on this count.

C. Relief sought by the complainant:

12. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 19,82,608/- paid by the complainants along with interest @ 24% p.a. from date of payment till its actual realization.

- ii. Direct the respondent to pay cost of litigation to the complainant.
13. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 respondent:

The respondent by way of written reply made following submissions

14. That the present Complaint lacks any cause of action to approach this Authority and as such the same deserves to be dismissed at the very threshold. The present complaint is filed with oblique motives without any merits. The allegations and averments in the complaint are false and frivolous and hence, there is no cause of action in the captioned complaint.
15. That the complainants out of their own free will and volition approached the respondent through broker namely "Balaji Estates" and submitted the "Application Form" dated 03.05.2014 expressing their willingness to book an apartment in the project namely Ashiana Mulberry situated at Sector-02, Sohna, Gurgaon, Haryana (hereinafter referred to as "project") and thereafter, made payment of Rs. 7,50,000/- vide cheque bearing no. 000058 dated 30.07.2015 drawn on HDFC Bank.



16. That based on the application form, the respondent issued the letter of provisional allotment dated 27.10.2015 and provisionally allotted flat bearing no. A-111, First Floor, Tower-T3 in the said project (hereinafter referred to as "said apartment"). Further, on 27.10.2015 an apartment buyer's agreement (hereinafter referred to as "said agreement") was executed between the parties.
17. That the said allotment letter and the said agreement also contained the schedule of payment plan and the complainants were under an obligation to adhere to the said payment plan. As per clause 4.1 application form and clause 3.2 and 11.2 of apartment buyer agreement provides that the schedule of payments as provided in the application form and apartment buyer agreement is the essence of allotment. However, the complainants have frequently, defaulted to adhere to the said payment plan. Despite receiving various reminders and demand letter(s) sent by it demanding the outstanding payments, they have failed to adhere to the said payment plan opted. It is submitted that the said act amounts to breach of terms of the said agreement.
18. That all the queries of the complainants were duly resolved by the respondent and being a customer-oriented company agreed to various demands/requests of the complainants. The respondent sent various demand letters requested them to clear the outstanding dues.

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19. That as per clause 11.2 of agreement subject to timely payment by the allottees as well as subject to force majeure, the construction of the apartment was to be completed within 39 months plus 6 months grace period from the date of the execution of the agreement. It is pertinent to mention herein that the construction of the project was stopped several times during the year 2016, 2017, 2018 and 2019 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India to curb the pollution in NCR region. Due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent.
20. That since the complainants have defaulted several times in making payment of installments the respondent in compliance of the clause 3.5 and 6.2 of the apartment buyer agreement vide letter dated 16.10.2019 was constrained to cancel the allotment of the unit on the ground of non-payment and forfeit the earnest money, brokerage,

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taxes, delay payment interest etc., and further apprised the complainants that an amount of Rs. 9,88,274/- is recoverable by it.

21. That the money received from the complainants/allottees has been utilized towards the construction of the flat and it is pertinent to mention here that during the last three years, Real Estate Sector has seen several events which severely impacted the Real Estate Sector. However, the construction works of the project is going on at full swing despite of the financial obstacles due to economic slowdown. It has already completed 80% construction work in the project. It is relevant to mention here that on 30.09.2020 a team appointed by this Authority duly inspected the project site and was satisfied with the construction activities. Since the money paid by the allottees have only been utilized for construction of the project thus, it is not feasible for the respondent to pay back the amount as sought for, since the project is nearing completion and the same will cause severe loss to the project and other allottees who are eagerly waiting for the possession of their respective flat. The complainants have failed to make timely payment against the allotment made in their favour and the same has already been cancelled.

22. That the complainants have applied for the allotment of the apartment as an investment and not for their personal use which is abundantly clear and evident from their conduct. They invested in the unit with intent to have monetary gains by way of reselling the unit to a higher

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bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority.

That since there is an arbitration clause in the agreement, the complainants without invoking arbitration proceedings are liable to be dismissed. The relationship of the parties is defined and decided by the apartment buyer's agreement executed between the parties. a specific clause for referring disputes to arbitration, is included in the said agreement and hence, both the parties are contractually bound by the above condition. In view of clause 28.2 of the agreement, the captioned complaint is barred.

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

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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25. 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 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

26. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. And M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him

F. Findings on objections raised by the respondent

F.I Objection regarding the complainants being investor.

27. It is pleaded on behalf of respondent that complainants are investors and not consumers. So, she is entitled to any protection under the Act and the complaint filed by her under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and the same is reproduced below for ready reference:

"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

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28. In view of above-mentioned definition of allottee as well as the terms and conditions of the apartment buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

29. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"28.2- All or any disputes, differences, arising out of, in connection with or in relation to this transaction/agreement, shall be amicably discussed and settled between the parties by mutual discussion, failing which the same shall be resolved the provisions of the Arbitration and Conciliation Act, 1996 or any modification/amendment made thereto.

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30. The respondent contended that as per the terms & conditions of the agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the *Hon'ble Supreme Court, particularly in National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, 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. Similarly, 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 complainant and builders could not circumscribe the jurisdiction of a consumer forum.

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31. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, 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."

32. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the rights 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

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the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objection regarding delay due to force majeure circumstances

33. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11.2 of agreement. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

G.I Direct the respondent to refund the amount of Rs. 19,82,608/- paid by the complainants along with interest @ 24% p.a. from date of payment till its actual realization.

34. The project detailed above was launched by the respondent as residential complex and the complainants was allotted the subject unit

bearing no. A-111 on 1st floor, tower T3 vide allotment letter dated 27.10.2015. A builder buyer's agreement detailing area, payment plan and other terms and conditions of allotment was executed in this regard on 27.10.2015 between the parties. As per clause 11.2 of the said agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 39 months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months. The said period has admittedly expired on 27.07.2019. Keeping in view the slow pace of construction at project site, the complainants wishes to withdraw from the project and seeks refund. It is relevant to comment upon the validity of cancellation before dealing with the aforesaid relief sought by the complainants as this would definitely affect the finding of the said relief.

35. In the present case, the complainants booked the aforesaid unit under construction linked payment plan and paid an amount of Rs. 19,82,608/- towards total consideration of amount BSP- Rs. 73,99,210/- constituting 26.80% of basic sale price. The respondent-builder cancelled the unit of the complainants on account of non-payment of demand raised vide demand letter dated 28.06.2017 payable on completion of internal plaster followed by various reminders as specified in the table above. The aforesaid demands were

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followed by pre-cancellation and cancellation letter dated 22.01.2019 & 10.10.2019 respectively.

36. It is observed by the authority that as per section 19(6) & 19(7) of Act of 2016, the allottees were under obligation to make payments towards consideration of allotted unit as per apartment buyer's agreement dated 27.10.2015. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainants vide letter dated 10.10.2019. Therefore, there is no doubt that the cancellation dated 10.10.2019 is valid in eyes of law.
37. The complainants- allottees has violated the provision of section 19(6) & (7) of Act of 2016. However, there is nothing on record to show that the amount of the complainants has been refunded to them after deduction as per relevant clause of agreement dated 27.10.2015.
38. Further, as per 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

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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."

39. Hence, the respondent is directed to refund the amount paid by the complainant after deduction of 10% of consideration along with interest @ 10.25% from date of cancellation i.e., 10.10.2019 till actual realization of such amount.

G.II Direct the respondent to pay a sum of Rs.1,00,000/- towards cost of litigation.

40. 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 complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants 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

41. 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/promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018; along with an interest @ 10.25% p.a. on the refundable amount, from the date of cancellation i.e., 10.10.2019 till the date of realization of payment.
 - ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
42. Complaint stands disposed of.
43. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.10.2022