

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

Complaint no. :	280 of 2021
Date of filing complaint:	18.01.2021
First date of hearing:	03.03.2021
Date of decision :	11.05.2023

Soneel Raj R/O: Flat No. 22ad-2, 22nd Floor Cape Tower, Hiland Park Kolkata 700094 West Bengal	Complainant
Versus	
Haamid Real Estate Private Limited Regd.office: The Masterpiece, Sector 54, Golf Course Road, Gurugram	Respondent

CORAM:

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Riju Mani (Advocate)

Complainant

Sh. M.K Dang (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information	
1.	Name of the project	"The Peaceful Homes", sector- 70A, Gurugram	
2.	Nature of project	Group housing	
3.	RERA registered/not registered	Registered, vide registration no. 63 of 2019 dated 22.10.2019 valid upto 31.12.2019	
4.	Area Registered	8.38 acres	
5.	DTPC License no.	16 of 2009 dated 29.05.2009	73 of 2013 dated 30.07.2013
6.	Validity status	28.05.2024	29.07.2019
7.	Name of licensee	Haamid Real Estates Private Limited	
8.	Licensed area	27.7163 acres	
9.	Booking dated	30.05.2012 [As per termination letter on page no. 193 of reply]	
10.	Unit no.	C-114 on 11 th floor in tower C [Annexure R-3-page no. 59 of reply]	
11.	Unit measuring	1565 sq. ft. [super area] [Annexure R-3-page no. 59 of reply]	
12.	Date of execution of flat buyer's agreement	21.11.2015 [As per page no. 57 of reply]	
13.	Possession clause	As per Clause 11(a) of the said agreement.	

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		The company endeavors to hand over the possession of the unit to the allottee within the period of 36 (Thirty-Six) months, from the date of commencement of construction of the project , which shall mean the date of commencement of the excavation of the project and this date shall be duly communicated to the Allottee (" Commitment Period "). The allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 months ("Grace Period"), after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining the Occupation Certificate of the project from the governmental authorities.
14.	Due date of possession	25.04.2017 (Calculated from the date of commencement of construction of project i.e 25.04.2014 taken from the project details)
15.	Basic sale price	Basic sale price- Rs. 93,27,400/- as per the buyer's agreement on page no. 62 of reply
16.	Total amount paid by the complainant	Rs. 38,54,895 /- [As per termination letter on page no. 193 of reply]
17.	Occupation certificate dated	29.10.2019 [As per page no. 207 of reply]
18.	Offer of possession	Not offered
19.	Reminders	25.06.2015, 07.09.2015, 01.10.2015, 05.12.2015, 20.02.2016, 18.03.2016, 08.06.2016, 03.09.2016, 02.01.2017, 01.02.2017, 08.02.2017
20.	Pre termination and termination letter	16.04.2019 and 13.06.2019

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	(Inadvertently mentioned the termination letter in the proceedings of the day as 13.07.2019)
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B. Facts of the complaint:

3. That a project by the name of "The Peaceful Homes" situated in sector 70 A, Gurugram, Haryana was being developed by the respondent. The complainant coming to know about the same booked a unit in it vide application dated 30.05.2012 for a total sale consideration of Rs. 1,13,48,872.
4. That as per clause 33 of the application form, in the event of the failure of the Allottee (complainant herein) to perform the obligations of the agreement, the company (respondent) had the right to cancel the Allotment and forfeit the earnest money and refund the balance amount to the allottee.
5. That the complainant opted for construction linked payment plan and as per the said plan, the respondent was supposed to demand instalments upon reaching a particular construction milestone. However, the respondent continued demanding the instalments from the complainant without reaching the requisite milestones in the construction site.
6. That after booking the apartment and after making payments of certain instalments, the complainant moved to America and his address changed. The said change in address of the complainant was informed to the respondent however, respondent failed to make necessary updation of their records. Further, during the transition from India to America, all the documents related to the unit such as application form, allotment letter, apartment buyer agreement, receipts etc. got misplaced and the complainant is trying his best to find these documents.
7. That the respondent continued sending the demand letters for instalments to the complainant at his old address when he was not present

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there. Because of this, the complainant failed to pay the further instalments demanded by the respondent. Instead of realizing their own mistake of not updating records with new address of the complainant, the respondent cancelled the unit due to non-payment of instalments and forfeited the entire money paid by the complainant.

8. That during his last visit to India when he was at his old address, which is in the records of the respondent, the complainant received a copy of the intimation of termination letter dated 13.06.2019. Vide the said letter, the complainant was informed that the unit booked and paid for by the complainant has been terminated due to non-payment of outstanding instalments. It is pertinent to mention that all the demand letters were sent to the old address of the complainant whereas the complainant now lives in America.

9. That before going abroad, the respondent demanded, and the complainant paid a total sum of **Rs. 38,54,895/-** for the allotted unit and the receipt of the said amount has been admitted by the respondent in their termination letter dated 13.06.2019.

10. That vide the said termination letter, the respondent deducted the entire amount paid by the complainant i.e., **Rs. 38,54,895/-**. It is pertinent to mention that it was the fault of respondent and the complainant. The respondent did not update their record with the new address of the complainant and sent all the demand letters at his old address.

11. That the respondent vide the intimation of termination dated 13.06.2019 cancelled the unit and instead of deducting earnest money (**Rs. 15,65,049.03/-**) and refunding the remaining balance (**Rs. 2,289,845.97**), the respondent illegally forfeited the entire amount paid to them i.e. **Rs. 38,54,895/-**. That such forfeiture of entire amount and not only earnest money of 15% was unwarranted and is illegal. The complainant had



approached the respondent with regard to the same however not received any reply from them.

12. That despite various representations by the complainant with regard to the refund of remaining money after deduction of 15% of Earnest Money, the opposite party/respondent has miserably failed to refund the same to the complainant even after more than 2 years. In such circumstances, the complainant had no other option but to prefer the present complaint before this Hon'ble Authority seeking refund of the money illegally held by the respondent.

13. That the respondent cancelled the allotment of the unit no. C114 vide letter dated 13.06.2019 and illegally forfeited the entire money paid by the complainant ignoring the provisions of Clause 5 and Clause 33. That the respondent has not refunded the balance amount after forfeiture of 15% of earnest money to the complainants even after 3 years of cancellation of the allotment and illegally holding such money with them. Such acts of the respondent clearly falls under restrictive and unfair trade practice.

14. That in view of the above mentioned facts and circumstances it is only appropriate that this Hon'ble Authority may be pleased to hold that the respondent company is liable to refund the entire amount of Rs. 38,54,895/- with the interest @18% per annum. Thus, the complainant was left with no other option but to file the present complaint seeking refund of the entire amount paid against allotment of the unit.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire amount of Rs. 38,54,895/- paid by the complainant along with interest on the paid amount from the date of termination till actualization.

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- ii. Direct the respondent to pay compensation of Rs. 1,00,000/- for mental agony and harassment and Rs. 50,000/- as litigation expenses.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

16. That the complainant, after checking the veracity of the project namely, 'The Peaceful Homes', Sector 70A, Gurugram had applied for allotment of an apartment vide this booking application form with respondent. The complainant agreed to be bound by the terms and conditions of the documents executed by him.
17. That based on it, the respondent allotted to the complainant unit no. C114 having tentative super area of 1565 sq.ft for a sale consideration of Rs.1,10,24,342/- (exclusive of the registration charges, stamp duty, and other charges). The buyer's agreement was executed between the complainant and the respondent on 21.11.2015. It is pertinent to mention herein that when the complainant had booked the unit with respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be enforced retrospectively.
18. That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the booking application form and buyer's agreement as well as of the payment plan. However it is pertinent to mention herein that the complainant committed several defaults in making timely payments of the demanded amounts despite being aware and admitting vide Clause 33 of Schedule 1 of the booking application form and Clause 8 of the buyer's agreement that timely payment of the instalment amount is the essence of the allotment. It is

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submitted that the respondent had raised the payment demand dated 21.04.2014 for the amount of Rs. 9,67,429/-. However, the demanded amount was paid by the complainant only after reminders dated 12.05.2014, 27.05.2014 and 19.06.2014 were issued by respondent.

19. That as per the agreed payment schedule vide payment request dated 25.06.2015, respondent raised the instalment demand of net payable amount of Rs. 7,95,046/-. However, the complainant failed to remit the demanded amount despite issuance of reminder dated 17.07.2015 and the due amount was adjusted in the next instalment amount by respondent.

20. That vide payment request dated 07.09.2015, respondent raised the instalment demand of net payable amount of Rs. 16,37,658/-. However, the complainant failed to remit the demanded amount despite issuance of reminder dated 01.10.2015 and the due amount was adjusted in the next instalment amount by respondent.

21. That as per the agreed payment schedule vide payment request dated 05.12.2015, respondent raised the instalment demand of net payable amount of Rs. 21,83,912/-. However, the complainant failed to remit the demanded amount and the due amount was adjusted in the next instalment amount by respondent. Vide payment request dated 20.02.2016, respondent raised the instalment demand of net payable amount of Rs. 27,26,500/-. However, the complainant failed to remit the demanded amount despite issuance of reminder dated 16.03.2016 and the due amount was adjusted in the next instalment amount by respondent.

22. That vide payment request dated 18.03.2016, respondent raised the instalment demand of net payable amount of Rs. 34,16,403/-. However, the complainant failed to remit the demanded amount despite issuance of reminder dated 22.04.2016 and the due amount was adjusted in the next instalment amount by respondent.

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23. That vide Payment Request dated 08.06.2016, 13.09.2016, 02.01.2017, respondent raised the instalment demand. However, the complainant failed to remit the demanded amount despite issuance of reminders dated 19.07.2016, 15.10.2016 and 25.08.2016 01.02.2017 and the due amount was adjusted in the next instalment amount by respondent.

24. That vide payment request dated 08.02.2017, respondent had raised the instalment demand for net payable amount of Rs. 64,83,424/-. However, the complainant again failed to pay the due instalment amount despite reminders dated 13.05.2017 and 26.06.2017 and pre-termination letter dated 16.04.2019.

25. That the possession of the unit was to be offered to the complainant in accordance with the agreed terms and conditions of the Booking Application Form. That the respondent has throughout acted strictly as per the terms of the builder buyer's agreement, rules and regulations and the provisions laid down by law. However, there have been several unforeseeable events which were beyond the reasonable control of the respondent which have materially and adversely affected the timely completion of the project. It is submitted that more than 60% of the allottees to the instant project have defaulted in their payments, leading to unrealized amount of more than Rs. 150 Crores as on date in the Project. Due to defaults on part of the allottees, including the complainant, the respondent was constrained to approach Financial Institutions to raise funds to complete the construction of the Project. Further, the said Financial Institutions have their own internal compliances before such funds are disbursed to entities like the respondent which lead to further delay in procurement of funds. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the Civil Contractors of the respondent viz. Shri Balaji Buildmate Private

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Limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time (around 6 months). During the said period, Shri Balaji Buildmate Private Limited did not allow any other contractor to carry on with the construction as was contemplated in the Builder Buyer's Agreement, and the project was put to a complete standstill. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and deploy its personnel and carry forward the work from the previous contractor.

26. Furthermore, there was a major accident at the project site which resulted in the untimely death of two laborers and three laborers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, since the labour union had started raising various demands etc. after the unfortunate incident. The respondent was accordingly constrained to make payments to the said labourers as compensation towards the aforesaid incidents and arrive at an amicable settlement, all of which further took considerable time and resulted in delay in completion of the project. It is pertinent to mention herein that the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016 further affected the pace of the development of the project. Due to the said policy change by the Central Government, the pace of construction of the Project was severely affected for a period of approximately six months from November 2016 to April 2017 as the withdrawal of money was restricted by Reserve Bank of India as the availability of new currency was limited and unavailable with the banks. It is well known that the Real Estate Sector deploys maximum number of construction workers who are paid in cash which wasn't readily available with the respondent. The effect of such demonetization was that

the labourers were (on some occasions) not paid within the stipulated time which consequently which consequently resulted in a huge labour crisis in Delhi and NCR region. Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the impact of demonetization on real estate industry and construction labour. The Reserve Bank of India has published reports on impact of Demonetization. In the report- Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

27. That beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which further affected the timely completion of the said project. It is pertinent to mention herein that various approach roads to the said project which are to be constructed by the relevant civic authorities have not been completely developed which are seriously affecting the timely completion of the project. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities.

28. Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

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29. That the aforesaid circumstances falls within the ambit of the definition of the 'force majeure' conditions as stated in Clause 46 of the Flat Buyer's Agreement. The complainant has admitted and acknowledged vide the said clause that the respondent shall not be responsible or liable for not performing any obligation if such performance is prevented, delayed or hindered by any act not within the reasonable control of the respondent.

30. That on account of non-fulfillment of the contractual obligations by the complainant despite several opportunities extended by respondent, the allotment of the complainant was cancelled and the earnest money deposited by the complainant along with other charges were forfeited vide cancellation letter dated 13.06.2019 in accordance with Clause 28 read with Clause 33 of Schedule 1 of the booking application form and Clause 4 and 56 of the buyer's agreement and the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment. Despite failure of the complainant to adhere to his contractual obligations of making payments, respondent has completed the construction of the tower in which the unit allotted to the complainant was located and the photographs and has obtained the occupation certificate on 29.10.2019.

31. That there is no default whatsoever on the part of the respondent and the complainant is concocting a baseless and false story as an afterthought in order to mislead this Hon'ble Forum in order to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable and untenable demands. The complainant cannot be allowed to achieve in his malafide motives, and the present complaint is liable to be dismissed with heavy costs payable by the complainant to the respondent.

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

E. Jurisdiction of the authority:

33. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

34. 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

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(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

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estate agents under this Act and the rules and regulations made thereunder.

35. 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.

36. 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 judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (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*** 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."

37. 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 in breach of agreement for non- invocation of arbitration.

38. The respondent raised an objection that the complainant has not invoked arbitration proceedings as per application form which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause 57 has been incorporated w.r.t arbitration in the application form:

57 "All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The award of the Sole arbitrator shall be final and binding on the Parties. The company and the allottee will share the fees of the Arbitrator in equal proportion".

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39. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506* and followed in case of *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. A similar view was taken by the Hon'ble apex court of the land in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* and has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, that the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

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40. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F. II. Objection regarding delay due to force majeure

41. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as, demonetization, shortage of labour, slow pace of construction due to a dispute with the contractor, and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

42. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal and Hon'ble Apex Court banning the construction activity on the recommendations of Central Pollution Control Board in Delhi NCR Region which was partially lifted. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11(a) of the buyer's agreement. Though there have been various orders issued but these were for a short duration and are annual features. So, the circumstances/conditions after that period

can't be taken into consideration for delay in completion of the project and the plea raised in this regard is devoid of merit.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the entire amount of Rs. 38,54,895/- paid by the complainant along with interest on the paid amount from the date of termination till actualization.

43. The subject unit was allotted to the complainant under the construction linked payment plan on the basis of booking application form. A buyer's agreement was executed with regard to the allotted unit between the parties on 21.11.2015 and the complainant started making payments against the allotted unit and paid a sum of Rs.38,54,895/- against total sale consideration of Rs. 93,27,400/-. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has not offered the possession till date and the respondent sent the reminders on the old address of the complainant where the complainant was not residing.

44. It is an admitted fact that the buyer's agreement was executed between the parties on 21.11.2015. So, the due date for completion of the project and handing over possession of the allotted unit is taken from clause 11(a) and the same comes to be 25.04.2017. Though the respondent is seeking a grace period of six months in completion of the project but the same is disallowed due to the fact that before expiry of the due date, it did not apply for obtaining occupation certificate of the project. Hence the due date for completion of the project and offer of possession comes to be 25.04.2017 i.e thirty six months from the date of excavation of the project.

45. The respondent raised various demands on 25.06.2015, 07.09.2015, 01.10.2015, 05.12.2015, 20.02.2016, 18.03.2016, 08.06.2016, 03.09.2016



, 02.01.2017 , 01.02.2017 , 08.02.2017 against the complainant for the amount due which were not cleared by him. So, the respondent sent pre termination letter on 16.04.2019 following which the respondent cancelled the unit of the complainant on 13.06.2019.

46. The due date of completion of project expired on 25.04.2017. Thus, it is evident from the facts mentioned above that the complainant is no longer interested in the project and is seeking refund of the paid-up amount as per the provisions of Act of 2016.

47. 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."

48. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land . But in the case in hand , after cancellation of the unit , the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of



the land in cases of in *Maula Bux V/s Union of India*, AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors*, Civil Appeal No. 7266 of 2009 decided on 01.12.2015 , followed in *Jayant Singhal v/s M3M India ltd*. Consumer case no. 27669 2017 decided on 26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to return the balance amount after deducting 10% of the basic sale price from the date of cancellation of the unit i.e, 13.06.2019 till the date of refund along with interest @ 10.70 % per annum within a period of 90 days.

G.II Direct the respondent to pay compensation of Rs. 1,00,000/- for mental agony and harassment and Rs. 50,000/- as litigation expenses.

49. The the complainant is 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. 2021-2022 (1) RCR (c) 357*, 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

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expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.


H.Directions of the Authority:

50. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the amount of Rs. 38,54,895/- after deducting 10% of the basic sale price of the unit being earnest money along with interest @ 10.70% p.a. on the refundable amount, from the date of cancellation i.e. 13.06.2019 till the actual date of refund of the amount.
- 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.

51. Complaint stands disposed of.

52. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.05.2023