

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

Complaint no.: 657 of 2020
Date of Complaint: 06.02.2020
Date of decision: 13.04.2023

1. Dr. Shobha Goel

2. Dr. G D Goel

Both RR/o: - House No. 28, Chiranjivi Vihar, Sector- 8,
Ghaziabad U. P

Complainants

Versus

M/s Raheja Developers Limited.

Regd. Office at: W4D- 204/5, Keshav Kunj, Western
Avenue, Sanik Farms, New Delhi- 110062

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Col. M.S. Sehrawat (Advocate)

Sh. Garvit Gupta (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.

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A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	i. 19 of 2014 dated 11.06.2014 valid up to 10.06.2018 ii. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Standard Farms Pvt. Ltd and 9 others
6.	Date of approval of building plans	29.01.2016
7.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
8.	RERA registration valid up to	27.08.2022
9.	Unit no.	Plot no. E- 147 (Page no. 35 of the complaint)
10.	Unit area admeasuring	275.84 sq. yds. (Page no. 35 of the complaint)
11.	Allotment letter	23.08.2016 (Page no. 28 of the complaint)

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12.	Date of execution of agreement to sell	23.08.2016 (Page no. 31 of the complaint)
13.	Transaction agreement form	24.11.2015 (Page no. 15 of the complaint)
14.	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and</i>

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		<p><i>cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay....."</i></p> <p>(Page no. 41 of the complaint).</p>
15.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by August 2019. As per agreement to sell, the construction of the project is to be completed by August 2019 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.</p>
16.	Due date of possession	<p>23.02.2019</p> <p>(Note: - 36 months from date of agreement i.e., 23.08.2016 + six months grace period)</p>

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17.	Basic sale consideration as per payment plan at page 54 of complaint	Rs.91,23,424/-
18.	Amount paid by the complainants	Rs.32,31,542/- [As per averment of complainant, page no. 7 of complaint]
19.	Payment Plan	Installment Link Payment Plan (As per payment plan at page 54 of complaint)
20.	Occupation certificate /Completion certificate	Not received
21.	Application for grant of completion/occupation certificate	27.04.2017 (Page no. 65 of the complaint)
22.	Offer of possession	Not offered
23.	Demand letters	02.06.2017, 07.07.2017 (Page no. 66 and 68 of the complaint)
24.	Termination/cancellation letter	29.07.2017 (Page no. 71 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainant no. 1 i.e., Dr. Shobha Goel has applied a plot on 24.11.2015 in the respondent project namely i.e., "Raheja Aranya City" situated in Sectors 11 and 14 Sohna Gurugram and filed a transaction agreement form through the real estate agent i.e., "360 Realtors". The complainants were made payment through cheques

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no. 000007 and 000010 dated 22.11.2015 and 28.11.2015 of Rs.7,50,000/- and Rs.1,52,000/- respectively. Thereafter, they were allotted a plot bearing no. E-147, area admeasuring 275 sq. Yds. for a total sale consideration of Rs.90,96,200/-.

- II. That on 28.03.2016, Kanika Kaushik Asst. Manager cum Customer Relations called upon the complainants to remind about an impending Instalment, according to 30:70 payment plan. However, the same was objected to by the son of the complainants namely Vaibhav Goel reminding the respondent that the agreed payment plan was 25:75 and thereafter, no Instalment was due to be paid. The next instalment was due to be paid only after 6 months from the date of booking.
- III. That, not only the payment plan was fudged from agreed 25:75 to 30:70, but all other information about the complainants too was also recorded incorrectly in the official records of the respondent, certainly with a definite mala-fide and some example is below in tabular form.

S. No.	Details of particular	Correct recorded in the form	Wrongly fed into the system
1.	Mob. No.	9560766005	9560766805
2.	Email ID: -	vaibhavgoel2@gmail.com	Vaibhavgoel21@gmail.com
3.	Payment plan	25:75	30:70
4.	Name of banker	BOB	OBC

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5.	Relationship	Shobha Goel and Dr. GD Goel (Husband and wife)	Wrongly shown as Son
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- IV. That, booking amount was paid to the realtor on 24.11.2015 and the receipt was issued by the respondent/promoter on 22.12.2015, after a delay of more than one month and for which the complainants were charged an amount of Rs.13,242/-. How, that amount became due even before booking.
- V. That the respondent/promoter had developed the plotted colony and the license was granted by the District Town and Country Planning Haryana bearing no. 19 of 2014 dated 11.06.2014 valid up to 10.06.2018 and 25 of 2012 dated 29.03.2012 valid up to 28.03.2018. The complainant/purchasers were intending to buy the unit based on the layout plans presently approved and as may be approved in future by the competent authority.
- VI. That the respondent/promoter applied for a completion certificate from the competent authority on 24.04.2017. Thereafter, on 02.06.2017, they have paid an amount of Rs.32,31,542/- towards the allotted plot.
- VII. That on 01.07.2017, the complainants informed the respondent /promoter via email that the Axis Bank would not release the loan amount of Rs.50 lakhs for their property E-147, of the above-mentioned project.

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VIII. That after protracted email exchanges between the parties during 01.07.2017 and 20.07.2017, the respondent intimated to the complainants vide RDL/CRD/Raheja's Aranya City/cancellation letter dated 29.07.2017, about cancellation of the allotted unit and summery of the account of the allotted unit which was given below: -

Total Paid	Rs.32,31,542/-
Less amount forfeitable	Rs.8,98,550/-
Delayed interest	Rs.85,581/-
Brokerage paid	Rs.4,72,313/-
Balance refunded	Rs.17,75,098/-

The balance amount after above deductions was refundable without ant interest. After the said unit was allotted to some other intending allottee(s) on 11.04.2018. On the request of the complainants, Rs.9,02,000/- were transferred from the account of E-147, to the account of unit no. C-012, in tower C, "Raheja Vanya", Sector- 99, Gurugram. An Allotment letter in this regard to the complainant's son was done vide allotment letter dated 12.10.2017, as suggested by the respondent to enable them to transfer the funds of E-147 to the account of C-012, as bank refused to finance E-147.

IX. That no brokerage charges are normally charged for shifting from one project to another project of the same developer/promoter as the complainants were not withdrawing from the project. They were compelled by non-sanction of loan granted by Axis bank.

X. That, no interest should have been charged on any due amount as the complainants had informed the respondent about their intention of

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cancellation of the property, due to non-approval of loan by the bank well before the instalment became due.

- XI. That, forfeiture of earnest money should not be allowed in this case as the complainants, firstly were not withdrawing from the project at their own will. The nominated financier bank declined to finance a loan and secondly, under those circumstances were only shifting them capital from one project of the respondent to its another project.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- i. Direct the respondent to cancel the allotment to the complainant's unit i.e., E-147, in the above said project, and refund the balance amount paid by the complainants along with interest @18% per annum.
 - ii. Direct the respondent not to forfeit any amount as earnest money amount of Rs.8,98,550/-.
 - iii. Direct the respondent not to charge arbitrary brokerage amount to Rs.4,72,313/-.
 - iv. Direct the respondent to pay an amount of Rs.5,00,000/- as compensation to the complainants for the harassment and agony caused to the family.
 - v. Direct the respondent to pay an amount of Rs.40,000/- as forced legal cost.
5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 13.09.2022, 14.12.2022, and 13.04.2023. Despite specific directions, it failed to comply with the orders

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of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, in view of order dated 13.04.2023, the defence of the respondent was struck off.

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

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

8. 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.

D. II Subject-matter jurisdiction

9. 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:

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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.

10. 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.

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

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment

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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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

- E. I. Direct the respondent to cancel the allotment to the complainant's unit i.e., E-147, in the above said project, and refund the balance amount paid by the complainants along with interest @18% per annum.
- E. II Direct the respondent not to forfeit any amount as earnest money amount of Rs.8,98,550/-.
- E.III Direct the respondent not to charge arbitrary brokerage amount to Rs.4,72,313/-.

13. The complainants were allotted plot no. E-147, in tower/block- E, in the project "Raheja's Aranya City" by the respondent/builder for a total consideration of Rs.91,23,424/-. A buyer's agreement was executed on 23.08.2016. The possession of the unit was to be offered within 36 months **plus/minus six (6) months in case the development was not completed within the time period mentioned above.** Therefore, the due date of possession comes out to be 23.02.2019. On 28.03.2016, Kanika Kaushik Asst. Manager cum Customer Relationship Manager

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called up the complainants to remind about the pending Installment, according to 30:70 payment plan, however, the same was objected to by the son of complainants i.e., Vaibhav Goel and reminding the respondent that the agreed payment plan was 25:75 and therefore, no Installment was due to be paid. That next Installment was due to be paid only after 6 months from the booking date. Further, respondent after giving reminders dated 02.06.2017, 07.07.2017 cancelled the allotted plot of the complainants vide letter dated 29.07.2017. Thereafter, they requested to the respondent company to adjust/transfer the funds of that unit to one of the other allotted unit in other project of the same being developed by the same developer/promoter.

14. Accordingly, the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The reluctant behavior of complainants led to issuance of notice of termination/cancellation by the respondent on 29.07.2017. Now, the question before the authority is whether this cancellation is valid or not?
15. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

Installment Payment Plan			
S.No.	Particulars	Other charges	Amount
1.	On application for booking	10% of BSP + 10% EDC/IDC + 10% of club membership charges + 10% IFMS	Rs.9,12,342/-

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2.	Within 180 days of booking	15% of BSP + 15% EDC/IDC + 15% of club membership charges + 15% IFMS	Rs.13,68,514/-
3.	On application of occupation certificate	65% of BSP + 65% EDC/IDC + 65% of club membership charges + 65% IFMS	Rs.59,30,226/-
4.	On receipt of occupation certificate	10% of BSP + 10% EDC/IDC + 10% of club membership charges + 10% IFMS + other charges	Rs.9,12,342/-
Net Plot Cost			Rs.91,23,424/-

16. The authority observes that as per payment plan agreed between the parties, the complainants agreed to pay 90% of sale consideration till application of occupation certificate. However, the complainants have only paid 35% of sale consideration against payment plan agreed to. Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties and the complainants have failed to fulfil the obligations conferred upon them vide section 19(6) & (7) of the Act of 2016, wherein the allottees were under an obligation to make payment towards consideration of allotted unit. The respondent after giving reminders dated 02.06.2017, 07.07.2017 cancelled the plot of the complainants vide letter dated 29.07.2017. The respondent has given sufficient opportunity to the complainants before proceeding with termination of allotted unit. Thus, the termination letter dated 29.07.2017 is valid in eyes of law.

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17. The respondent company applied part completion certificate /completion certificate for the project of the allotted plot was on 27.04.2017. Thereafter, the respondent/promoter issued demands letter and further, issued termination/cancellation letter to the complainants. The respondent cancelled the unit of the complainants after giving adequate demands notices. Thus, the cancellation of unit is valid. Further, as per article 12 of the agreement to sell, the respondent/promoter have right to cancel the unit and forfeit the earnest money in case the allottee breached the terms and conditions of the agreement to sell executed between both the parties. Article 12 of the agreement to sell is reproduced as under for ready reference:

Article 12.

TERMINATION/CANCELLATION OF THE ALLOTMENT

11.1 *The purchaser agrees that all defaults, breaches and/or non-compliance of any of the terms and condition of this Agreement to Sell shall be deemed to be events of defaults liable for consequences stipulated herein including termination/cancellation of allotment and forfeiture of earnest money as per terms and conditions of this Agreement.*

3.5 Earnest Money

*That the Purchaser agrees that out of the amount(s) paid by him towards the sale price, the **Seller shall treat 10% of the total sale consideration as Earnest Money to ensure fulfilment by the Purchaser of the terms and conditions as contained herein.** Timely payment is the essence of the terms and conditions. of this Agreement to Sell and the Purchaser is under obligation to pay the sale price as provided in the payment plan along with the other payments such as, applicable stamp duty, registration fee, maintenance security, PLC, EDC, IDC, IAC etc., and other charges on or before the due date or as and when demanded by the Seller, as the case may be and also to perform and observe all other obligations of the Purchaser under this Agreement to Sell.*

18. The respondent company applied part completion certificate /completion certificate for the project of the allotted plot on

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27.04.2017. Thereafter, the respondent/promoter issued demands letter and further, issued termination/cancellation letter to the complainants. The respondent cancelled the unit of the complainants after giving adequate demands notices. Thus, the cancellation of unit is valid.

19. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. Though vide letter dated 29.07.2017, the details of amount to be returned after deductions have been given but it is pleaded by the allottees that they have not received any amount after cancellation of the unit. Even otherwise a perusal of calculations given in letter dated 29.07.2017 shows that besides the amount deducted on account of brokerage, delayed interest, and forfeitable one, more than 50% of the paid-up amount has been deducted which is nothing but in the nature of penalty as per section 74 of the Contract Act, 1872. The issue with regard to deduction of earnest money on cancellation of a contract arose 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., (2015) 4 SCC 136,*** and 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 section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of

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allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"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."

20. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate

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Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of basic sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complaints after deducting 10% of the basis sale consideration and return the remaining 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 termination/cancellation 29.07.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

E. IV Direct the respondent to pay an amount of Rs.5,00,000/- as compensation to the complainants for the harassment and agony caused to the family.

E. V Direct the respondent to pay an amount of Rs.40,000/- as forced legal cost.

21. The complainants are seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the

complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

22. 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 paid-up amount of Rs.32,31,542/- after deducting 10% as earnest money of the basic sale consideration of Rs.91,23,424/- with the interest at the prescribed rate i.e., 10.70% is allowed on the balance amount, from the date of cancellation i.e., 29.07.2017 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.

23. Complaint stands disposed of.

24. File be consigned to registry.

Dated: 13.04.2023

V.I - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram