

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

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|---------------------------|---|--------------|
| Complaint no. | : | 4829 of 2020 |
| Date of filing complaint: | | 15.01.2021 |
| First date of hearing: | | 18.03.2021 |
| Date of decision | | 03.03.2023 |

| | | | |
|----------------------------|-----------------|--|---|
| NAME OF THE BUILDER | | Elan Buildcon Pvt. Ltd. | |
| PROJECT NAME | | Elan Town Centre | |
| S. No. | Case No. | Case title | Appearance |
| 1 | CR/4829/2020 | Vinod Kumar V/S Elan Buildcon Pvt. Ltd. | Sh. Rajan Kumar Hans Sh. J.K Dang |
| 2 | CR/4854/2020 | Nitin Mehrotra V/S Elan Buildcon Pvt. Ltd. | Sh. Rajan Kumar Hans Sh. J.K Dang |

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of all the 2 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, Elan Town Centre (commercial complex) being developed by the same respondent/promoter i.e., Elan Buildcon Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of 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, total paid amount, and relief sought are given in the table below:

| | |
|---|---|
| Project Name and Location | Elan Town Centre, Sector 67, Gurugram, Haryana |
| <p>Possession clause: - 11(a) The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building / Said Unit within a period of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt.</p> <p style="text-align: right;">(Emphasis supplied)</p> | |
| <p>Occupation certificate: - ➤ OC received dated 09.03.2021</p> | |
| <p>Note: Grace period is not included while computing due date of possession.</p> | |

| Sr. No | Complaint No., Case Title, and Date of filing of complaint | Reply status | Unit No. | Date of apartment buyer agreement | Due date of possession | Total Consideration / Total Amount paid by the complainant(s) | Relief Sought | Date of withrawal |
|--------|--|--------------|----------|-----------------------------------|------------------------|---|---------------|-------------------|
| | | | | | | | | |

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|----|---|------------------------------------|--|--|--|--|--|--|
| 1. | CR/4829/ 2020 Vinod Kumar V/S Elan Buildcon Pvt. Ltd. Date of Filing of complaint 15.01.2021 | Reply Received on 03.02.2021 | KIOSK- 0203, 2 ND FLOOR (Page no. 21 of complaint) | 20.07.2017 (Page no. 18 of the complaint) | 20.07.2021 (Calculated from date of execution of the agreement) The due date comes out to be 20.07.2020 but as on 25.03.2020 the entire nation was under lockdown and there was a ban on everything including construction etc. Hence the said grace period for 12 months on on failure due to government is allowed. | TSC: - Rs.26,74, 500/- AP: - Rs. 10,32,73 1/- | -Refund the entire amount along with interest | 05.10. 2020 (As per on page 62 of compl aint) |
| 2. | CR/4854/ 2020 Nitin Mehrotra V/S Elan Buildcon Pvt. Ltd. Date of Filing of complaint 15.01.2021 | Reply Received on 04.02.2021 | KIOSK- 0209, 2 ND FLOOR (Page no. 11 of complaint) | 20.07.2017 (Page no. 18 of the complaint) | 20.07.2021 (Calculated from date of execution of the agreement) The due date comes out to be 20.07.2020 but as on 25.03.2020 the entire nation was under | TSC: - Rs.26,74, 500/- AP: - Rs.10,32, 731/- | Refund the entire amount along with interest | 06.10. 2020 (As per on page 56 of compl aint) |

| | | | | | | | | |
|---|--|--|--|--|---|--|--|--|
| | | | | | lockdown and there was a ban on everything including construction etc. Hence the said grace period for 12 months on on failure due to government is allowed | | | |
| <p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)</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 in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. 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.
6. The facts of all the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 4829/2020 titled Vinod Kumar V/S Elan Buildcon Pvt. Ltd.* is

being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details

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

CR/4829/2020 titled Vinod Kumar V/S Elan Buildcon Pvt. Ltd.

| S. N. | Particulars | Details |
|-------|--------------------------------------|--|
| 1. | Name of the project | "Elan Town Centre" Sector 67, Gurugram, Haryana |
| 2. | Project area | 2.00 acres |
| 3. | Nature of the project | Commercial Complex |
| 4. | DTCP license no. and validity status | 84 of 2012 dated 28.08.2012 valid upto 27.08.2021 |
| 5. | Name of licensee | M/s Elan Buildcon Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Registered dated 02.02.2018 |
| 7. | RERA registration valid up to | 01.02.2022 |
| 8. | Allotment of unit | 06.03.2017 (As per page no. 14 of complaint) |
| 9. | Unit no. | KIOSK - 0203, 2 nd floor (On page no. 21 of complaint) |
| 10. | Super area | 300 sq. ft. |

| | | |
|-----|----------------------------------|--|
| 11. | Date of flat buyer's agreement | 20.07.2017 (As per page no. 18 of the complaint) |
| 12. | Possession clause | <p>As per Clause 11(a) of the said agreement:</p> <p>The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building / Said Unit within a period of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt.</p> <p>As such the above grace period is not allowed as there is no failure on govt.</p> |
| 13. | Due date of possession | <p>20.07.2021 (Calculated from date of execution of the agreement)</p> <p>The due date comes out to be 20.07.2020 but as on 25.03.2020 the entire nation was under lockdown and there was a ban on everything including construction etc. Hence the said grace period for 12 months on failure due to government is allowed</p> |
| 14. | Total sale consideration | Rs 26,74,500/- |
| 15. | Amount paid by the complainant | Rs. 10,32,731/- (As alleged by the complainant) |
| 16. | Occupation certificate | 09.03.2021 |
| 17. | Offer of possession for fit outs | 18.09.2020 (Page 56 of complaint) |
| 18. | Surrender Letter | 05.10.2020 (Page 62 of complaint) |

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- I. That the project in question is known as "Elan Town Centre", at Sector 67, Gurgaon. That respondent issued allotment letter of the unit on 06.03.2017 the cost of unit was arrived at Rs. 26,47,500/- through which the complainant was allotted Food Court Unit no. 203 on 2nd floor admeasuring super area of 300 sq. ft.
- II. That on 28.07.2016 the complainant booked the food court unit by paying Rs. 2,47,500/- through the Cheque no. 832458 Drawn on State Bank of India. The respondent convinced the client by showing the map of the food court unit whereas the unit had the service corridors behind every single unit, which is an essential aspect of running the kitchen of the food court unit, also the complainant could choose the unit as per his wish by seeing the layout plan.
- III. That even before the issuance of the allotment letter the complainant had already paid Rs. 10,32,731/- on the demand of the respondent. The respondent accepted 35% of the amount even before the entering into the builder buyer agreement.
- IV. That on 20.07.2017 a preprinted, one-sided builder buyer agreement was executed between the complainant and respondent, the complainant had no say and followed the dotted lines as set by the respondent builder in the agreement.
- V. That the payment plan agreed between the parties was 10:25:65, whereas the 65% of the amount was to be paid at the possession. The

complainant has already paid 35% of the agreed amount till date to the respondent.

- VI. That as mentioned in the builder buyer agreement, the super area of the food court unit is supposed to be 300 square feet. Whereas the builder failed to annex the exact dimensions of the unit with the builder buyer agreement, and also in due course it did not inform the complainant about the actual carpet area or its dimensions.
- VII. That on 18.09.2020 the respondent sent the intimation of the possession and along with that it sent a demand letter, asking for the payment of Rs. 19,11,263/-.
- VIII. That after receipt of the possession letter the complainant was quite happy to get the unit which he wanted to make his source of earning and went to check the physical progress on site. The complainant happiness was short-lived, and he noted that delivery of unit was not in line with what was promised on the following counts.
- IX. That the complainant was shocked to find out that the actual carpet area of the unit was just 42 Square feet (Size in LXB as 7X6). Hence the ratio of carpet area to super area is just 14% or in the words the loading was 86% of the size against the usual 45-50% in the commercial units. The respondent changed the layout plan of the unit and now the food court units are made back-to-back, and no service corridor is being provided in the units, which is an essential aspect of opening the kitchen in the premises and against the set norms of the units of food courts. The locations of the unit are completely changed as promised and on which the builder convinced the client to buy the unit.

- X. That in response to the aforesaid letter, the complainant sent a letter on 05.10.2020 to the respondent informing about the discrepancies in the promised and actual unit and for the cancelation of the unit as this high loading, absence of service corridors and change in the layout plan without consent was unacceptable to the complainant.
- XI. That the various written and verbal reminders to the companies and visit to the office went unanswered by the respondent and complainant is forced to take the complainant to the Hon'ble Authority for the resolution of the matter.
- XII. That as per the clause 1.6 of the builder buyer agreement the respondent convinced the complainant that the carpet area will be at least the 50% of the super area which is in line with the standard practice in the commercial units, and also the service corridors are an essential part of the kiosks and food court units , but has miserably failed to keep its commitment.
- XIII. That the main grievance of the complainant in the present complainant is that the complainant is an end user who wished to open the food chain unit in the premises, but the high loading has rendered this unit as unfit for the usage as the food court, as it becomes impossible to open

the kitchen in such as short space.

- XIV. That the other grievance of the complainant is that the builder has changed the layout of the unit and the absence of the service corridors has made this unit a safety hazard and unfit for opening any food outlets. That as per Section 12 of The Real Estate (Regulation and Development) Act, 2016 this becomes the matter of the fact that the respondent misled the complainant about the exorbitantly high loading and showed the one layout at the time of booking and changed the layout later on without consent and made these units a safety hazard due to the absence of service corridors.
- XV. That the complainant stated that about the discrepancies in the promised and actual unit and for the cancelation of the unit as this high loading, absence of service corridors and change in the layout plan without consent was unacceptable to the complainant leading to filing this complaint seeking refund of the deposited amount along with other relief.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
1. Direct the respondent to refund the amount of Rs.10,32,731/- along with interest.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.

- I. That the present complaint has been instituted by the complainant in respect of Kiosk bearing number 0203 on second floor admeasuring 300 square feet approximately (super area) located in the project developed by the respondent known as "Elan Town Centre" located at Sector 67, Gurugram. The complainant had evinced an interest in purchasing a unit/kiosk in the said project and had approached the respondent voluntarily to purchase the same. The complainant had already conducted his due diligence pertaining to the capability of the respondent to develop, construct, market etc. the said project. Only after being satisfied about the ability of the respondent did the complainant proceed to purchase a unit/kiosk in the said project.
- II. That an application form dated 28.07.2016 had been voluntarily filled and signed by the complainant pertaining to purchase of a unit in the said project. Thereafter, allotment letter dated 06.03.2017 had been issued by the respondent to the complainant vide which the said kiosk had been allotted to the complainant.
- III. That the buyer's agreement was executed between the parties on 20.07.2017 .It is pertinent to mention that the complainant had executed the aforesaid buyer's agreement voluntarily after carefully going through the terms and conditions incorporated therein. The complainant, without being influenced in any manner by the respondent had executed the buyer's agreement after being satisfied with the contractual covenants contained therein.

- IV. That the complainant has alleged in the complaint filed by him that the respondent had changed the layout of the kiosk. Moreover, the complainant has also alleged that the ratio of carpet area to super area is merely 14%. It would not be out of place to mention that nowhere in the entire complaint has the complainant alleged that there had been any delay in handing over of possession of said kiosk to the complainant. The respondent had applied to the concerned statutory authority for obtaining the occupation certificate on 20.03.2020.
- V. That refund at this advanced stage of project is not in the interest of the other allottees at large as the same will hamper the completion of the project. It is submitted that the respondent company has invested a huge amount on the construction and development of the said project and in case the refund is allowed to the complainants, it would cause financial loss to the project as well as loss to the genuine customers in the said project.
- VI. That the complainant has admitted in the complaint filed by him that the complainant has made payment of only 35% of total sale consideration amount to the respondent. It is pertinent to mention that as per the payment plan voluntarily chosen by the complainant, the balance 65% of the consideration amount had to be paid to the respondent at the time of offer of possession. However, the complainant for reasons best known to him has failed to do so. As on date, the complainant is liable to make payment of an outstanding amount to the responding of Rs.17,09,082/- plus applicable GST, plus applicable interest, plus applicable stamp duty

and other charges as per the builder buyer's agreement signed by the complainant.

- VII. That the complainant has wrongly alleged that the respondent had failed to provide the exact dimensions of the kiosk in the builder buyer's agreement. The complainant has further alleged that the respondent did not inform the complainant about the carpet area of the said kiosk. It is pertinent to mention that all the relevant documents had been duly provided to the complainant wherein the carpet area of the said kiosk along with the exact dimensions had been disclosed. Moreover, it had also been conveyed to the complainant that even though all relevant documents had been provided to him, he was more than welcome to visit the office of the respondent to obtain any document as required by him.
- VIII. That the complainant has wrongly stated that the ratio of carpet area to super area with respect to the said unit was just 14%. Furthermore, the complainant has intentionally misinterpreted Clause 1.6 of the buyer's agreement. It is pertinent to mention that as per Clause 1.6 of the buyer's agreement, the covered area in case of a kiosk would also include the area of sitting space as well as service corridor. Moreover, it had never been communicated to the complainant that the carpet area of the kiosk would be at least 50% of the super area. It is pertinent to mention that the complainant has himself admitted that in case of commercial units, it is standard practice that the carpet area is at least 50% of the super area. It is pertinent to mention that the complainant had booked a kiosk and not a full-fledged commercial unit as is sought to be portrayed by him.

- IX. That since the complainant had booked a kiosk which was located in the food court on the 2nd floor in the said project, the complainant cannot contend that he deserves similar advantages and perks as provided to the allottees of full-fledged commercial units. Moreover, the calculations provided by the complainant in his complaint with respect to the said kiosk are erroneous, flawed and without any basis.
- X. That it would not be out of place to mention that there is no mention of a service corridor in the buyer's agreement. It had never been agreed between the parties that a service corridor was to be provided for the kiosk in question. The complainant has falsely alleged that a service corridor was to be provided for the kiosk in question or that the same is an essential aspect of operating a kiosk in the food court. Moreover, a kitchen is provided to the food court units but not kiosks located in the food court.
- XI. That on the one hand the complainant has relied upon various terms and conditions incorporated in the buyer's agreement and the other hand the complainant has entirely ignored certain contractual covenants contained therein. It has been provided in Clause L(ii) of the buyer's agreement that the complainant after being fully satisfied and relying upon his own judgment had decided to book the said kiosk, uninfluenced in any manner by the respondent.
- XII. That the complainant has wrongly stated that the layout plans had been changed unilaterally by the respondent. It is pertinent to mention that the location of the said kiosk is in consonance with what had been promised to the complainant and mentioned in the layout plans. It is pertinent to

mention that the layout plans for the said project are public documents which are readily available on the official website and with the Hon'ble RERA Authority. Moreover, the complainant has appended a map purportedly showing the location of the kiosk allegedly handed over to him by the respondent at the time of booking as Annexure P6. It is pertinent to mention that the said map does not even contain the kiosk in question. Moreover, the said document had never been handed over to the complainant by the respondent.

- XIII. That several allottees, including the complainant, have defaulted in timely remittance of payment of sale consideration amount which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- XIV. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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

12. 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

13. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

14. 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.

15. 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. (Supra)* 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."

16. 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 relief sought by the complainant

F.1 Direct the respondent to refund the amount of Rs.10,32,731/- along with interest.

17. In the present case the complainant approached the Hon'ble Adjudicating Officer in year 2021 to seek refund of the amount paid by the complainant, while vide order dated 20.08.2021 the Hon'ble Adjudicating Officer directed the respondent to refund the amount paid by the complainant along with interest. Thereafter, the respondent approached the Appellate Tribunal by filing an appeal no. 565 of 2021 against the said order passed by the Hon'ble Adjudicating Officer. The same appeal was allowed vide order dated 25.04.2022 and set aside the order passed by Hon'ble Adjudicating Officer dated 20.08.2021 stating that the case is remitted for fresh trail in accordance with law to the learned Haryana Real Estate Authority, Gurugram. Hence, the parties were directed to approach the authority on 25.05.2022 for further proceedings.
18. That the complainant was allotted the subject unit vide allotment letter dated 06.03.2017 for a total sale consideration of Rs. 26,74,500/-. The buyer's agreement was executed on 20.07.2017 and the due date comes out to be 20.07.2021. The occupation certificate was obtained on 09.03.2021 and the respondent offered the possession for fit out on 18.09.2020.
19. That the complainant made request for surrender of the unit on 05.10.2020 which is evident from page no. 62 of the complaint and the same is before due date of handing over of possession seeking refund against the allotted unit.
20. 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."

21. It is evident from the above mentions facts that the complainant paid a sum of Rs.10,32,731/- against basic sale consideration of Rs. 26,74,500/-of the unit allotted on 06.03.2017. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.
22. It has been pleaded by counsel for respondent that occupation certificate has already been obtained and it has already made payment of required taxes to the government. The occupation certificate was obtained on 09.03.2021 before due date of handing over of possession i.e., 20.07.2021. However, the complainant approached the Authority seeking relief of refund on 15.01.2021 i.e., before due date of handing over of possession. The Authority observes that the respondent has already made payment towards taxes to the governmental authorities. Hence, the respondent is entitled to deduct from refundable amount to the complainant , taxes which are not refundable from government and respondent-promoter cannot charge from subsequent allottee as GST provision prohibit charging of GST after receipt of occupation certificate..
23. The respondent - builder has already charged the amount from the allottee paid to them and the same has been borne by the respondent - builder and brokerage charges as admissible as per law and paid to the government. So, the

respondent - builder is at stage to deduct the statutory dues and brokerage charge from the allottee.

24. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance 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, (subject to deduction of statutory dues and brokerage i.e 0.5%) from the date of surrender 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):

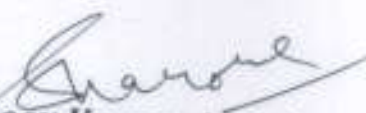
- i. The respondent is directed to refund to the complainant the paid-up amount (subject to deduction of statutory dues and brokerage i.e 0.5%) after deducting 10% as earnest money of the basic sale consideration with interest at the prescribed rate i.e., 10.70% is allowed, from the date of surrender till date of actual refund.

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

26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

27. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

28. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2023