BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3331 of 2021**
First date of hearing:		**25.11.2021**
Date of decision	**:**	**09.02.2023**

Hansa Devi
R/o: - H.No. 266, Shikhopur,
Gurugram – 122001 **Complainant**

Versus

M/s Pareena Infrastructures Private Limited
Office: 2, Palm Apartment, Plot No. 13B, Sector - 6,
Dwarka New Delhi DL 110075
Corporate office: C-7A, Second Floor, Omaxe City Centre, Sector – 49, Sohna Road, Gurugram – 122018 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
Sh. Arun Yadav along with Sukhbir Yadav Advocate **Complainant**
Sh. Prashant Shoeran Advocate **Respondent**

ORDER

1. The present complaint dated 26.08.2021 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities

and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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:

S.N.	Particulars	Details
1.	Name and location of the project	"Coban Residences", sector-99A, Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	**Registered** Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
7.	Unit no.	1401, 14th Floor, Tower T-6 [Page 32 of complaint]
8.	Unit admeasuring area	1550 sq. ft. of super area [Page 32 of complaint]
9.	Allotment letter	27.11.2013 [Page 28A of complaint]
10.	Date of builder buyer agreement	21.01.2014 [Page 30 of complaint]
11.	Possession clause	*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.....*

		Emphasis supplied....
12.	Date of start of construction	16.10.2014 [as per SOA dated 17.06.2020 page 76 of complaint]
13.	Due date of possession	16.10.2018 [Calculated from start of construction i.e. 16.10.2014]
14.	Cancellation letter dated	23.02.2021 [as page 78 of complaint]
15.	Total sale consideration	Rs. 82,15,000/- (Basic Sale Price as per BBA) Rs. 1,05,67,066/- [as per SOA dated 17.06.2020 page 76 of complaint]
16.	Total amount paid by the complainant	Rs. 17,03,922/- [as per SOA dated 17.06.2020 page 76 of complaint]
17.	Occupation certificate	N/A

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

I. That, in July 2013, complainant received a marketing call from a real estate agent who represented himself as an authorized agent of the respondent and marketed a residential project namely "Coban Residences" situated at sector–99A, Gurugram. The complainant visited the Gurugram office and the project site of the respondent/builder. There she met the marketing staff of builder and got information about their project "Coban Residences". The marketing staff gave her a brochure, and pricelist etc. and allured her with a rosy picture of the project.

II. That, believing the said representations and assurances of the respondent, the complainant booked flat/apartment bearing no. 1406 in tower T6 of size admeasuring 1550 sq. ft. and paid a booking amount of Rs. 7,50,000/- vide cheque drawn on catholic syrian bank dated 07.02.2013 and the respondent issued the payment receipt for the same on 30.07.2013. The flat/apartment was purchased under the construction linked plan for a sale consideration of Rs. 1,02,78,600/-. On 03.08.2013 the respondent raised a demand of Rs. 9,53,922/- and the complainant paid the said demand on 15.10.2013. That on 27.11.2013, the respondent issued the provisional allotment letter for said flat.

III. That on 21.01.2014, a pre-printed, unilateral, arbitrary builder buyer's agreement/buyer's agreement was executed inter-se the respondent and the complainant. According to clause 3.1 of the buyer's agreement, the respondent was to give possession of the said flat within 4 years of the start of construction or execution of this agreement, whichever is later. It is germane to mention here that the construction commenced on 16.10.2014, therefore the due date of possession was 16.10.2018.

IV. That on 12.11.2014, the respondent sent a reminder letter and asked the complainant to pay Rs. 10,60,727.22/-. That, upon receiving the reminder letter, the complainant visited the office of the respondent and asked the respondent to cancel the unit being allotted to her as due to some personal financial reasons she is unable to pay the demands being raised by the respondent. It is pertinent to mention here that

office bearers of the respondent have expressed their inability to refund the paid amount due to financial constrain of the company and said that as a special case we are allowing you to pay the demands within one year without interest. The complainant is a simple villager and believed in the representations of the respondent with a hope that she might get the money that was stuck in a deal.

V. That on 05.02.2016 the respondent raised a consolidated demand of Rs. 21,03,690/-. Upon receiving the said demand letter the complainant again visited the office of the respondent and asked the respondent to cancel the unit being allotted to her, due to some personal financial reasons. That after considering the financial condition of the complainant, the office bearers of the respondent said that if you surrender the unit/allotment the company will deduct 15% earnest money as per clause no. 1.2 e) i. of the BBA, but in a special case, if we find a suitable buyer for your allotted unit, we will allot the flat to the prospective buyer and will refund you the paid money without interest. That under, these compelling circumstances the complainant become agreed to the assurance of the respondent.

VI. That thereafter the respondent kept sending the reminder letters to the complainant, but when the complainant asked to stop sending the demand letters, the office bearers of the respondent said that letters are system generated and there will be no harm to you by these demand letters. That despite repeated requests by the complainant for

cancellation of the unit and for refund of the paid amount, the respondent failed to do the same.

VII. That on 24.01.2020, the respondent issued a letter to the complainant and stated that "This is to apprise you that the licensee i.e. Monex Infrastructure Pvt. Ltd. of our project "Coban Residences" being developed by us at Sector 99A, Gurugram has obtained in-principle approval from DTCP for change of developer in the above said license in our favor. This change of developer on license will enable us to streamline the process of giving possession of flat allotted to you in the above-said project. It will also help in our endeavor to serve our esteemed clients in a better way".

VIII. That as per the statement of account issued by the respondent the complainant has paid Rs. 17,03,922/- i.e. 16% of the total sale consideration of the unit. In January 2021, the complainant visited the office of the respondent asked for the refund of the money after deduction of earnest money ie. 10% of basic cost, but the respondent did not accept the request of the complainant.

IX. That on 23.02.2021, the respondent sent a unit cancellation letter to the complainant and stated that Rs. 28,13,041/- are due towards the complainant. It is pertinent to mention here that the respondent has raised various unreasonable and unjustifiable demands from the complainant which is not acceptable. It is again pertinent to mention here that since 2014, the complainant is requesting the respondent to cancel the unit and refund the paid amount but the respondent did not

acknowledge any request of the complainant. It is pertinent to mention here that in the cancellation letter the respondent acknowledged the payment of Rs. 17,03,922/-. It is further pertinent to mention here that, the cancellation letter issued by the respondent mentioned the earnest money @ 10% of total cost instead of 10% of basic cost. As per regulation of authority, the builder can deduct the earnest money equal to the 10% of basic cost.

X. That, thereafter the complainant has visited various times the office of the respondent and asked to cancel the unit and refund the paid amount but the respondent did not pay any heed to the just and reasonable demands of the complainant. It is pertinent to mention here that even after requesting the respondent for cancellation of the unit the respondent kept sending the reminder letters and kept misleading the complainant. It is highly pertinent to mention here that the respondent misused his dominant possession and used the hard-earned money of the complainant.

XI. That, due to the above acts of the respondent the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice. The cause of action for the present complaint arose in **November 2014**, when after the request of the complainant for cancellation of the unit and refund of the paid amount, the respondent did not acknowledge the request of the complainant and did not cancel the unit. The cause of action again

arose on various occasions, including in: a) August 2015; b) Oct. 2016; c) December 2019, d) January 2021; and on many times till date, when the protests were lodged with the respondent about its failure cancellation of the unit and refund of the paid amount. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

XII. That the complainant wants to withdraw from the project, the promoter has not fulfilled his obligation under section 11(4), 12, 18(1) & 19(4) as per which the promoter is obligated to refund the paid amount along with the prescribed rate of interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

   i. Direct the respondent to refund the paid money along with prescribed interest under section 11 (4), 12, 18 & 19(4) of the Act, 2016.

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 and 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 present complaint is not maintainable in the eyes of law. That the forum has no jurisdiction to entertain the present complaint.

b. That, the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A. That, the unit/tower in question is approximately near completion.

c. 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 expected to be completed as soon as possible. That, the current status of project is attached herein as **Annexure R1**: However, it is pertinent to mention here that the respondent is endeavoring to apply for occupation certificate quite soon and under normal circumstances will offer possession by the end of first quarter of year 2022.

d. That, quite conveniently certain pertinent facts have been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this Hon'ble Authority at the expense of the respondent.

e. That, the respondent continues to bonafidely develop the project in question despite there being various instances of non-payment of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainants have already been spent in the development work of the proposed project.

On the other hand, the respondent is still ready to deliver the unit in question on its due completion to the complainant, subject to payment of due installments and charges.

f. 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 for the unit in question. If such frivolous allegations are admitted then interest of other genuine allottees of the project will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

g. That, admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount, does not fulfill the need for collective payment. It is submitted that numerous allottees have defaulted on payment demanded by the respondent, resulting in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds.

h. That, the situation of non -payment of amount by the allottees is beyond the control of respondent. Even in the apartment buyer agreement, it was stated that period of 4 years was subject to normal conditions and force majeure, and with any stretch of imagination, situations faced by respondents were not normal. It is submitted that more than 30% payment was not received by the respondent, yet the work at the tower/unit is completed by approximately 95% percent. That, it is the

fault of those allottees who had committed defaults and respondent should not be made to suffer for the same.

i. That, other than above stated factors, there are lot of other reasons i.e. NGT orders of various dates, Environment pollution (Prevention and control) Authority orders, Haryana State Pollution Control Board orders and Municipal Corporation Gurugram orders, which hampered the progress of construction of project and in many cases caused complete stoppage of construction work.

j. That, other than these, there are several other orders of 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 shall 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."

k. That ,the situation of COVID pandemic is in the knowledge of everyone. From march 2020 to till now, there has been several months where construction work was completely stopped either due to nationwide

lock down or regional restrictions. There has been 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. Even RERA extended the time limits for completion of project vide notification dated 26.05.2020, by 6 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 our 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 this consumed more than 11 months wherein 2/3 time, there could be no construction and rest of the time construction progressed at a very slow pace due to several restrictions imposed by the state government on movement and number of persons allowed etc.

l. That, even the hon'ble apex court 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 such force majeure event.

m. That, complainant never paid amount after execution of apartment buyer agreement. Even after receiving numerous demand letters from the respondent at respective stages of construction. It is submitted that RERA is based on principles of natural justice and equity, and these

principles apply both to allottee and developer alike. It is further submitted that RERA does not give absolute right to allottee to seek refund if in standard time project is not completed. It is submitted that allottee rights are governed through their duties and if they failed to fulfill their duties, than they have no right to seek refund. That, none is allowed to take benefit of their own mistake.

n. That, the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. That in such cases if refund is granted then it would be against the principles of natural justice. It is pertinent to mention here that, whatsoever amount was received by respondent qua construction has already been utilized for it and it is tne complainant who failed to make payments. Thus, he cannot blame respondents. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.

o. That, the respondent explained that all these circumstances are beyond its control. That, even the adjudicating officer has already opined in similar matter that, if completion of project is delayed to some extent and the respondent has explained the delay, allowing refund will hamper the project construction.

p. That, it is the admitted fact that the builder buyer agreement was executed between the parties on 21.01.2014. However, certain important facts were concealed by the complainant while drafting the present complaint. That, the complainant has intentionally provided

details of payments only but concealed the fact whether the payments were made on time or not or whether the amount alleged to be paid by complainant is paid by her only.

q. That out of total amount paid by complainant, a major portion was paid as taxes and charges like EDC, IDC to government, thus the said amount can't be claimed from respondent. It is pertinent to mention here that whatsoever amount that was received by respondent qua construction has already been utilized for construction and any sort of refund will be against natural justice. That, the present complaint has been filed by the complainant in utter disregard of the provisions of Indian Contract Act and in complete violation of various agreements executed between the parties.

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.IISubject-matter jurisdiction

10. 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.*

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(I) RCR,357*** and

followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 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."*

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/developer prayed 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. The apartment buyer's agreement was executed between the parties on 21.01.2014 and as per terms and conditions of the said agreement, the due date of handing over of possession comes out to be 16.10.2018. The various orders passed by NGT, EPCA, SC were for a shorter duration of time and were not continuous as there is a delay of more than three years and no occupation certificate or offer of possession is given till date. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons and plea taken by respondent is devoid of merit.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, the 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 as under:

> *"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/builder 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 (calculated from date of start of construction i.e. 16.10.2014, this date of start of construction of project is taken from similar complaint of this project) 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 considered while calculating the delay in handing over of possession.

G. Findings on the relief sought by the complainant.

GI. Direct the respondent to refund the paid money along with prescribed interest under section 11 (4), 12, 18 & 19(4) of the Act, 2016.

17. The complainant booked a unit in the project named "Coban Residencies" by paying a booking amount of Rs. 7,50,000/-. Thereafter, on 03.08.2013, she paid Rs. 9,53,922/- against demand raised by the respondent after which she was issued the provisional allotment letter dated 27.11.2013. On 21.01.2014, a BBA was executed between the parties. The respondent then sent a reminder letter dated 12.11.2014 after which the complainant herself approached the respondent for cancellation of the unit but upon assurances by respondent she decided to continue with the project. The contention of the complainant is that the respondent has not offered possession of the unit as per the BBA and hence a case for refund is made out.

18. The respondent, however contends that the complainant has defaulted in payment of installments. It has placed on record various demand/remainder letters dated 05.01.2021, 21.05.2015 and 07.03.2016. after issuance of these letters, a pre-cancellation letter was issued on 21.01.2021 before finally canceling the unit vide letter dated 23.02.2021.

19. During proceedings, the counsel for the complainant stated that she could not make the payment after the booking due to certain financial constraint and on mutual verbal understanding, an assurance was given by the

respondent to refund the amount after sale of the unit to any buyer and she has been waiting for the same. But the unit was cancelled on 23.02.2021 due to non-payment after repeated reminders. The counsel for the complainant states that the above cancellation has been done after the due date was over way back in 2018 and OC is not obtained even till date and hence, the complainant be given full refund. The counsel for the complainant further draws attention towards cancellation letter dated 23.02.2021, wherein the deductions have been made beyond the 10% of earnest money on the pretext of GST, interest on outstanding amount, taxes and administrative expenses which are not maintainable and therefore she requests for setting aside excess deductions. Now the question before the authority is whether this cancellation is valid.

20. On consideration of documents available on record and submission of both the parties, the authority is of the view that on the basis of provisions of agreement executed between the parties, the complainant had paid Rs. 17,03,922/- against the total sale consideration of Rs. 1,05,67,066/- . The respondent/builder sent a number of demand letters/reminder letters dated 01.10.2014, 12.11.2014, 11.12.2014, 02.01.2015, 12.05.2015, 25.04.2015, 21.05.2015, 05.02.2016, 07.03.2016, 08.09.2016, 05.01.2021 respectively asking the allottee to make payment of the amount due but this had no positive outcome, and this ultimately lead to cancellation of unit vide letter dated 23.02.2021 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 the earnest money and refund the balance amount deposited by allottee without any interest in the manner prescribed in this 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. 17,03,922 i.e., 17% of BSP to the respondent/builder and the cancellation of the allotted unit was made on 23.02.2021 by retaining the amount beyond 10% which is not legal in view of number of pronouncements of the Hon'ble Apex court.

22. 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."*

23. Keeping in view the aforesaid legal provisions, the respondent is directed to forfeit earnest money which shall not exceed the 10% of the basic sale price of the said unit as per statement of account and shall return the

balance amount to the complainant within a period of 90 days from the date of this order.

H. Directions of the authority

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

    i. The respondent is directed to refund the deposited amount of Rs 17,03,922/- after deducting 10% of the basic sale price of the unit being earnest money along with an interest @10.60% p.a. on the refundable amount, if any, from the date of cancellation of unit (i.e. 23.02.2021) till the date of realization of payment.

    ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2023