

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

Reserved on :-

05.01.2023

Date of pronouncement:-

22.03.2023

Name of the Builder		Oasis Landmark LLP	
Project Name		Godrej Oasis, Sector 88A, Gurugram	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/9/2021	Mr. Rudra Bose Vs Oasis Landmarks LLP	Ms. Priyanka Agarwal Shri Saurabh Gauba proxy counsel for Sh. Kapil Madan
2.	CR/10/2021	Mrs Ruma Bose Vs Oasis Landmarks LLP	Ms. Priyanka Agarwal Shri Saurabh Gauba proxy counsel for Sh. Kapil Madan

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **Godrej Oasis** (group housing project) being developed by the same respondent/promoter i.e., Oasis Landmarks LLP. The complainants/allottees seeking refund the entire amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Godrej Oasis, Sector- 88A							
Possession clause: Clause 4.2							
<i>The Developer shall endeavor to complete the construction of the Apartment within 48 months from the date of Issuance of Allotment Letter, along with a grace period of 12 months over and above, this: 48 months period ("Tentative* Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment.</i>							
Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasure- -eing	Date of execution of buyers agreement	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/9/2021 Case titled as MR RUDRA BOSE Vs. OASIS LANDMARKS LLP DOF:- 12.01.2021	Received on:- 30.07.20 21	D0304, 3 rd floor, tower D 1045 SQ. FT.	11.02.2015	22.09.2019 Termination letter issued by the respondent :- 01.04.2016	Rs. TSC- 1,15,21,700/- Paid Up amount:- Rs. 19,93,990/-	Refund along with interest

2.	CR/10/2021 Case titled as Mrs. Ruma Bose Vs OASIS LANDMARKS LLP DOF:- 12.01.2021	Received on:- 30.07. 2021	E1201, 12 th floor, tower E 1045 sq. ft.	11.02.2015	22.09.2019 Termination letter issued by the respondent :- 02.11.2015	Rs. 1,15,21,700/ - Paid amount:- 19,86,780/-	TSC- Up Rs.	Refund along with interest
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviations Full form TSC- Total Sale consideration DOF:- Date of Filing</p>								

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/9/2021 Case titled as Mr. Rudra Bose Vs Oasis Landmarks LLP.** are being taken into consideration for determining the rights of the allottees.
- A. Project and unit related details**
6. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Godrej Oasis, Sector 88A, Gurugram
2.	Project area	6.8 acres
3.	Nature of project	Group Housing Project
4.	RERA registered/not registered	Registered vide 53 of 2017 dated 17.08.2017 valid upto 30.09.2019
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013
6.	Apartment no.	D0304, 3 rd floor, tower D (Page 83 of reply)
7.	Unit area admeasuring (super area)	1045 sq. ft. (carpet area) [Page 83 of reply]
8.	Provisional allotment letter dated	22.09.2014 (Page 86 of complaint)
9.	Date of apartment buyer agreement	11.02.2015 [Page 61 of reply]
10.	Possession clause	4.2 of the said agreement i.e., 48 months from the date of issuance of allotment letter along with grace period of 12 months over and above this period [Page 69 of reply]
11.	Due date of possession	22.09.2019 Grace period is allowed as the same is unqualified.

12.	Total consideration as per BBA on page 85 of reply	Rs. 1,15,21,700/-
13.	Total amount paid by the complainant	Rs. 19,93,990/- (As specified in CRA from by complainant)
14	Occupation certificate	29.03.2019
15	Offer of possession	Not offered
16	Termination Letter	01.04.2016 (Page 123 of reply)
17	Final opportunity letter	08.08.2017 (Page 124 of reply)

B. Facts of the complaint

7. The complainant made the following submissions in the complaint:
- That the respondent/companies under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent and gullible public at large. The respondent advertised its projects extensively through advertisements, channel partners, agents, etc.
 - That the respondent advertised his project in the name of Godraj properties and promoted his project for good connectivity with dwarka expressway. Complainant was allured by an enamoured advertisement of the respondent and believing the plain words of respondent in utter good faith the complainant was duped of their hard-earned monies which they saved from bonafide resources.

Due to brand name of Godraj Properties and good connectivity builder launching price is very high when project grow and people now the reality of that brand name project market value was down and builder start to sell project in very cheap rate.

- iii. That the complainant was got allotment letter and payment schedule dated 22/09/2014 in which mentioned allotted unit D-304 on third Floor, Block- D tentatively super area admeasuring 1479 Sq. ft. That the allotment letter was also received at a later stage by the complainant after the initial payment/booking amount. That the respondents to dupe the complainant in their nefarious net even executed apartment buyer agreement signed between complainant and M/s Oasis Landmarks LLP on dated 11.02.2015, just to create a false belief and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. That the basic sale price of flat is 9613500/- out of that Rs 1993990/- was paid by complainant to the respondent in advance and rest of the amount was supposed to be paid in accordance with schedule vii (schedule of payments) of the agreement.
- iv. That about Rs. 1993990/- which constitutes about 20% of the basic sale price, was paid to the respondents in advance, which was in sharp contrast to the terms and conditions as specified in the agreement. That despite having paid about 20% of the basic sale price at the very outset, the complainant started receiving demand notices from respondent it is submitted that various demand notices have been received from the respondent within a period of 2 years, seeking payments amounting to about 90% of

the basic sale price in sharp contrast to the promise of payments being required to be made within a span of 4-5 years.

- v. That demand notices have been consistently received by the complainant informing them about the overdue payments on their part, as the slabs had been completed by the respondent as per the agreement. Notably, the demand letters clearly mention that the complainant would be liable to pay an interest of 15% p.a. from the date of the payments becoming due. It is pertinent to mention here that the respondent while being extremely diligent in seeking payments as per the terms of the contract, has, however, failed to meet its obligations of constructing proper roads and ensuring proper access to the flats.
- vi. That one-sided development agreement has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the builder imposes unfair and discriminatory terms and conditions. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of earnest money clause no. 2.4, delay payment charges clause no. 2.9, delay possession charges clause 4.3, transfer clause 10.1 & many hidden charges which was forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory. That the complainant had been assured by the representatives of the respondents that the project would have



direct connectivity with the Dwarka Expressway, however, the existent permanent structures/hindrances on the route to the Dwarka Expressway are yet to be removed and are functioning on full scale. Interestingly, new permanent structures have come up on the road which was supposed to connect the project with the Dwarka Expressway.

vii. That the complainant has been constantly requesting the respondents herein to consider their requests of either offering them easier payment plans as has been done to the new/prospective customers or consider offering the complainants the revised rates at which the new flats are being offered to the prospective customers and further waive the interest being levied on the delayed payments. The complainant has approached the respondents at various levels starting from the executive level to writing multiple appeals to the chairman of Godrej Properties Pvt. Ltd. The complainant through their letters/emails have tried to highlight the following concerns :

- No proper access to Dwarka Expressway as assured in the brochures and advertisements.
- No proper access to the main road from the apartments.
- Arbitrary and completely one-sided terms and conditions in the Apartment Buyer's Agreement, thereby rendering losses to the Complainant.
- Requesting them to consider shifting to the new scheme being offered to the new customers wherein close to 75% payment would have to be made nearing possession.

- The said concerns have yielded no positive response from the Respondents, thereby causing severe mental agony and trauma to the Complainant, Complainant is a service class person.
- viii. That the complainant has also received pre-termination and termination notices from the respondent, thereby threatening the complainant of forfeiture of earnest money submitted by the complainant, in the event of non-payment of the monies by the complainant along with the interest @15% p.a. That the complainants sent various letters to the respondents mentioning about their plight and the lack of deficiency of services in respect of the lack of basic facilities such as path to the buildings, roads etc. That despite various assurances from the respondents, no action has been forthcoming from them and therefore the complainant has been constrained to file the present complaint.
- IX. That the respondent herein has failed to cater to the concerns of the complainant by deliberately ignoring various representations made by the complainant and reducing the rates of individual flats by a large margin, eventually leading to incurrance of huge losses to the complainant should they desire to sell the flats in their present condition. It is submitted with regard to earnest money clause no 2.5 of BBA that it must be given at the moment at which the contract is concluded and that it represents a guarantee that the contract will be fulfilled, or, in other words, 'earnest' is given to bind the contract. The Complainant submits that whenever a seller (respondent herein) forfeits an amount paid by a buyer (complainant herein) under an agreement to sell then the source of right of forfeiture arises only because of section 74 of the

Contract Act. This is because Section 74 enacts a uniform principle that would apply to all amounts to be paid in case of breach, whether they are in the nature of penalty or otherwise.

X. It is further submitted that it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well. Merely because the amount is called as earnest money it will not automatically become earnest money and what is to be taken as the earnest money amount will depend upon the facts and circumstances of each case with the intentions of the parties.

XI. It is submitted that the said clause is ambiguous, and therefore, it should be interpreted against the interest of the person who insisted that the clause be included, or who drafted the clause as per the doctrine of Contra Preference. It refers to a standard in contract law which states that if a clause in a contract appears to be ambiguous, it should be interpreted against the interests of the person who insisted that the clause be included.

C. The complainant is seeking the following relief:

8. The complainant has sought the relief(s):

- (i) Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs. 19,93,990/- along with interest.

D. Reply filed by the respondent

9. The respondent had contested the complaint on the following grounds:

- i. That it is submitted that the present complaint arises out of an apartment buyer's agreement dated 11.02.2015 (hereinafter referred to as "**agreement**") wherein the complainant agreed to purchase a flat in the project 'Godrej oasis, for a total consideration of Rs.1,15,21,700/- excluding taxes. It is submitted that the complainant opted for a construction linked plan and unconditionally undertook to make payment as per the schedule of construction mentioned in the application form dated 30.04.2014 allotment letter dated 22.09.2014 as well as in the agreement dated 11.02.2015.
- ii. It is submitted that the complainant has paid a total sum of Rs.19,93,390/- to the respondent. It is apposite to mention here that the complainant has defaulted on several occasions and failed to pay timely construction linked instalment post the execution of the agreement. It is submitted that the complainant entered into the agreement being fully aware that he shall be liable to make the payments as per the progress of construction opted by the complainant in the application form and the agreement.
- iii. That the application form ("**application form**") (clause 15), the allotment letter ("**allotment letter**") and the agreement (clause 2.5) clearly stipulated and defined earnest money to be 20% of the basic sale price ("**earnest money**") which was meant to ensure performance, compliance, and fulfilment of obligations and responsibilities of the buyer. That the respondents constructed the project in a phased manner and received the occupancy certificate of the respective tower on 30.03.2019. The



complainants failed to make the payments and committed a default in terms of clause 8 of the agreement. It is submitted that the complainant has failed to make payments towards the construction linked invoices and as on 23.04.2021 a sum of Rs.95,27,710/- is outstanding as per the statement of accounts.

- iv. That the complainant stopped making payments in the year 2014 and chose to ignore all the reminder letters and calls from the respondent. Thereafter, almost after a year the complainant vide email dated 21.08.2015 reverted to respondents reminder email dated 21.08.2015 wherein the complainant acknowledged the receipt of all reminder letters and accepted their default of non-payment of several demands as duly raised by the respondent due to certain financial issues. The complainant vide same email also gave assurance that they shall make the full payment along with the interest on delayed payments. It is submitted that the complainant despite assuring to make full payment along with interest again failed to do so despite sending several reminder letters and emails. Owing to a continuous default by the complainant, the respondent was constrained to issue the termination letter vide email dated 01.04.2016 as per the terms of agreement. It is submitted that despite giving additional time and sending reminder letters and emails, the complainant failed to perform his obligations and as such the respondent was constrained to issue a pre-termination letter dated 05.11.2016. It is submitted that thereafter in order to avoid termination and to help the complainant retain his unit subject to clearance of all

outstanding amounts a final opportunity letter was also sent on 08.08.2017.

- v. It is submitted that since the complainant miserably failed to make the payment despite several reminders, and opportunities to clear the outstanding, the respondent was constrained to finally terminate the booking.
- vi. It is submitted that presently there is a downward revision in the market prices and the identical flat is now being sold at Rs. 7,158/- per sq ft instead of Rs.9,199/- per sq ft and as such there is a loss of Rs.2041 per sq ft. It is submitted that as such the Respondent will incur huge loss of Rs.21,32,845/- (Rs.2041 x 1045 carpet area of the flat pr sq ft). It is submitted that the complainants are trying to shift the burden of losses on to the respondent by arbitrarily cancelling and seeking an exit from the project. It is submitted that the complainant has not brought the property for his own self-use and is a mere speculative investor in the project. It is submitted that the real reason for filing the complaint is the downward revision in the market prices of the property. It is submitted that the complainant is dishonestly trying to shift losses on account of fall in the market price onto the respondents.
- vii. It is submitted that there is no violation of any of the provisions and as such the present complainant is liable to be dismissed. It is further submitted that the present complaint is wholly erroneous and misconceived. It is submitted that the present complaint is devoid of any cause of action as admittedly the respondents have raised the invoices as per the agreed timelines.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

12. Section 11(4)(a) of the Act 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.

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
14. 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 Pvt. Ltd. and other Vs. Union of India and other SLP(Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

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

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

15. 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.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainant is an investor

16. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
17. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is an allottee/buyer and he has paid total price of Rs. 19,93,990/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainant-allottee being investors is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainant/allottee.

- G. I Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs,19,93,990/- along with interest.
19. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

20. The complainant was allotted unit no. D0304, 3rd floor in tower D in the project "Godrej Oasis, Sector-88A" by the respondent- builder for a total consideration of Rs. 1,15,21,700/- and he paid a sum of Rs. 19,93,990/- which is approx. 17% of the total sale consideration. A buyer's agreement dated 11.02.2015 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 22.09.2019. The complainant failed to pay amount due against the allotment unit. The respondent issued cancellation letter on 01.04.2016 however, the intention of the respondent/promoter was to give the possession as even after issuing cancellation letter the respondent again gave the opportunity to the complainant to clear the outstanding dues vide letter dated 08.08.2017. Also, the occupation certificate for the project

of the allotted unit was granted on 29.03.2019 by the competent authority.

21. Since in the present matter the allottee is seeking refund of the amount paid to the respondent. The authority relying on the finding of the Apex Court in the case titled as ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, it was observed as under: -

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

22. Accordingly this judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The allottee has exercised this right and it is unqualified one, accordingly entitled to claim the refund of the amount paid along with interest at the prescribed rate.

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

"5. AMOUNT OF EARNEST MONEY

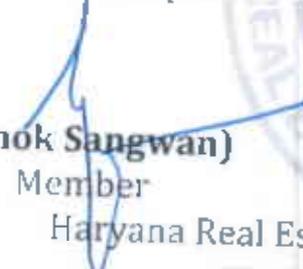
Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission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

24. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the basic sale consideration and shall return the 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 filling of complaint i.e., 12.01.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

25. 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. 19,93,990/- after deducting 10% of the basic sale consideration of Rs. 1,15,21,700/- with interest at the prescribed rate i.e., 10.70% on balance amount, from the date of filling of complaint i.e., 12.01.2021 till the actual date of refund.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
26. Files be consigned to registry.
 27. A copy of this order be placed on the connected case file bearing no. CR/10/2021.
 28. Both the complaints stand disposed of. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2023


(Vijay Kumar Goyal)
Member