

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

Complaint no. : 3778 of 2020
Complaint filed on : 02.11.2020
First date of hearing : 28.01.2021
Date of decision: 09.03.2023

Shri Ashok Yadav
R/o: 129, VPO Sikanderpur Badha,
Gurugram, Haryana.

Complainant

Versus

M/s Orris Infrastructure Pvt. Ltd.
Regd. Office: RZ-D-5, Mahavir Enclave,
New Delhi-110045.
Corporate Office: J-10/5, DLF Phase II, M.G. Road,
Gurugram, Haryana-122002.

Respondent

CORAM:

Shri V.K. Goyal

Member

APPEARANCE:

S/Shri V.K. Chauhan and S.S. Hooda

Counsel for the complainant

Ms. Charu Rustagi

Counsel for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Floreal Towers, Sector 83, Gurugram, Haryana
2.	Project area	9.052 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no.	260 of 2007 dated 14.11.2007
	License valid till	13.11.2024
	Licensed area	9.05 acres
	License holder	M/s Seriatim Land & Housing Pvt. Ltd.
5.	HRERA registered/ not registered	Not registered
6.	Allotment letter issued by the respondent in favour of complainant on	15.11.2010 (Annexure C3, page 21 of complaint)
7.	Unit no.	GF-022, ground floor, tower A (Annexure C3, page 21 of complaint)

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8.	Unit admeasuring	525.28 sq. ft.
9.	Increase in area of the unit vide letter of offer of possession dated 18.01.2018, page 73 of complaint	558 sq. ft.
10.	Difference in area of unit	32.72
11.	Space buyer agreement executed between complainant and respondent	22.04.2011 [Page 25 of complaint]
12.	Possession clause as per clause 10.1 of the agreement	10.1 Schedule for Possession of the said Unit The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Unit within the period of 36 months from the date of execution of the Space Buyer Agreement by the Company or Sanction of Plans or Commencement of Construction whichever is later , unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1). (11.2). (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given in Annexure lor as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any terms or conditions of this Space Buyer Agreement. (Page 42 of complaint)

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13.	Date of commencement of construction	Not on record	
14.	Date of sanction of building plans	Not on record	
15.	Due date of possession	24.04.2014 (Calculated from date of execution of buyer's agreement dated 22.04.2011 as neither the date of commencement of construction nor date of approval of building plan is on record)	
16.	Total consideration	As per clause 1.1 of agreement, page 31 of complaint	As per SOA dated 18.01.2018 on page 75 of complaint
		Rs. 40,76,173/-	Rs. 56,49,712/- (including EDC & IDC, covered car parking, GST, ECC, IFMS, VAT and AMC)
17.	Amount paid by the complainant as per statement of account dated 18.01.2018 at page 75 of complaint	₹ 42,02,746/-	
18.	Occupation certificate	16.08.2017 [annexure R1, page 15 of reply]	
19.	Offer of possession	18.01.2018 (Annexure C6, page 73 of complaint)	
20.	Legal notice sent by the complainant for seeking refund of the amount paid by him	21.01.2020 [Page 76 of complaint]	

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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That the complainant allured by an advertisement and assurance given by the officials of the respondent, booked a space bearing unit no. 22, tower A on ground floor, in the project "Floreal Towers" admeasuring super area of 48.79 sq. mtrs. (525.28 sq. ft.) situated within the revenue estate of Village Kherki Daula, Sector-83, Gurugram, Haryana, for a total sale consideration of Rs.40,76,173/- vide application dated 06.10.2010 with the respondent and paid a sum of Rs.18,34,277/- towards provisional allotment vide cheques no. 123943 dated 06.10.2010 for Rs.4,20,224/-, 123950 dated 15.11.2010 for Rs.10,06,436/- and 128963 dated 12.03.2011 for Rs.4,07,617/-, drawn at J&K Bank Ltd., which was acknowledged vide receipt nos. 2564 dated 05.10.2010, 2623 dated 15.11.2010 and 3349 dated 21.03.2011.
 - ii. That the respondent allotted the said space to the complainant vide allotment letter dated 15.11.2010 and a space buyer agreement in respect of the said space/unit was executed between the respondent and complainant on 22.04.2011. The complainant further paid the instalment inclusive service tax to the respondent in respect of the said unit. The complainant has paid a total sum of Rs.42,02,746/- as per statement of account supplied by the respondent with letter dated 18.01.2018 for offer of physical possession.

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- iii. That the complainant opted for construction linked payment plan and was assured that as per clause 10.1 of the space buyer agreement, the possession of the said unit will be handed over within 36 months from the date of execution of space buyer agreement. In case of failure in handing over the possession of the said unit within the stipulated period, the respondent is liable to refund the entire amount paid by the allottee with simple interest @ 8% per annum as per clause 11.5 of the said agreement.
- iv. That due to non-handing over possession of the said space/unit in time by the respondent, the complainant has to set up the office for his company i.e. M/s Stela Furniture Pvt. Ltd. in a rented building at Village Binola, Tehsil Manesar, District Gurugram, Haryana.
- v. That the complainant visited the office of the respondent time and again and was given false assurance that the possession of the said unit will be handed over to him very soon, but the project is not complete as yet. It shows that the respondent has committed the calculated fraud upon the complainant and other allottees as the respondent was intended since beginning not to complete the project.
- vi. That the complainant is convinced that the respondent is not going to complete the project in near future and he is no more interested in taking over the possession of the said unit and wants to withdraw from the project and refund of his entire amount with interest.
- vii. That it tantamount to unfair trade practice and the respondent is liable to be prosecuted for fraud. The respondent is retaining a sum

of Rs.42,02,746/- of the complainant for the last more than 6 years and utilizing the same for its own gain. So, the respondent is liable to refund the said amount of Rs.42,02,746/- with interest @ 18% per annum from the date of payment till realization.

viii. That finding no other way, the complainant got sent a legal notice dated 21.01.2020 to the respondent through regd. post, requesting them to refund a sum of Rs.42,02,746/- along with interest at the rate of 18% per annum from the date of payment till its actual realization, but the respondent has paid no heed to the genuine request of the complainant till date.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the total amount of Rs.42,02,746/- paid by the complainant towards installments in respect of the subject unit in the said project to the complainant after cancellation of the allotment of the same at the earliest.
- ii. Direct the respondent to pay interest @ 18% per annum over the said amount from the date of payment till its actual realization to the complainant.
- iii. Pass any other order/direction which the Hon'ble Authority deems fit and proper in favour of the complainant and against the respondent.

5. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed

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in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has made the following submissions:

- i. That the complainant had approached the respondent for purchase of a unit in the project "**Floreal Towers**" located at Kherki Dhaula, NH 48, Sector 83, Gurugram, Haryana 122004. The complainant was issued with allotment letter dated 15.11.2010 wherein the complainant was allotted unit no. 22, ground floor, tower A, admeasuring \pm 525 sq. ft (tentative area) for a total sale consideration of Rs. 40,76,173/- excluding the statutory taxes which are levied by the Government of India.
- ii. That in the present case, the space buyer agreement was executed between the parties on 22.04.2011 and as per clause 10.1 of the buyer agreement dated 22.04.2011, the respondent was supposed to hand over the possession within a period of 36 months from execution of agreement by the company or sanctions of plans or commencement of construction whichever is later.
- iii. That the respondent completed the development/construction work in the year of 2014 and subsequently applied for occupation certificate (OC). However, the company had received the occupancy certificate for the project on 16.08.2017 and immediately informed the complainant about the same. That final approval of building plans/zonal area was received by the respondent on 24.01.2017.

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- iv. That immediately after receiving the OC by the respondent, the respondent offered physical possession of the unit in question to the complainants vide letter dated 18.09.2018 wherein the respondent had requested the complainant to complete the possession formalities and remit the balance payments as accrued on the basis of the statement of accounts being the statutory Government charges levied upon the unit in question along with the maintenance and electricity charges which have already been mentioned in the space buyer agreement and duly agreed by the complainant.
- v. That there was an increase in the area of the unit in question, i.e., increase from 525 sq. ft. to 558 sq. ft. which is increase of 33 sq. ft. and as per clause 1.4 and 9.2 of the agreement, such an increase is neither a major alteration, nor is more than 15% and was allowed as per the terms of the agreement clauses whereby the allotted area was tentative and subject to change at the time of obtaining OC or completion of construction.
- vi. That the respondent again sent several reminders to complainant dated 11.01.2019, 31.01.2019 and 23.01.2019 to take possession of the unit in question by complying with all the possession formalities. That as a gesture of good faith, the respondent decreased the maintenance charges from Rs. 24.5/- sq. ft. per month to 21.5/- sq. ft. per month.
- vii. That the respondent till today has not levied any holding charges upon the complainant and sent a rescheduled statement of account

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which had to be remitted by the complainant which was comprised of the following details:

- a. Based upon clause 1.4 of the said agreement dated 22.04.2011, charges of the increase in the super area which are payable by the allottee at the time of final instalment as the same are assessed and calculated after the completion of the building and such changes/ alteration are allowed as per clause 9.2 of the said agreement dated 22.04.2011 to the extent of $\pm 15\%$.
- b. Based upon clause 1.8 of the said agreement dated 22.04.2011, charges of the External Development Charges (EDC) and Infrastructure Development Charges (IDC), also being the charges imposed and levied as the statutory charges being levied by the Government.
- c. Based upon clause 1.10 of the said agreement dated 22.04.2011, the charges for the maintenance for providing services such as power back-up, fire safety measures & equipment, provision of stand-by generators, etc. and also in accordance to the provisions of clause 14.4 of the said agreement dated 22.04.2011.
- d. Based upon clause 1.11 of the said agreement dated 22.04.2011, the charges/ tariff for providing and supplying the power at the rate as may be fixed by the Dakshin Haryana Bijli Vitran Nigam (DHBVN) and State Electricity Boards (SEBs) and also in accordance with the provisions of clause 14.3 of the Space buyer agreement dated 22.04.2011.

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- e. Based upon clause 2 of the said agreement dated 22.04.2011, the charges for the government rates, property taxes, wealth tax, service tax, education cess, sales tax/VAT and GST as assessed and applicable from the date of application of the allottee being the taxes levied by the statutory body or authority.
- f. Based upon clause 14.2 of the said agreement dated 22.04.2011, the charges as levied for the Interest Free Maintenance Charges (IFMS) have to be remitted by the allottee which is calculated at the rate of Rs. 125/- per sq. ft. of the super area.
- g. Based upon clause 14.3 of the said agreement dated 22.04.2011, if Haryana Vidyut Prasaran Nigam or any other body authorized by Government of Haryana grants permission to receive and distribute bulk supply of electrical energy, the allottee will have to pay for the proportionate share as determined by the company of all deposits and charges paid.
- h. Based upon clause 14.4 of the said agreement dated 22.04.2011, the maintenance charges would be levied from the date of issuance of the OC and the Allottee undertakes to pay the same promptly. The maintenance charges could be recovered monthly or as may be decided by maintenance agency/company (respondent).
- viii. That at the time of booking the aforementioned unit, the complainant was explained in details all the provision and clauses mentioned in the space buyer agreement dated 22.04.2011 to which the complainant agreed on their own free will without any kind of force or coercion and signed the same.

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- ix. That in appreciating the rival contentions of the complainants, regard must be had to the sequence of events, which shall bear out the frivolity of the instant compliant:
- a. The complainant had approached the respondent and had expressed their desire to purchase unit from the respondent after thorough investigation and site surveys. The complainant, thereafter, was endorsed the aforementioned unit in question and the complainant being the second allottee to the unit in question agreed to all the terms and conditions.
 - b. That prior to that time, a writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "*Sunil Singh vs. Ministry of Environment & Forests Parayavaran*" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31.07.2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction.
 - c. That on passing of the abovementioned orders by the High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential part for construction.
 - d. That in light of the Order passed by the Hon'ble High Court, the respondent had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for

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- the treatment of the procured water before the usage for construction which further resulted in the in alleged delay.
- e. That despite the slow-down in the construction work and difficulty in arranging the sufficient water required for the construction, no additional money has been demanded from the allottees and complainant, even though the cost of the project has increased because of the unavailability of water in the adjoining areas of Gurgaon.
- x. That the respondent was to handover the possession of the unit in question as per clause 10.1 of the space buyer agreement within 36 months from the date of execution of the agreement and the delay so caused in handing over the possession was due to the reasons not attributable by the respondent but due to the *force majeure* reasons which were not foreseen by the respondent.
- xi. That despite offering possession to the complainant on various occasions, and sending various reminders to the complainant after that, the complainant never came forward to take the possession of the unit in question but instead filed this frivolous complaint against the respondent at a very-very blatant stage.
- xii. That the respondent is ready to handover the possession of the unit in question without levying the holding charging for the unit as per the statement of account dated 18.09.2018 and 11.01.2019 but the complainant is reluctant in coming forward to take the possession of the unit in question despite the fact that the respondent has not run away from its fiduciary duty of completing the project and handing over the possession of the unit.

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7. Written arguments have been filed by the respondent on 20.03.2023. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

E. II Subject 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)(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

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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 promoter, 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 complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief 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(C), 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* and 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

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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. Findings on the relief sought by the complainants

- F.I Direct the respondent to refund the total amount of Rs.42,02,746/- paid by the complainant towards installments in respect of the subject unit in the said project to the complainant after cancellation of the allotment of the same at the earliest.**
- F.II Direct the respondent to pay interest @ 18% per annum over the said amount from the date of payment till its actual realization to the complainant.**

14. The complainant was allotted unit bearing no. 022, ground floor in tower A vide allotment letter dated 15.11.2010 for a total sale consideration of Rs.56,49,712/- and the complainant has paid a sum of Rs.42,02,746/-.
15. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified

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therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

16. The due date of possession as per space buyer's agreement as mentioned in the table above is 24.04.2014. The respondent obtained the occupation certificate for the said project on 16.08.2017 and offered possession of the subject unit to the complainant on 18.01.2018. Despite being offered possession of the subject unit, the complainant filed present complaint on 02.11.2020 for refund of amount paid along with interest before the authority. The complainant has pleaded that the possession is delayed, and the construction is still incomplete. The plea of the complainant, however, is devoid of merit. At the cost of repetition, it is highlighted that the occupation certificate has already been granted by the concerned authority and thus, it is unfair to say that the project is still incomplete.
17. The allottee in this case has filed present complaint on 02.11.2020 which is after possession of the subject unit was offered to him after obtaining occupation certificate by the promoter. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession except legal notice dated 21.01.2020 and only when offer of

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possession was made to him and demand for due payment was raised then only he has filed present complaint before the authority.

18. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** 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; that-

"25. The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any

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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 allottees/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 allottees 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."

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees 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. But the complainant-allottee failed to exercise his right although it is unqualified one. Complainant has to demand and make his intentions clear that he wishes to withdraw from the project. Rather tacitly the complainant wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as

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reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

20. In case allottee wishes to withdraw from the project, the promoter is liable on demand to the allottee to return the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words 'liable on demand' need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest. If he has not made any such demand prior to receiving occupation certificate and unit is ready, then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and the proviso to section 18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. Versus Abhishek Khanna and Ors.** (Civil appeal no. 5785 of 2019) and also in consonance with the

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judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P. and Ors. (supra)**.

21. There is a delay in handing over the possession as due date of possession was 24.04.2014 whereas the offer of possession was made on 18.01.2018 and thus, becomes a case to grant of delay possession charges. The authority has observed that interest for every month of delay at the prescribed rate of interest be granted to the complainant-allottee. But, the peculiar situation is that the complainant wants to surrender the unit.
22. The complainant has approached the authority for the refund of his deposited amount at a very belated stage. The authority is thus of the view that forfeiture of earnest money is necessary to make good to the losses of the respondent who has completed the project and even offered possession of the unit. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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

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agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

23. Hence, the authority hereby directs the promoter to return the paid-up amount of Rs. 42,02,746/- to the complainant after deduction of 10% of the sale consideration. The respondent is further directed to pay an interest on the balance amount at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 21.01.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

G. 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):
- The respondent is directed to return the paid-up amount of Rs. 42,02,746/- to the complainant after deduction of 10% of the sale consideration.



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- ii. The respondent is further directed to pay an interest on the balance amount at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 21.01.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules.
 - iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
25. The complaint stands disposed of.
26. Files be consigned to registry.

V.1 - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 09.03.2023