

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

Complaint no. :	1249 of 2019
Date of filing complaint:	26.03.2019
First date of hearing:	10.12.2019
Date of decision :	20.04.2023

Ms. Shakuntala Gulia R/O: H-53, Ridgewood Estate, Phase-4, DLF City, Gurugram - 122002	Complainant
Versus	
M/s Angle Infrastructure Private Limited Regd. office: 406, 4 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi-110025	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE WHEN ARGUED:	
Sh. Parveen Kumar (Advocate)	Complainant
Sh. Shivam Rajpal proxy counsel (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottees 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 complainant, 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	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
5.	Allotment letter	05.07.2013 [As per page no. 31 of complaint]
6.	Unit no.	1101 on 11 th floor of tower C [As per page no. 38 of complaint]
7.	Unit area admeasuring	1865 sq. ft. [Super area]

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		[As per page no. 38 of complaint]
8.	Date of apartment buyer agreement	08.11.2013 [As per page no. 35 of complaint]
9.	Possession clause	<p>Clause 3.1</p> <p><i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchaser(s) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course. The Seller shall give Notice</i></p>



		<i>of Offer of Possession in writing to the Purchasers) with regard to the handing over of possession, where after, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment.</i>
10.	Building plan approvals	12.08.2013 [As per project details]
11.	Environmental clearance	15.10.2013 [As per page no. 14 of reply in complaint no. 3964/2021 for similar project]
12.	Commencement of construction	01.06.2013 [As per corresponding demand raised on "commencement of excavation" in customer ledger dated 23.02.2019 on page no. 63 of complaint]
13.	Due date of possession	08.08.2018 [Calculated from the date of agreement i.e., 08.11.2013, being later + grace period of 9 months] Grace period of 9 months is allowed.
14.	Payment plan	Construction linked payment plan [As per allotment letter on page no. 31 of complaint]
15.	Total sale consideration	Rs. 97,91,250/- (BSP) Rs. 1,09,67,000/- (TSC) [As per customer ledger dated 23.02.2019 on page no. 63 of

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		complaint]
16.	Amount paid by the complainant	Rs. 30,28,140/- [As per customer ledger dated 23.02.2019 on page no. 63 of complaint]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Demand letter & reminders	09.07.2013, 05.12.2013 09.12.2013 , 22.05.2014, 01.12.2014 25.09.2015 , 26.11.2015, 21.12.2015, 12.01.2016 [Page no. 19-32 of reply]
20.	Notice for cancellation letter dated	27.02.2016 [As per page no. 64 of complaint]
21.	Cancellation letter dated	31.03.2016 [As per page no. 64 of complaint]
22.	Letter sent to complainant by respondent after cancellation of allotted unit	17.05.2016 [As per page no. 65 of complaint]
23.	Legal notice sent by the complainant seeking refund of the amount paid.	16.03.2019 [As per page no. 66-69 of complaint]

B. Facts of the complaint:

3. That somewhere in mid-2012, respondent who claiming itself to be a KRISH group company published advertisements in several

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newspapers inviting general public to book residential apartments in its project namely "Florence Estate", situated at Sector-70, Village Fazilpur Jharsa, Tehsil & District - Gurugram (Haryana) (hereinafter referred to as the "said project").

4. That being lured by the advertisement for the sale of apartments and based on the representations, affirmations and commitments made by the representatives of respondent during various meetings, the complainant booked an apartment vide application form dated 04.08.2012 and out of her life-long savings paid booking amount of Rs. 10,00,000/-.
5. That the complainant made further payments of Rs. 10,00,000/- and Rs. 10,28,140/- on 05.02.2013 and 22.05.2013 respectively.
6. That pursuant the application for booking an apartment in the said project and above payments, the respondent issued letter dated 05.07.2013 allotting an apartment bearing no. C-1101 on 11th floor of tower-C, admeasuring super area of (approx.) 1865 sq. ft. (hereinafter referred to as the 'said apartment'). Further, an apartment buyer agreement was also executed between the parties on 08.11.2013 (hereinafter referred to as the 'Agreement').
7. That as on date, the complainant has paid a sum of Rs. 30,28,140/-, i.e. almost 27% of the total sale consideration of Rs. 1,09,67,000/-, duly acknowledged by the respondent as well.



8. That the complainant noticed that there was almost no major development at the project site and that the respondent has been unlawfully and illegally extracting money from her by issuing demand letters. As per clause 3.1 of the agreement, it was obligatory on the respondent's part to handover the possession of the said apartment duly completed with all specifications within a period of four years, with a grace period of nine months from 08.11.2013, i.e., by 07.08.2018.
9. That the complainant was shocked and surprised to receive a letter from the respondent dated 31.03.2016, cancelling the allotment of the said apartment unlawfully & illegally and forfeiting the amount of Rs. 30,28,140/- paid by her to it.
10. That it is pertinent to note herein that the complainant received a letter dated 17.05.2016 from the respondent and wherein it was categorically mentioned that the construction work at site was going on in full swing and that it has planned to offer possession of tower A, B and C tentatively in May 2017, whereas and till date, the apartment is not ready for handing over the possession to her and a lot of work is still pending to be completed by the respondent.
11. That as per clause 3.3 of the said agreement, it has been categorically agreed by the respondent that in case it fails to handover possession of the said apartment to the complainant by 07.08.2018, then it shall be

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liable to pay to her the compensation equivalent to the amount calculated on the basis of Rs. 10/- per sq. ft. per month of the total area of the said apartment for the delayed period.

12. That as a matter of fact, the respondent has still not completed the said project and whereas at the time of booking the said apartment, the respondent assured her that the possession of the said apartment shall be handed over on/before 07.08.2018, which undoubtedly and evidently depicts its malafide and malicious intentions of defrauding and cheating the complainant of her life savings.
13. That the respondent has intentionally and deliberately delayed the said project for the reasons best known to it. Till date, the respondent has not been able to complete the said project, and the RERA Registration bearing no. 287 of 2017, dated 10.10.2017, issued by the Haryana Real Estate Regulatory Authority (HRERA), also expired on 31.12.2018. This is a violation of Section 18 of Act of 2016, besides other provisions of the said Act and Rules.
14. That from the very beginning, the respondent's intention was to cheat and cause wrongful loss to her thereby enriching themselves. The complainant is a single lady and is a senior citizen. Due to the respondent's unprofessional and callous attitude, contrary to the terms and conditions of the agreement and the provisions of law, she has been suffering huge monetary losses.

15. That in light of the above, the complainant got issued a legal notice through her advocate dated 16.03.2019, calling upon the respondent to cancel the booking of the said apartment and simultaneously refund the entire amount of Rs. 30,28,140/- paid by her, along with interest @ 18% p.a. from the date of payment and to which it did not bother to comply or reply leading to the filing of the complaint seeking refund as prayed above.

C. Relief sought by the complainant:

16. The complainant has sought following relief(s):
- i. Direct the respondent to refund the amount paid by the complainant i.e., Rs. 30,28,140/- along with interest @18% from date of booking of the said apartment till the realization of the entire amount in full.
 - ii. Direct the respondent to refund the amount collected from the complaint in lieu of interest, penalty for delayed payments under Rule (3)(c) of the Rules.
 - iii. Impose penalty as per provision of Section 60 of Act, for wilful default committed by them.
 - iv. Impose penalty as per provision of Section 61 of Act for contravention of Section 12 of Act.
 - v. Direct every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence neglect any of the offences that has been

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committed as mentioned in Section 69 of Act of 2016 to be read with Rules.

- vi. Recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 & 409 of Indian Penal Code.
- vii. Direct the respondent to pay cost of litigation.
- viii. Direct the respondent to pay compensation to the complainant for mental agony, pain and harassment.

D. Reply by respondent:

The respondent by way of written reply made following submissions

17. That initially one M/s. Capital Builders was the absolute owner of the total land admeasuring 115 kanal 15 marla situated at Village Fazilpur, Jharsa and District Gurgaon, Haryana (hereinafter referred to as "the said Project Land").
18. That, the said M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said project land.
19. That accordingly, the respondent proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said

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Project") on the said project land and initially, the Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a license bearing no. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of project which was subsequently transferred to the respondent.

20. That in the year 2012 the complainant approached the respondent to buy an apartment in the said project and applied for booking. The respondent vide letter dated 05.03.2013, provisionally allotted a unit no. 1101 on 11th floor, of tower C, admeasuring super area 1865 sq. ft. in the said project at a basic cost of Rs. 97,91,250/- to the complainant as per terms and conditions mentioned in the application.
21. That however, the complainant had failed to make the payments of the consideration as per the payment schedule. As such, the respondent on several occasion requested the complainant to make the due payments.
22. That thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 08.11.2013 was executed between the parties setting out the terms and conditions of allotment, sale consideration, dimensions of the unit, payment plan and the due date of possession etc.
23. That the complainant failed to pay the consideration amount in terms of the payment schedule. As such, the respondent time to time

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requested her to pay the due consideration amount as per the payment schedule but she has failed to pay the due consideration amount. As such, with no other option left, the respondent vide notice dated 01.12.2014 called upon the complainant to pay a sum of Rs. 18,96,146.32, failing which it would cancel the allotment and terminate the apartment buyer's agreement.

24. That thereafter, the complainant gave assurance to the respondent that she would pay the due consideration amount within a short period of time. In view of the request of the complainant, the respondent did not cancel the allotment and the apartment buyer's agreement. However again, the complainant failed to pay the due consideration amount. As such, the respondent on several occasion requested her to pay the due amount but she failed to make the due payment of Rs. 55,40,455.86/-. As such, with no other option left, the respondent vide cancellation letter dated 31.03.2016 terminated the apartment buyer's agreement dated 08.11.2013 and cancelled the allotment of the complainant.

25. That the complainant vide legal notice dated 16.03.2019 called upon the respondent to refund amount of Rs. 30,28,140/- to her along-with Rs.18,650/- and Rs. 25,000/- towards compensation and costs for issuance of the legal notice.

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26. That it is pertinent to bring to the notice of the Authority that sometime in the year 2013 one Mr. Ballu Ram filed a writ petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license no. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said project. So, in view of that the respondent was unable to continue with any kind of construction at the project site. All the construction work at the project site came to stand still. The Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition.
27. That in view of the said order of the Hon'ble High Court, the respondent was forced to keep in hold all the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months and it is in the process of completing and developing the said project and would deliver the possession of the apartment to the respective allottees within a short period of time. The Authority also granted registration of the said project under the Real Estate (Regulation and Development) Act, 2016. It has also applied for extension of validity of registration of the project with the Authority and deposited the requisite fees.

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28. That the complainant has paid a total sum of Rs. 30,28,140/- to the respondent. Since, the complainant failed to adhere to the terms and conditions of the apartment buyer's agreement, so the respondent is not liable to pay any amount to her in as much as that the entire amount received by it from her stood forfeited in terms of the provisions of the said apartment buyer agreement. It is the complainant who is liable to pay a sum of Rs. 5,14,480.00 to it. The detail calculation of the amount payable by the complainant to the respondent are as under:

S.no.	Particulars	Amount
1.	Earnest Money @ 15% of Basic Sale Price	Rs.14,68,688.00
2.	Brokerage	Rs.2,93,738.00
3.	Interest Amount	Rs.17,80,194.00
Total		Rs.35,42,620.00
Amount paid by the complainants		Rs.30,28,140.00
Amount payable by the complainant to the respondent		Rs.5,14,480.00

29. That the complaint for the desired reliefs is not maintainable before the Authority as it does not have the jurisdiction to award any such relief. As such, the present complaint is not maintainable.

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30. All other averments made in the complaint were denied in toto.
31. 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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

32. The plea of the respondent regarding 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

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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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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.

33. 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

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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."

34. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matters noted above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by her.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions:

35. The respondent-promoter pleaded that there was no delay on its part in completing the project and handing over the possession of the allotted unit and which was on account of force majeure circumstances such as stay on transfer and construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013). The respondent pleaded that such period should not be considered while calculating the delay in completion of the subject unit. The Authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling its obligations but the respondent has failed to place on record any such document/order of any competent Authority/forum wherein such period was declared as "zero-period".

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Hence, the plea of the respondent on that count is not tenable. Moreover, grace period of nine months has already been allowed to the respondent-company being unconditional. Thus, no further grace period or leniency can be allowed to the respondent.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the amount paid by the complainant i.e., Rs. 30,28,140/- along with interest @18% from date of booking of the said apartment till the realization of the entire amount in full.

G.II Direct the respondent to refund the amount collected from the complaint in lieu of interest, penalty for delayed payments under Rule (3)(c) of the Rules.

36. Both these issues being inter-connected are being taken together.
37. The project detailed above was launched by the respondent as group housing complex and the complainant was allotted the subject unit in tower C on 05.07.2013 against basic sale consideration of Rs. 97,91,250/-. It led to execution of a builder buyer agreement between the parties on 08.11.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of four years along with grace period of nine months was allowed to the respondent for completion of the project and that period has admittedly expired on 08.08.2018. It has come on record that against the basic sale consideration of Rs. 97,91,250/-, the complainant has paid a sum of Rs. 30,28,140/- to the respondent which constitutes 30.93 % of the basic sale consideration.
38. The respondent submitted that the allotment of the complainant was terminated in 2016 on account of non-payment of due installments by

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her. But it was pleaded by the complainant that after alleged cancellation, the respondent sent letter dated 17.05.2016 requesting her to make the outstanding payments and cooperate in the completion of the project expected to be completed by May 2017/December 2017. The complainant submitted that neither there was any substantial construction made by the respondent w.r.t to tower in which her unit is situated, nor occupation certificate has been obtained till date. Even no refund after such cancellation has been made by it. Thus, she is entitled for full refund of the paid-up amount. The Authority observes that vide letter dated 17.05.2016 sent by the respondent after cancellation letter dated 31.06.2016, it was only a newsletter under the heading "News-letter on Florence estate construction progress" and nowhere specifically raised any demand upon the complainant and the contents of the letter dated 17.05.2016 for a ready reference are being reproduced as under: -

"We have planned to handover the possession of tower A, B and C tentatively in May 2017 & Tower D & E in December 2017. we appreciate your corporation n progressing the project so far and continue to expect similar corporation, specially by making outstanding payments of respective demands on time as and when demanded by the company. This will help us to".

39. There have been cases where the respondent issued demand letters after termination of subject unit and the Authority has taken a view that applying provisions of *Doctrine of Waiver*, the promoter itself abstains from his right knowingly that his action would render the



earlier communication made/act made void. But in the instant complainant, no doubt that the letter is addressed to the complainant, but that was general in nature informing the allottees about the status of construction and cannot be termed as over-riding the cancellation already made by the respondent of the subject unit vide letter dated 31.03.2016. Moreover, the fact cannot be ignored that despite such letter, the complainant did not come forward to make payment towards consideration of allotted unit. As per customer ledger dated 23.02.2019 on page no. 62 of complaint, she made last payment way back in 2013 and paid an amount of Rs. 30,28,140/- towards basic consideration of the allotted unit constituting 30.93 % of total consideration i.e., Rs. 97,91,250/-. Thus, the plea of the complainant that the respondent sent letter dated 17.05.2016 after cancelation of subject unit on 31.03.2016 recalling its earlier letter is not tenable and cannot be said to be revival of allotment of the unit.

40. Further, on account of non-payment of various demands, the respondent raised various demands and reminders letters dated 09.07.2013, 05.12.2013, 09.12.2013, 22.05.2014, 01.12.2014, 25.09.2015, 26.11.2015, 21.12.2015 and 12.01.2016 followed by pre-termination and termination letter dated 27.02.2016 and 31.03.2016 respectively. The complainant after cancellation of subject unit in 2016 filed the instant complaint only on 26.03.2019 i.e., within three years from the date of cancellation i.e., 31.03.2016 and the same is said

to be within limitation. No doubt the complainant did not challenged the action of the respondent in cancelling her unit by way of any suit or complaint as per the law of the land at that time but challenged that action by way of complaint within three years and the same can't be said be bad and not maintainable on account of laches. However, the issue of cancellation in the case is as to whether the said cancellation dated 31.03.2016 is bad in the eyes of law or the same is liable to be set aside. It has come on record that after booking of the subject unit, the complainant paid sale consideration to the extent of 30% and failed to pay the remainder amount despite issuance of various letters/ reminders as detailed above which ultimately, lead to cancellation of the unit vide letter dated 31.03.2016. So, it can be concluded that the respondent was justified in cancelling the unit of the complainant as per the terms and conditions agreed upon between the parties.

41. Now the second issue for cancellation arises as to whether after cancellation of the allotment vide letter dated 31.03.2016, the complainant is entitled to any amount after deduction of earnest money. It is pleaded on behalf of the respondent that after making deductions as per the terms and conditions of buyer's agreement, no amount remained to be paid to the allottee and hence, she is not entitled to any amount on cancellation. But the plea advanced in this regard is devoid of merit. The complainant has admittedly paid a sum

of Rs. 30,28,140/- against basic sale consideration of Rs. 97,91,250/- and while cancelling the allotment, the respondent forfeited whole of the amount and which is not legally permissible in view of law laid down by the Hon'ble Apex Court of land in cases of ***Maula Bux Vs. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136***, wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. A similar view was taken by the ***Hon'ble National Consumer Dispute Redressal Commission in consumer case no. 2766 of 2017 titled as Jayant Singhal & Anr. Vs M/s M3M India Limited decided on 26.07.2022***. Even keeping in view, the principles laid down in the first two cases, the Haryana Real Estate Regulatory Authority Gurugram framed regulation 11(5) known as (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under-

"AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all

cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

42. Thus, keeping in view of aforesaid circumstances and the law of the land, though the cancellation of the allotted unit is held to be valid, but the respondent was not justified in retaining whole of the paid-up amount on cancellation. It could have retained 10% of the basic sale consideration of the unit and was require to return the remainder on cancellation. Since that was not done, so the respondent is directed to refund the paid-up amount after deducting 10% of the basic sale consideration of the unit being earnest money from the date of cancellation i.e., 31.03.2016 within 90 days from the date of this order along with an interest @10.70 % p.a. on the refundable amount, till the date of realization.

G.III Impose penalty as per provision of Section 60 of Act, for wilful default committed by them.

G.IV Impose penalty as per provision of Section 61 of Act for contravention of Section 12 of Act.

G.V Direct every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence neglect any of the offences that has been committed as mentioned in Section 69 of Act of 2016 to be read with Rules.

G.VI Recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 & 409 od Indian Penal Code.



43. The aforesaid reliefs no. iii to vi were not pressed by the complainant during the course of proceedings. Hence, no findings are being required qua the same.

G.VII Direct the respondent to pay cost of litigation.

G. VIII Direct the respondent to pay compensation to the complainant for mental agony, pain and harassment

44. The complainant is 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.*, 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 complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

45. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the paid-up amount of Rs. 30,28,140/- to complainant-allottee after deducting 10% as earnest money of the basic sale consideration of Rs. 97,91,250/- with interest at the prescribed rate i.e., 10.70% on such balance amount, from the date of cancellation i.e., 31.03.2016 till the date of realization.
 - 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.
46. Complaint stands disposed of.
47. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.04.2023

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