

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

Complaint no. : 3172 of 2021
First date of hearing: 25.11.2021
Date of decision : 09.02.2023

1. Mr. Om Shanker Singh
2. Mrs. Ranjeeta Singh
Both RR/o: - MAF Tower-2, MAF Properties, LLC,
PO Box no.60811, Dubai, UAE

Complainants

Versus

M/s Pareena Infrastructures Private Limited
Office: 2, Palm Apartment, Plot No. 13B, Sector - 6,
Dwarka New Delhi DL 110075

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Vaibhav Sharma proxy counsel
Sh. Prashant Shoeran Advocate

**Complainants
Respondent**

ORDER

1. The present complaint dated 10.08.2021 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 provisions 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 and location of the project	"The Elite Residences", sector-99, Gurgaon
2.	Nature of the project	Group Housing
3.	licensed area	12.031 acres
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2024
5.	Name of licensee	Shivnandan Buildtech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 46 of 2019 issued on 25.09.2019 up to 31.07.2020
7.	Unit no.	A-1005, 10 th floor, Tower A [page no. 33 of complaint]
8.	Unit admeasuring area	2150 sq. ft. of super area [page no. 33 of complaint]
9.	Provisional allotment letter	11.06.2013 [page no. 26 of complaint]
10.	Date of builder buyer agreement	23.04.2014 [page no. 30 of complaint]
11.	Possession clause	<i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</i> Emphasis supplied....
12.	Date of start of construction	Not Provided
13.	Due date of possession	23.04.2018

		[calculated from the date of execution of agreement i.e. 23.04.2014]	
14.	Cancellation of booking letter	07.09.2020 (page 150 of reply)	
15.	Total sale consideration	Payment plan	Statement of account
		Rs.1,38,57,675/- {excluding taxes} [page 56 of complaint]	Rs. 1,41,04,649/- [page 145 of reply]
16.	Total amount paid by the complainants	Rs.12,50,000/- [as per SOA dated 12.01.2017 on page no. 145 of reply]	
17.	Occupation certificate	Not obtained	

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the complainants booked a unit/flat being unit no. 1005, Tower-A, 10th floor in the project of the respondent under the name and style "**The Elite Residences**" on the 21.05.2013. This was followed by a payment of Rs. **12,50,000/-** through cheque bearing no.- 563922 dated 21.05.2013 towards the booking of said apartment. The respondent thereafter issued an acknowledgement receipt dated 03.06.2013 for the same.
- II. That upon receipt of the booking and the subsequent amount from the complainants and on consistent request made, the respondent issued an allotment letter dated 11.06.2013. The complainants were allotted apartment no.1005, in Tower-A, 10th floor, admeasuring area 2150 sq. ft. in the project.
- III. That the complainants came to know that the project was being developed besides of railway track and next to flyover on Dwarka



Expressway which could never be an undisturbed location for living peacefully. It is bound to cause disturbances and excess noise pollution which will jeopardize the lives of the residents. It is bound to cause disturbances and excess noise pollution which will jeopardize the lives of the residents.

IV. That astonished by the untrue and dishonest promises, assurances, representations, and warranties of the respondent, the complainants expressed their resentment and asked the respondent to refund the entire amount paid or to allot a unit in a peaceful location as asked by them before booking an apartment. The respondent kept on assuring the complainants that they would be provided a better location as per their requirements and the monies paid shall be adjusted accordingly. However, the respondent did not provide any unit as per the complainant's requirement. They kept on chasing the respondent and running pillar to post for redressal of their grievances, however, all the requests fell on deaf ears of the respondent.

V. Despite fulfilling the assurances, promises, representations, and warranties made, the respondent after the lapse of more than 1 year, executed the apartment buyer agreement on 23.04.2014 along with 2 copies and asked the complainants to sign the same and return within 15 days from the date of dispatch. By way of the agreement, the respondent again tried to compel the innocents complainants to execute the agreement having arbitrary, unfair, unlawful and one-sided terms and conditions.



- VI. That under the clause 2.24 of the agreement it was mentioned that in case of delay in remitting instalments from the side of the complainants, the respondent would be entitled to charge interest @ 24% p.a. However, on the other hand, if the respondent failed to complete the project within specified time period, then the complainants would be entitled for the compensation of Rs. 5/sq. ft. p.m. under clause 5.1 of the agreement. On bare perusal of the aforementioned clause and other clauses of the agreement, it is very much evident that there is huge dissimilarity/variability in the remedies available to the complainants and the respondents under the agreement.
- VII. It is also pertinent to mention here that under clause 3.1 of the agreement, it was mentioned that the respondent would be liable to handover the flat within 4 years from the date of start of construction of the project and also a grace period of 6 months was to be availed by it. However, till the year 2014, the construction work of the project was not even started even after lapse of 1 year from booking and the respondent neither enclosed any date of start of construction of the project.
- VIII. The complainants approached the respondent various times and asked him to amend/ rectify all those unfair, arbitrary and one sided clauses of the agreement. However, the respondent remained intact on the terms mentioned in the agreement and refused to change them.
- IX. To the utter shock, the complainants never executed such unfair and one sided agreement and asked the respondent to refund the entire amount as the apartment was sold with the *malafide* intention harboured since



the very beginning. The respondent was pressurizing the complainants to enter into an agreement for a unit which was never sought by the complainants and was sold to them by way of unfair trade practice. The true location of the apartment was never disclosed with the complainants with the intention of cheating and duping them.

- X. It is submitted that in the year 2014, the development work of the project was not even started which was contrary to the assurances and promises of the respondent. It is submitted that the respondent since the very beginning was cheating and duping the complainants by taking the benefit of the fact that they were living in Dubai who could not frequently visit to their office or site of the project.
- XI. That after non receiving any positive response from the respondent upon the consistent follow up regarding redressal of the grievances, the complainants through telephonic conversation to the respondent expressed their resentment. The complainants further stated that they were not satisfied with the location and progress of the project as the development of the project after 2014 was going on in very lethargic manner. They asked the respondent to refund the amount paid along with interest. Finally after much pursuance of the complainants, the respondent asked them to visit their office for redressal of all the concern. After visiting and discussing all concerns with the respondent at their office, the complainants through telephonic conversation asked it reiterating all the discussions held in the meeting. The complainants mentioned that since the management of the respondent is not ready to



refund the amount paid or shift the unit in another project as per their requirement, it was agreed by the respondent that they would sell their unit in the market and would refund the entire amount paid by them thereafter.

- XII. That in response, the respondent accepted the contents of the complainants. The respondent specifically mentioned that they would sell the unit of the complainants in the market to refund the amount paid by the complainants. The respondent at the same time also requested the complainants to try to find a prospective buyer for the same.
- XIII. That the complainants again through telephonic conversation to the respondent stating that 3 months have already passed since the respondent assured them for refund of the amount. The complainants further stated that they cannot wait endlessly for the purchaser of their unit and asked the respondent to refund the paid amount immediately.
- XIV. That to the utter shock of the complainants, the respondent through demand letter cum service invoice dated 12.01.2017 with malicious intention to cheat and dupe them, gives a reminder for the payments due in spite of knowing that the said unit was being sold by it in the market o refund the amount paid by them. The complainants relied on telephonic conversation on the same day and humbly asked the respondent to refund the amount instead for raising demands. This gesture of the respondent was very clear that they had no intention to redress the grievances of the complainants even after assuring them for the refund.



- XV. That the complainants again in January 2020 through telephonic conversation asked the respondent to refund the amount as agreed in the meeting. The complainants further mentioned that they were chasing the respondent since last 3 years, however, the respondent kept mum of all their requests of the complainants. It is submitted that even after the lapse of more than 7 years of booking, the respondent failed to complete the project and still the development work is being carried out in very slow pace.
- XVI. That the respondent, by force of habit of committing illegal, unlawful and dishonest acts again sent a final notice dated 15.07.2020 to the complainants and asked them to pay an amount of Rs. 1,37,19,338/- which is not tenable in the eyes of law as the complainants and the respondents had already agreed on refund of the amount. The respondent again with *malafide* intention on 07.09.2020 sent a cancellation letter stating that the unit booked by the complainants is being terminated and the amount paid stands forfeited. The respondent further mentioned that the complainants from now have no right, claim, etc in the unit booked.
- XVII. That such conduct leading to unilateral cancellation is unacceptable and is violative of section 11(5) of the Act. Such cases of unilateral cancellation being dealt in **Complaint case Number CC00600000054698 of Mr. Sunil Devnani vs M/s. Geopreneur Spire Realty and M/s Aditya Enterprises**, the Hon'ble Maharashtra Real Estate Regulatory Authority held that the unilateral cancelation of

allotment of unit is bad as per law, as the cancellation is not accepted by the complainants and the amount paid was not refunded. That cancellation was not valid as per law.

XVIII. In response to the cancellation letter, the complainants through telephonic conversation protested the cancellation letter and asked the respondent to refund the amount as per the earlier discussions held in the year 2017. The complainants further asked the respondent to refund the amount of Rs. 12,50,000/- immediately.

XIX. The respondent has utterly failed to fulfil his obligations to refund the amount paid as per the agreed terms and hence is liable to refund the money along with interest and also compensate the complainants for the mental agony, harassment and huge losses caused due to breach of contract by the respondent.

C. Relief sought by the complainants:

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

I. Direct the respondent to refund the money of Rs. 12,50,00/- paid by the complainants for allotment in the project along with interest from the date of respective deposits till its actual realizations.

II. To set aside the arbitrary decision of the respondent vide cancellation letter date 07.09.2020 to forfeit the amounts paid by the complainants.

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

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
- a. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "The Elite Residences" at Sector 99.
 - b. That the construction of the said project is at an advance stage and the construction of various towers has already been completed and remaining work is endeavored to be completed as soon as possible. The project is near completion and within a very short span of period, it will be completed and thereafter possession shall be offered after obtaining occupancy certificate as agreed in builder buyers agreement.
 - c. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundationless allegations will be admitted then, interest of other genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.
 - d. That admittedly completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds. The certificate of chartered accountant



showing the cost incurred till 31.03.2019 and amount spent by builder out of its own fund, due to reason of non-payment by allottees is attached.

- e. That other than above stated factor there are lots of other reason which either hamper the progress of construction of in many cases complete stoppage of construction work i.e. NGT orders.
- f. The Hon'ble supreme court in Nov 2019 wherein it was ordered that *"With respect to demolition and construction activities we direct that no demolition and construction activities take place in Delhi and NCR region. In case it is found that such activity is done, the local administration as well as the municipal authorities including the Zonal Commissioners, Deputy Zonal Commissioners shall be personally held responsible for all such activities. They have to act in furtherance of the Court's order and to ensure that no such activity takes place"* That said order was revoked by Hon'ble supreme court in Feb 2020 whereby it was ordered that *"The restriction imposed vide order dated 04.11.2019 is recalled. As per the norms, the work can be undertaken during day and night by all concerned, as permissible. Application for direction is, accordingly, disposed of.*
- g. That the situation of COVID pandemic is in the knowledge of everyone, that since march 2020 till now our country has seen mass migration of labor, complete lockdown in whole of the country, curfews and several other restrictions. That present situation seriously hampers the construction progress in real estate sector. From march 2020 till now, there have been several months where construction work was



completely stopped either due to nationwide lock down or regional restrictions, that metro cities like Gurgaon and Delhi suffered from a major outburst of COVID cases and deaths in such a number which can't be comprehended. That there has severe dearth of labour due to state imposed restrictions. The developers were helpless in these times since they had no alternative but to wait for the situation to come under control. That even RERA has extended the time limits for completion of project vide notification dated 26.05.2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at fag end of year 2020. However soon thereafter, the country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. The whole of that consumed more than 11 months wherein 2/3rd time there could be no construction and rest of the time construction progressed at very slow pace to several restrictions imposed by state government on movement and number of person allowed etc.

- h. That even the hon'ble apex court has already held that notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property comes under force majeure and period for handing over of the possession stood extended during the prevalence of the force majeure event.



- i. That it is the admitted fact that the builder buyer agreement was executed between the parties on 23.04.2014. However, certain extremely important facts were concealed by the complainants while drafting the present complaint. The complainants have intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. It is submitted that material, labor and other requirements do not come for free and if allottees wish to get the possession on time, then it is their legal duty to pay on time, since without money, it is not possible to construct the project on time. Since, the complainants failed to pay even after receiving final notice, the respondent ultimately cancelled the allotment vide letter dated 07.09.2020.
- j. That the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. Thus in such cases if delayed possession charges are granted, then it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent qua construction has already been utilized for construction and it is the complainants who delayed in payments. Thus, they cannot put blame upon respondent. From above stated facts, it is clear that since year 2014, the complainants stopped making payment and even respondent sent several letters so that payment was made. But the complainants choose to commit default instead of making payment even after receiving several demands. When no payment was made by complainants the respondent cancelled the

allotment. Thus keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.

7. 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

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***, wherein it has been laid down as under:

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

functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions:

14. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as orders of Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. As per the buyer's agreement, due date of handing over of possession comes out to be 16.10.2018. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I)*

(Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.10.2018 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession

G Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the entire amount paid by the complainant.

17. The complainants submitted that they booked a flat in the project named as "The Elite Residences" and paid 12,50,000/- through cheque on 21.05.2013. On 11.06.2013 an allotment letter was issued. Thereafter, on 23.04.2014 a BBA was executed between the parties. The complainants raised concerns through telephonic conversation to the respondent and expressed their resentment. They were not satisfied with the location and progress of the project as the development of the project. During the visit, they came to



know that the location at which the project was being developed was not at all as similar as assured, promised, represented, warranted, and showcased at the time of booking by the respondent.

18. It is pertinent to mention here that respondent issued various reminders on 01.08.2014, 06.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 01.12.2014, 17.12.2014, 09.01.2015, 26.02.2015, 09.03.2015, 11.04.2015, 07.08.2015, 12.20.2015, 12 01.2017, 02.06.2017, 19.06.2017 respectively. Thereafter, issued final notice on 15.07.2020. After all the reminders and final notice, the respondent cancelled the allotted unit of the complainants vide letter dated 07.09.2020.
19. During proceedings, the counsel for the complainant states that that further payment were not made as construction was not in progress and the site was situated near railway track. The counsel for the respondent states that a cheque of Rs.12,55,000/- given by the allottees got dishonoured/bounced on account of insufficient funds on 20.09.2014 and after that no payment has been made by them despite issuance of more than 19 reminders and that led to cancellation of the unit by the respondent and forfeiture of the amount being less than 10%.

Now the question before the authority is whether this cancellation is valid?

20. On consideration of documents available on record and submission by both the parties, the authority is of the view that on the basis of provisions of allotment the complainant had paid 12,50,000/- against the total sale consideration of Rs. 1,38,57,675/-. The respondent/builder send number of demand letters/reminders on 01.08.2014, 06.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 01.12.2014, 17.12.2014, 09.01.2015, 26.02.2015, 09.03.2015, 11.04.2015, 07.08.2015, 12.20.2015, 12 01.2017, 02.06.2017, 19.06.2017 respectively and asking the allottee to make



payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 07.09.2020 in view of the terms and conditions of the agreement. No doubt the complainant did not pay the amount due despite various reminders but the respondent while cancelling the unit was under an obligation to forfeit out of the amount paid by them i.e., the earnest money, refund the balance amount deposited by allottee without any interest in the manner prescribed in the agreement as per clause 4.4. of the terms and conditions of the allotment but that was not done. Clause 4.4 of the agreement is reproduced hereunder for ready reference:

"4.4 If the Flat Allottee(s) is in default of any of the payments as afore stated, then the flat allottee(s) authorizes the Developer to withhold registration of the Sale/Conveyance Deed in his/her/their favor till full and final settlement of all dues to the Developer is made by the Flat Allottee(s). The flat allottee(s) undertakes to execute Sale/Conveyance Deed within the time stipulated by the Developer in its written notice failing which the Flat Allottee(s) authorizes the Developer to cancel the allotment and terminated this Agreement in terms of this Agreement and to forfeit out of the amounts paid by him/her/them the Earnest Money, processing fee, interest on delayed payment any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount deposited by the Flat Allottee(s) without any interest in the manner prescribed in this Agreement"

21. The complainants have paid Rs. 12,50,000/- to the respondent/builder and the cancellation of the allotted unit was made on 07.09.2020 by retaining the amount beyond 10%, if any, which is not legal in view of number of pronouncements of the Hon'ble Apex court.
22. The respondent cancelled the complainant's unit due to non-payment vide letter dated 07.09.2020. It is observed by the authority that as per section 19(6) & 19(7) of Act of 2016, the allottee is under an obligation to make payments towards consideration of allotted unit as per payment plan. The complainants-allottees have 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 have been refunded to them after deduction as per relevant clause of buyer's agreement dated 23.04.2014.

23. 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 amount of the real estate i.e. apartment/plot/building as the case may be in all case 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."

24. In view of aforesaid circumstances, the respondent should have refund the amount paid by the complainants after deducting 10% of the sale consideration of the unit being earnest money after cancelling the allotted unit vide letter dated 07.09.2020. The complainants paid only an amount of Rs. 12,50,000/- against a total consideration of Rs. 1,38,57,675/- constituting 9.02%, which is less than 10% of total consideration. Hence, no direction to this effect can be given.

G. II Direct the respondent to pay the compensation of Rs. 2,00,000/- for the legal costs.

25. The complainants are also seeking relief w.r.t litigation expenses. 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. Hence, the complainants may approach the adjudicating officer for seeking the relief of litigation expenses, if so advised.

26. Complaint stands disposed of.
27. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 09.02.2023

HARERA
GURUGRAM