



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

Date of decision:

21.03.2023

NAME OF THE BUILDER		JMD Ltd.	
PROJECT NAME		Imperial Suite, JMD Suburbio	
S. No.	Case No.	Case title	APPEARANCE
1	CR/306/2020	Aditya Kumar Karwa V/s JMD Ltd.	Shri Sandeep Jha Shri Pankaj Chandola
2	CR/1212/2023	JMD Ltd. V/s Aditya Kumar Karwa	Shri Pankaj Chandola Shri Sandeep Jha

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the



project, namely, "Imperial Suite, JMD Suburbio" being developed by the same respondent/promoter i.e., **M/s JMD Ltd.**

3. The aforesaid complaints were counter filed by the parties against each other on account of violation of the buyer's agreement executed between the parties in respect of said unit.
4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case **CR/306/2020 Aditya Kumar Karwa V/s JMD Ltd.** are being taken into consideration for determining the rights of the parties.

A. Unit and project related details

5. Both the cases relate to one allotted unit. One among these is filed by the allottee and the other one is filed by the builder, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Imperial Suite, JMD Suburbio", Sector 67, Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license no.	291 of 2007 dated 31.12.2007
	Validity of license	30.12.2024
	Licensee	Ananddham Realtors Pvt. Ltd
4.	HRERA registered/ not registered	30 of 2022 dated 25.04.2022



	HRERA registration valid up to	30.12.2024
5.	Occupation certificate granted on	18.10.2018 [pg. 72 of reply]
6.	Unit no.	322, 3 rd floor [page 11 of complaint]
7.	Area of the unit	650 sq. ft
8.	Date of execution of buyer's agreement	02.03.2012 [page 9 of complaint]
10.	Possession clause	15. POSSESSION <i>That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within three years from the date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company,— or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events,</i>



		<p><i>the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever.</i></p> <p>(Emphasis supplied) [pg. 15 of complaint]</p>
11.	Date of sanction of revised building plan	13.11.2013
12.	Due date of possession	13.05.2017 [Note: Grace period of 6months included being unqualified]
13.	Basic consideration as per buyer's agreement at pg. 11 of complaint	₹ 43,00,000/-
14.	Total amount paid by the allottees as per demand letter dated 01.10.2015, at page 31 of complaint	₹ 15,05,000/-
15.	Offer of possession	03.12.2018 [pg. 74 of complaint]
16.	Request for cancellation	05.10.2019



B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:

- a. The complainant entered into a contract with and respondent M/s JMD Limited through Mr Sunil Bedi on 02.03.2012 wherein the respondent - M/s JMD Limited was to construct and deliver a specific individual unit in the "Imperial Suites" of approx. 650 square feet in Sector 67, Gurgaon in company's project JMD SUBURBIO. The said unit was booked by complainant by paying ₹ 15,05,000/- after which respondent allotted unit no. 322 in the said project.
- b. It is submitted that the complainant and respondent signed the premises buyer's agreement on 02.03.2012 after complainant had paid ₹ 15,05,000/- to respondent. It is further submitted that as per clause 15 of aforesaid premises buyer's agreement, the said unit was to be delivered to complainant within three years from the date of sanction of revised building plan from competent authority or further extended to six months after expiry of 36 months as agreed above except the force majeure circumstances. Since complainant was never communicated any said date of approval of 'revised plan and no concurrence of allottees of the units in the project is obtained by the respondent, the date of delivery of the said apartment should have been 02.09.2015 i.e., 42 (36+6) months from the date of premises buyer's agreement i.e., 02.03.2012.



- c. The complainant further submits that he from time to time followed up with the respondent regarding the development of the project. That despite having no development of the project, the respondent keeps on demanding money from the complainant from time to time. But due to breach of promises and commitment made by the respondent, the complainant had not made payment on the fear of losing entire money.
- d. The respondent has failed to offer the possession of the said unit even after more than 7 years from the date of premises buyer's agreement. The complainant had made several communications to various officers of the company in last four years to enquire about the date of delivery of the said unit. This is in addition to multiple enquires on phone and in personal visits but neither respondent nor their office bearers have replied till date, forget communicating the date of delivery of the apartment. It is pertinent to mention here that though there is no significant development in the construction but still the respondent kept on raising illegal demand for payment of agreement money. From the perusal of letter dated 19.06.2019 issued by the office of the respondents, it is clear that till date the construction was going on.
- e. That it is further stated that considering the inordinate delay in delivery of the said apartment and breach of the terms of the premises buyer's agreement i.e., 02.03.2012, the complainant has further requested for cancellation of his allotment and refund of his deposited amount along with statutory interest vide his letter dated 05.10.2019.



C. Relief sought by the complainant:

4. The complainant in compliant no. 306/2020 has sought following reliefs:
 - a. Refund the entire amount paid by the complainant along with the prescribed rate of interest.
 - b. Compensation & cost of litigation.
5. The complainant in compliant no. 1212/2023 has sought following reliefs:
 - a. Direct the respondent to clear outstanding dues with respect to the total sale consideration along with prescribed rate of interest.
 - b. Direct the respondent to take possession of the unit and execute the conveyance deed.
 - c. Direct the respondent to clear outstanding dues with respect to the maintenance charges along with the interest.
6. On the date of hearing, the authority explained to the respondents/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 the respondent.

7. The respondent has contested the complaint on the following grounds:
 - a. It is significant to point out that the project in question in the instant complainant was launched before the commencement of Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016") and it is pertinent to mention that the commercial premises buyer's agreement (hereinafter referred to as "CBA") was executed between the parties on 02.03.2012. It is



necessary to mention that the CBA dated 02.03.2012 is the backbone of the transactions related to sale and purchase of the unit in question of the between the complainant and the respondent. As the CBA is executed before the commencement of RERA Act, 2016 the provisions of RERA Act, 2016 does not apply in the instant complaint. Further, it is pertinent to note that the occupation certificate has already been granted and therefore project in question is not an ongoing project.

- b. It is submitted that the complainant is a habitual defaulter in making payments of instalments due towards the total sale consideration of the allotted unit. That the complainant till date has only paid ₹ 15,05,000/- due towards the total sale price of the allotted unit and that ₹ 60,08,653/- is still pending towards the total sale price of the unit.
- c. It is pertinent to mention that the complainant clearly admitted in para (iii) of its complaint that he did not made payment despite receiving the demand letters. It is pertinent to mention that the respondent being a responsible developer/promoter had sent multiple demand/reminder letters dated 01.10.2012, 06.11.2012, 17.06.2013, 07.11.2013, 21.12.2013, 10.03.2014, 29.05.2014, 25.07.2014, 06.09.2014, 13.01.2017, 16.02.2017, 25.03.2017, 11.05.2017, 19.09.2017, 22.01.2018, 16.10.2018, 03.12.2018, 06.06.2019, 29.08.2019, 30.09.2019, 31.10.2019, 07.12.2019, 26.02.2020, 26.11.2020, 07.01.2021 and 06.07.2021 to the complainant. That despite receiving such demands/reminders the



complainant failed to make any payment towards the total sale price of the allotted unit.

- d. It is relevant to point out that while executing the Agreement dated 02.03.2012 the complainant was well aware of the fact that under clause 7 of the agreement dated 02.03.2012 timely payment was the essence of the said agreement. Further, that if the allottees do not comply with the terms of the payment, and other terms and conditions of the sale, then they shall forfeit to the respondent the entire amount of earnest money. It is pertinent to mention that clause 7 of the agreement further contains that in case the unit allottee failed to fulfil his part of the agreement, then the agreement shall stand cancelled, and the earnest money shall stand forfeited. Since the complainants have evidently defaulted in this aspect, the complainants are liable to forfeit to the respondent the entire earnest money.
- e. That it is pertinent to note that till date the complainants have made total payment of ₹ 15,05,000/-. That the complainants being habitual defaulters have not made the payment within the stipulated period of time as enshrined in the payment plan/notices/ demands raised, which has also become a major reason for hampering the scheduled development of the respondent. Thus, the complainants are in direct violation of Section 19(6) of the RERA Act, 2016, wherein the complainants are obligated to make the necessary payments in a time bound manner.
- f. It is pertinent to mention that as per clause 15 of the agreement dated 02.03.2012 it was mutually agreed between the parties that



the unit was to be delivered within three years from the date of revised sanctioned plan from the competent authority which was sanctioned on 13.11.2013 and was valid till 12.11.2018.

- g. That respondent has made all its effort in order to complete the said project in terms of the said agreement and has completed the construction of the said commercial complex and applied for the grant of the occupation certificate on 15.06.2016 and the same was received on 18.10.2018 from the concerned Authority. Hence, the respondent has constructed the said project well within the time and got the occupation certificate on time.
- h. It is pertinent to mention as per clause 16 of the agreement the possession was to be delivered to the unit allottee(s) after receiving the occupation certificate, provided all the due amounts are paid to the respondent. The clause 16 further provided that the unit allottee(s) shall take possession of the allotted unit within 30 days from the date of offer of possession letter. It is pertinent to mention that the complainant failed to perform its obligation under the said agreement as he neither paid the due instalments nor came forward to take the possession of the allotted unit.
- i. It is significant to mention that it is specifically mentioned in clause 15 of the agreement dated 02.03.2012 that the respondent shall not incur any liability if the reason for delay was beyond the control of the respondent or due to non-payment of timely instalments by unit allottee. That the present complaint is an abuse of the process of this Authority and is not maintainable. The complainant has not approached this authority with clean hands and is trying to



suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

- j. That as per the amended HARERA rules, the power to grant refund vest with the Ld. Authority, meanwhile, the Hon'ble Punjab and Haryana High Court has stayed the operation of the amended rules. Therefore, there is *status quo* upon the amended HARERA Rules, thus, the Authority does not have jurisdiction to adjudicate upon the complaint seeking refund until the Hon'ble Punjab and Haryana High Court decides the validity of amended HRERA Rules. Therefore, it is pertinent to note that the present complaint shall be liable to be dismissed only upon the sole ground.
- k. That the complainant approached the representative of the respondent and showed his interest in purchasing a unit in the project of the respondent known as "Imperial Suite" situated at village Badashapur, Sector - 67, Tehsil & District Gurugram, Haryana. Thereafter, after conducting inspection of the project site and reviewing all the sanctions/ documents and after being satisfied with the competency of the respondent builder/promoter in completing the said project, the complainant booked a unit in the said project. And accordingly, a service apartment bearing no. 322, 3rd floor, admeasuring 650 sq. ft. was allotted to the complainant.
- l. It is pertinent to mention that at the time of executing the commercial premises buyer's agreement, the respondent had clarified all the facts to the complainant and they were well aware



of the facts that the Anand Dham entered into a development agreement on 20.04.2007 with M/s Ansal Properties & Infrastructure Ltd. (hereinafter referred to as the "Ansal") and Ansal obtained license no. 291 dated 31.12.2007 from the DTCP, Haryana. The complainant was also aware of the fact that the aforesaid sanctioned FSI of 3,22,986 sq. ft. and FSI of approximately 2,22,618 sq. ft. along with corresponding land i.e., front side of the said land has been agreed to be sold by Anand Dham and Ansal to the respondent company i.e., JMD Ltd. It is also significant to mention that the sanctioned building plans were also inspected and duly seen by the complainant at the time of the execution of the agreement.

- m. Furthermore, it is specifically submitted that the respondent company was advised by its prestigious customers that the current project of the respondent was surrounded by a large chunk of residential township and the said project site is best suited for a commercial mall. Therefore, after considering the above proposal from almost every customers/allottees and consent in writing, the respondent company has made through its architect a proposed building plan and the said plan is duly shown with marking of each unit to every allottee and is signed and acknowledge by its allottees including the present complainant and accordingly the respondent company has applied for the revision in building plans and developed the said project in accordance with the said proposed/revised building plans and completed the project on time. Thereafter applied for the occupancy certificate with the



concerned authorities which was granted to the respondent on 18.10.2018 and accordingly offer of possession was issued to the unit allottees.

- n. It is pertinent to mention that there is no allegation in the complaint, nor any evidence filed by the complainant that the respondent company failed to abide by the terms of agreement or there is any deficiency or defect on part of the respondent company, whereas the complainant's case is that they were unable to make the balance payment in time as per the agreed payment plan. It is significant to mention that the complainant has breached the agreement therefore the complainant is not entitled to any relief/refund/interest/compensation etc. Furthermore, it is submitted that the complainant had invested in the said property for investment purpose, for making money and when the property prices went down the complainant filed the instant complaint seeking refund and compensation. It is specifically submitted that the agreement dated 02.03.2012 is binding between the parties and the complainant has filed the instant complaint only to wriggle out of his obligation under the said agreement.
- o. That the complaint is baseless and is flagrant abuse process of law. The complaint has been filed with the sole objective to harass the respondent in order to gain illegitimate monetary benefit. That the instant complaint is wholly misconceived and untenable in law and is liable to be dismissed with heavy cost.

8. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

10. 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:



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

12. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. 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."*
14. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others*** dated 13.01.2022 in

CWP bearing no. 6688 of 2021. The relevant paras of the above said judgment reads as under:

"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court; the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

15. 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. (supra)**, and the division bench of Hon'ble Punjab and Haryana High Court in **"Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

F. Findings on the relief sought by the complainant.

F.I. Refund entire amount paid by the complainant along with the interest.

16. Now, the question arises before the authority is as to whether the allottees are entitled for refund of the amount paid along with interest or they be directed to take the possession of the allotted unit after clearing the outstanding dues along with interest.
17. In the present matter the promoter has proposed to hand over the possession of the apartment according to clause 15 of the BBA within a period of 3 years plus 6 months from date of sanction of revised building plan. The due date of possession is calculated from the date of revised building plan i.e., 13.11.2013. The period of 3 years expired on 13.11.2016. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 13.05.2017.
18. The allottee filed a complaint before the authority bearing no. CR/306/2020 on 13.02.2020 and after 3 years, the respondent has also filed a complaint bearing no. CR/1212/2023. Both these complaints were clubbed together in order to avoid conflicting orders. Now, the matter before the authority is as to whether the allottee has right to seek refund or not, when the promoter is unable to give possession of unit in accordance with the terms of agreement for sale. The allottee was allotted unit no. 322 on 02.03.2012 having an area of 650 sq. ft. as per clause 15 of the BBA, the subject unit was to be handed on or before 13.05.2017. However, the possession was offered to the allottee on

03.12.2018 after receipt of OC from the competent authority on 18.10.2018. Instead of taking possession, the allottee has filed the present complaint before the authority seeking refund u/s 18 (1) of the Act, 2016.

19. Although the respondent has offered the possession of the unit on 03.12.2018 after receiving OC on 18.10.2018 but the allottee has filed for the refund of amount paid by the respondent in the year 2020 and the respondent in the year 2023 filed for issuing directions against the complainant for taking the possession of the unit. It can be said that though there is a delay of about only one year in handing over the possession but still no one can be forced to purchase a house. This has also been observed by the appellate tribunal in appeal no. 255 of 2019 titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd. & anr.** wherein it is stated as follows:

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government".

20. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the

Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

21. It is evident from the above-mentioned facts that the complainant had paid a sum of ₹ 15,05,000/- against total sale consideration of ₹ 43,00,000/- of the unit allotted to him on 04.06.2015.
22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **21.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
24. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to cancel the same in view of cancellation clause of the allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount along with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and

Development) Rules, 2017, from the date of surrender i.e., 05.10.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

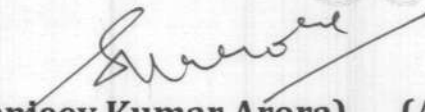
G. Directions of the authority

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

- i. The respondent is directed to refund the paid-up amount of ₹ 15,05,000/-after deducting earnest money i.e., 10% of the basic sale consideration of unit along with the interest at the prescribed rate i.e., 10.70% on such balance amount from the date of surrender i.e., 05.10.2019 till date of actual refund.
- 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.

26. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

27. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2023