

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

Order reserved on: 05.01.2023
**Date of pronouncement
of order:** 23.02.2023

Dinesh Chandra Arora
Address:- M – 207 (Second Floor), South City – 1,
Gurgaon – 122001

Complainant

Versus

Oasis Landmarks LLP
Address:- Godrej One, 5th Floor, Pirojshanagar,
Eastern Express Highway, Vikroli (East)
Mumbai – 400079

Respondent

CORAM:
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:
Dinesh Chandra Arora (in person)
Shri Saurabh Gauba

Complainant in person
Advocate for the respondent

ORDER

1. The present complaint dated 10.11.2021 has been filed by the complainant 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 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. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Godrej Icon (Iconic Tower), Sector 88A and 89A, Gurugram
2.	Total area of the project	0.475 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no.	85 of 2013 dated 10.10.2013 Valid upto 09.10.2024 151 of 2014 dated 05.09.2014 valid upto 04.09.2024
	Licensee	Oasis Buildhome Pvt. Ltd.
5	HRERA registered/ not registered	Registered vide 54 of 2017 dated 17.08.2017
	HRERA registration valid up to	valid upto 30.04.2020
6.	Occupation certificate granted on	18.09.2020 for towers 6-10 and EWS BLOCK
7.	Provisional allotment letter	05.11.2015 (Page 26 of complaint)
8.	Unit no.	ICONIC 2101, 21 st floor, ICONIC (Page 76 of complaint)
9.	Area of the unit	1455 sq. ft. (carpet area) (Page 76 of complaint)



10.	Date of execution of buyer's agreement	18.01.2016 [Page 32 of complaint]
11.	Possession clause	4.2 <i>The Developer shall endeavour to complete the construction of the Apartment within 48 months (for Iconic tower's (apartments) 46 months (for-other tower's apartments) from the date of Issuance of Allotment Letter, along with a grace period of 6 months over and above, this: 48 months period ("Tentative* Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment.</i>
12	Due date of possession	05.05.2020 Grace period is allowed as the same is unqualified.
13	Total consideration as per BBA on page 83 of complaint	Rs. 1,65,56,606/-
14	Total amount paid by the complainant as per statement of account dated 05.11.2020 at page 87 of complaint	Rs. 1,45,88,900.98/-
15	Offer of possession	30.10.2020 (Page 130 of reply)
16	Demand Letter	31.10.2020, 14.04.2021 10.05.2021
17	Pre-termination letter	25.05.2021 (Page 166 of reply)
18	Request for cancellation by complainant	Vide email dated 31.05.2021

		(Page 172 of reply)
19	Termination by respondent	26.08.2021 (Page 176 of reply)

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That the respondent has been grossly deficient and negligent in providing its services and discharging its duties as per the provisions of the Real Estate (Regulation and Development) Act, 2016, its rules and regulations framed thereunder. The approach of the respondent was not only dishonest and malafide while intending to forfeit a substantially unfair and an unreasonable amount out of the consideration but also was to deceive the complainant after cancelling the unit/apartment by the complainant due to his personal reason.
- ii. That the respondent is a limited liability partnership, engaged in the business of real estate. The respondent made wide publicity in the print and electronic media for its project named "Godrej Icon", and represented its project as premium project with super luxury specifications & amenities and security & entertainment. It was also represented that the project will be crafted by the world renowned designers for the people who love luxurious lifestyle.
- iii. That the complainant, believing the representation, booked a flat admeasuring 2059 sq. ft. approx. with the respondent, situated at Sector 89A/88A, Gurgaon, Haryana at a sale consideration i.e. basic sale price of Rs.1,33,81,441/- and further the respondent

has also charged preferred location charge, statutory charges, car parking allocation charges, club membership fee, association formation charges, interest free maintenance security, external electrification charges, power backup facility charges and legal and administrative charges for totalling amount of Rs. 31,75,165/- in addition to the basic sale price. In view of this, the total amount payable by the complainant was Rs. 1,65,56,606/- to the respondent. The complainant paid Rs. 5,00,000/- as a booking amount to the respondent in April 2015 and the respondent issued the allotment letter signed and issued on 05th November, 2015 to the Complainant by the Respondent.

- iv. The sale consideration of the said unit is Rs. 1,33,81,441/- and Cost of property including statutory and other charges is INR 1,65,56,606/- which is mentioned on page no. 52 of the agreement. The Service tax/later GST is in addition to same. The complainant also signed the apartment buyer's agreement (hereinafter referred to as "agreement") on 18th January 2016 with the respondent. That at the time of signing the agreement, respondent represented that the possession of the unit will be given within 48 months from the date of allotment i.e. 5th November, 2015 and this period could have gone to maximum 54 months after stretching the 6 months grace period. Accordingly, the completion date as informed to RERA was 30th April, 2020. That the complainant was closely observing the progress keenly waiting for the completion and to pay the balance 20% on possession, however, even after making 80% payment i.e. INR 1.44 Crore as per the demand of the respondent, the project was,



though, disappointedly running delayed and was nowhere near completion even when the lockdown was imposed on 23rd March, 2020.

- v. Though the restrictions were lifted in a couple of months, and soon thereafter the work was started even then there was a six months extension granted going beyond the 6-month grace period and extended till 31st October, 2020. While keeping track on the progress of the project, the complainant called up the relationship manager to find out the status of the project and every time this was informed that the time-line got affected due to sudden lock-down and related issues. When after resumption of construction activities, the complainant again called up and enquired in August, 20 about project completion, the complainant was informed that it is likely to go on till January-February, 2021. That the complainant received an e-mail dated 15th October, 2020 from the respondent regarding the payment of remaining 20% of the amount. The relevant extracts are reproduced hereinbelow:

"We wish to inform you that the next milestone "on offer of possession" will tentatively be achieved within the next 7 days and the invoice will be raised accordingly. The invoice will have the details of the due date. Kindly make sure that you make arrangements for the funds accordingly"

- vi. The complainant was shocked to receive such email as while checking with the relationship manager prior to receiving this email, it was informed to the complainant that the project is likely to be completed around January - February, 2021. The complainant immediately, called up the relationship manager and expressed his surprise of receipt of this mail in the wake of the above updates. She stated that the same is meant for the other

towers and not relevant for Iconic tower (where the unit allotted to me - GICONIC2101 pertains) and for Iconic Tower the completion will take at least another 2-3 months and the final demand will be raised accordingly.

- vii. That however, to the complainant's utter surprise, the complainant received an email dated 5th November, 2021 demanding the balance 20% demand amounting to Rs. 33.97 lakhs (due date - 17th November, 2020) in the name of 'Notice of possession' which was back dated 31st October, 2021. The complainant got 7 such mails at different timings in a span of one and half hour from 5.53 p.m. to 6.14 p.m. That it will be important to mention here that during this phase of pandemic, the complainant lost his employment and could not find another job in the wake of the worsening employment scenario. Accordingly, having lost the ability to pay EMI against the Home Loan taken, coupled with the financial obligations of complainant's son's advanced stage of education and other family and health related challenges, the only option left with the complainant was to go for the cancellation of the allotment and to quickly get the refund in line with the provisions of RERA in order to have a control on the worsening financial circumstances.
- viii. The complainant expressed to visit and see the unit to find out the real status in the wake of the above developments and also to have a talk on the matter of unavoidable situation of cancellation. The complainant called up a number of times, sent several messages and mails, in fact countless times, and there was hardly any response and even after getting some revert, there were all

attempts to avoid the visit to the unit and despite making hard follow ups, visiting and waiting for long hours at their site office, no one was available, that too after fixing up the appointment not just once but for more than thrice. After many efforts, the complainant got an opportunity to visit the site with a hope to meet up some responsible official on 10th January after receiving an invitation for a get-together organized. However, to complainant's disappointment, no responsible person was accessible for a talk. While visiting the site and unit, to the complainant's utter surprise, as earlier mentioned, turned as an utter shock when the complainant saw the status of the project and the unit. The entire project was in a raw shape. the real serious work in club house had started just a few days back, the work at the sites of most of the amenities were only halfway through. The scene at the corridors, lobbies, and in the unit was even more shocking. There was no flooring in any of the rooms other than the living room, the fittings (including sanitary, electrical, wooden) were not at all in place in any of the four bathrooms and the rooms including kitchen and the overall state was quite shabby. In nutshell, this was a clear, apparent and evident premature call to claim it as 'ready for possession' and to raise the final demand.

- ix. After this, there was hardly any response to the calls made, messages sent, mails exchanged and even after making all hard efforts. However, there was no dearth of sending the reminder mails for making the payment of final demand and unscrupulously levying the penal interest for the so-called delay. The complainant

though, summarized the above facts and brought to their notice through mail dated 25th January, 2021. During this period there were frequent changes of the relationship managers one after the other, and finally a mail came informing that a new relationship Manager Ms. Sonam Sharma has joined who was then approached and the matter of discussion on cancellation and developments have been brought to your notice.

- x. That during this period due to intensified covid cases and certain other related factors, including frequent changes in the team of developer, no one from the respondent was approachable to discuss the concerns. After many follow ups and prolonged efforts, the complainant could contact the new relationship manager Ms. Sonam Sharma and visited to the site office on 31st January 2021 and discussed about the current compelling financial situation leading to inevitable cancellation consequent to the loss of employment. The relationship manager expressed that she is quite new and thus could not comment on the same.
- xi. That the complainant vide its email dated 31st may, 2021 expressed its dissatisfaction with the illegal and exorbitant amount demanded by the respondent and highlighted the HARERA notification which clearly states 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 requested the respondent to honour the same.

- xii. That there was no response from the respondent and thus, the complainant had to follow up with the respondent on the matter. The complainant sent an email dated 9th June 2021 following up on the matter. The respondent vide its email dated 9th June, 2021 stated that withdrawal from the project could not be allowed on the grounds that the occupancy certificate was issued to the complainant.
- xiii. That it is pertinent to state that the respondent's actions have not only been unprofessional and arbitrary but also illegal and malice. The respondents on one hand arbitrarily decided to cancel the allotment of the complainant and charged a hefty forfeiture amount in utter violation of the laws of the land vide email dated 22nd May, 2021 and on the other hand refused the withdrawal of the complainant from the apartment on baseless grounds. That the complainant yet again followed up and humbly requested vide mail dated 25th June, 2021 to not deviate as the cancellation had already been effected vide mail dt. 22nd May, 2021 and requested accordingly to centre upon the subject matter of revisiting the exorbitant forfeiture amount in the light of the RERA provisions which clearly state that the deductible amount not to exceed 10% of the sale consideration. However, the respondent failed to reply to the complainant. The complainant started the process of following up but all in vain as the respondent was reluctant to reply to the concerns of the complainant.
- xiv. That it is significant to state that the complainant is withdrawing from this project due to his financial distress and the respondent vide their mail dated 22nd May 2021 confirmed the cancellation

while illegally imposing an exorbitant amount on the complainant with the sole intention to harass and extort the complainant. That it is trite to mention that the complainant has always fulfilled the payment terms of the respondent as and when demanded or due. In the year 2017, the respondent demanded 20% amounting of INR 37.33 lakhs vide invoice dated 2nd September 2017 due on 20th September, for a milestone of 'completion of superstructure' and thereafter, an another sudden and an abrupt 40% demand vide invoice dated 4th December, 2017 (vide mail dt. 05.12.2017) amounting to INR 74.59 lakhs was raised, claiming a yet another major milestone 'Completion of Finishing-Brick Work and internal plastering' - due on 22nd December, 2017. It will not be out of place to mention that the complainant paid all the dues in good faith, trusting that the respondent has genuinely reached the milestones.

- xv. That it is also to bring into the kind notice that with effect from 1st July, 2017 GST was introduced with the benefit of input tax credit. The real purpose of introducing GST was to ensure that the benefit of input tax credit can be set-off and the net liability should not have a cascading effect unfairly. The initial 20% payment was subject to Service tax. Accordingly, the balance 80% amount due and payable was attracted towards GST and the total GST Liability on such amount comes close to INR 15 lakhs and the amount which has been passed on as set-off for input tax credit is even below INR 5 lakhs (INR 4,83,766/-) which is not even 1/3rd of the output liability, resulting in more than 2/3rd burden getting

shifted on allottees which is entirely against the spirit and scheme of the GST Law.

- xvi. That it is further pertinent to mention that though the project is yet to be ready for possession, the bill for common areas maintenance charges amounting to INR 1,45,194/- has been sent to the Complainant, making it chargeable and effective from February, 2021 which is a yet another instance of a premature and an untimely attempt to collect/extort the money not linked to the appropriate timing which can be considered as justified, fair and reasonable.
- xvii. That it is also trite to mention that the complainant has never defaulted in any payment term for the apartment however, the complainant received statement of accounts from the respondent demanding the payment towards the apartment along with an interest levied on the amount regarding delays in previous payments which is unfathomable as the complainant has never defaulted any earlier payment.
- xviii. That the respondent informed to the complainant through email dated 26th August, 2021 for the cancellation/termination of allotment of the allotted unit citing the reason of non-payment of the final 20% allotment amount. The respondent acted in the draconian manner and cancelled the unit even after knowing well that the complaint filed by the complainant was sub-judice before ld. adjudicating officer. That once the complainant has filed the complaint against the respondent before the adjudicating officer and informed the respondent in advance for the same, the respondent cannot terminate/cancel the unit in any manner

whatsoever till the further orders of the adjudicating officer. the said act to cancel/terminate the allotted unit by the respondent clearly depicts its dictatorship approach towards the complainant.

- xix. The complainant is an innocent man, who has limited income with number of liabilities and is a regular taxpayer. The malicious acts of the respondent have borne suspicion in the mind of the complainant. That the complainant submits that the difficulties, mental and financial distress faced, and the agony of the complainant is incomparable. The complainant has faced irreparable losses as their lifetime savings and hard-earned money which they invested in the project in good faith has resulted in perpetual anguish.

C. The complainant is seeking the following relief:

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

- (i) Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs. 1,43,64,332/- along with interest.

D. Reply filed by the respondent

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

- I. The present complaint is a gross abuse of the process of law and has been filed with the sole intent of arm-twisting, harassing and coercing the respondent into accepting the illegal, unfair and unethical demands of the complainant herein. As such, the instant complaint is a glaring example of a party to a contract, resorting

to frivolous and vexatious litigation, in order to avoid forfeiture of the amount paid by the complainant towards the apartment / unit bearing no. ICONIC - C2101, 21st floor in the group housing residential project "Godrej ICON" and other charges due to the failure on the part of the complainant to honour his contractual obligation of making timely payment and complete the execution and registration of conveyance deed and other documents.

- II. It is submitted that the complainant has failed to bring out any deficiency / defect, on the part of the respondent and has filed the instant complaint with the mala fide intention to wriggle out of the contractual obligations by raising all kind of false, frivolous issues and has concocted a baseless story without any basis whatsoever. It is further submitted that the instant complaint is found to be frivolous and vexatious and as such deserves to be dismissed along with exemplary costs.
- III. It is submitted that the complainant has filed another complaint before adjudicating officer bearing no. 3450/2021 for seeking refund of the amount paid by the complainant to the respondent towards the booking of the apartment. It is further submitted that the complainant cannot approbate or reprobate at the same point of time. It is submitted that on one hand the complainant in the complaint bearing no. 3450/2021 is seeking refund of the amount paid towards booking of the apartment / unit and on the other hand the complainant in the present complaint is seeking revocation of the cancellation / termination of the apartment / unit and seeking restraint orders against the respondent from creating any third party interest. It is submitted that the

complainant cannot blow hot and cold at the same point of time. Thus, the instant complaint is liable to be dismissed on this sole ground alone. It is submitted that the complainant unequivocally agreed to make timely payments as per the opted payment plan provided in the application form and the apartment buyer agreement. It was made clear to the complainant that timely payment will be the essence of the transaction. It is further submitted that the complainant made the booking after carefully going through the terms and conditions as mentioned in the application form.

- IV. Pursuant to the aforesaid, the parties hereto had executed an apartment buyer agreement dated 18.01.2016. It is submitted that the total cost of the unit/apartment was Rs.1,65,56,606/- inclusive of taxes. It is pertinent to mention here that the complainant had opted the payment plan mentioned in *Schedule VII* of the said apartment buyer agreement at the time of execution of the said apartment buyer agreement. It is submitted that the complainant opted for *Flexi-Possession Linked Plan* wherein they unequivocally agreed to make timely payments as provided in the apartment buyer agreement. It is further submitted that in terms of clause 16 of the application form and clause 4.2 of the apartment buyer agreement the tentative date of completion of the apartment / unit was 48 + 6 months from the date of issuance of allotment i.e. (05.11.2015) and therefore in terms of the application and apartment buyer agreement the date of completion of the unit would be 05.05.2020. It is submitted that clause 15 of the application form and clause 2.5 of the

apartment buyer agreement clearly stipulated that 20% of the sale consideration / cost of the property was to be considered / treated as earnest money which was meant to ensure performance, compliance, and fulfilment of obligations and responsibilities of the buyer.

- V. It is submitted that the clause 2.10 of the apartment buyer agreement dated 18.01.2016 clearly stipulated that in the event of non-payment of any instalment by the complainant as per the opted schedule of payments set out in *schedule vii* of the agreement, the respondent is within its right to reject / cancel the booking and to forfeit the earnest money and other amounts in view of the defaults committed by the complainant.
- VI. It is submitted that clause 8 of the apartment buyer agreement clearly stipulated that in case the complainant fails to comply with the terms and conditions of the application form and apartment buyer agreement, the respondent shall have the right to terminate / cancel the allotment letter and / or unit.
- VII. It is submitted that the respondent has raised the invoice as per the opted flexi possession linked payment plan and only on completion of milestones as mentioned in the payment plans. It is pertinent to mention here that the respondent has time and again sent all the construction updates to the complainant.
- VIII. It is submitted that the respondent had duly completed the construction of the iconic tower and has duly obtained the occupation certificate on 18.09.2020. It may not be out of place to mention here that the construction activity of the ICONIC tower was disrupted due to the outbreak of COVID-19 pandemic that

resulted in the minor delay in the completion of the construction and as such HARERA vide notification dated 26.05.2020 extended the completion dated by 6 months. It is further submitted that as per the agreed terms and conditions of the apartment buyer agreement the respondent was entitled to an extension of time if the performance of the respondent was delayed due to force majeure event. It is submitted that after completion of the construction, the respondent issued a possession intimation letter dated 30.10.2020 and requested the complainant to clear the balance amount payable towards the costs of the property.

- IX. Pursuant to the issuance of the aforementioned possession intimation letter dated 30.10.2020, the respondent vide its letter dated 31.10.2020 issued an invoice for an amount of rs.32,51,702/- upon completion of the milestone namely "*on intimation of possession*" and called upon the complainant to clear the said amount on or before 17.11.2020. It is pertinent to mention that the said amount of rs.32,51,702/- along with interest on delayed payments is still due and payable by the complainant.
- X. It is submitted that at the time of execution of the apartment buyer agreement the complainant agreed and undertook to pay all amounts due and payable to the respondent as per the payment plan opted by the complainant mentioned in *Schedule VII* of the apartment buyer agreement. It is further submitted that the respondent had raised the invoices upon the complainant in accordance with the opted payment plan and upon completion of construction milestones mentioned therein. It is important to

note here that the invoices were raised /issued by the respondent only upon completion of the milestone and no premature demand was raised by the respondent.

- XI. Pursuant to the issuance of the demand letter/invoice dated 31.10.2020, the respondent vide its email dated 11.01.2021, 11.05.2021 and letter dated 14.04.2021 called upon the complainant to clear the outstanding amount immediately, to avoid accrual of further interest as provided under the application form as well as the apartment buyer agreement.
- XII. It is not out of place to mention here that the respondent is a customer centric organization and has from time to time updated the complainant about the status of the construction. The factum of the same is evident from the Email dated 30.09.2020 issued by the respondent to the complainant herein informing / intimating the complainant about obtaining the principal occupation certificate. Pursuant to the aforesaid, the respondent vide its email dated 10.05.2021 once again called upon the complainant to pay an amount (s) aggregating to Rs. 35,40,636/- along with applicable interest and GST@18% on the interest amount immediately, to avoid further accrual of interest/penal consequences as provided under the application form/allotment letter and apartment buyer agreement.
- XIII. It is submitted that the complainant has miserably failed to perform his part of the obligation in as much as the complainant has failed to make timely payments and thus committed material breach of the terms and conditions as stated in the application form/allotment letter/apartment buyer agreement. It is

submitted that as on 25.08.2021, there is a total outstanding amount of Rs.36,44,106/- as per the statement of interest and Rs.32,51,703/- as per statement of account.

XIV. It is submitted that the respondent vide its email dated 25.05.2021 once again called upon the complainant to pay an amount of Rs. 35,55,141/- within 10 days. It was further clarified by the respondent that in case the complainant fails to pay the said amount within the stipulated time period in that case the respondent will be constrained to terminate the allotment letter / apartment buyer agreement and forfeit the amount paid by the complainant. It is pertinent to mention here that pursuant to the issuance of the email dated 10.05.2021 by the respondent, the complainant sought details of the amount to be forfeited by the respondent in case the complainant opts to cancel the booking. It is further submitted that the respondent duly intimated the complainant that the cancellation shall attract forfeiture charges as agreed between the parties hereto and intimated the forfeiture amount vide email dated 22.05.2021.

XV. It is further submitted that the complainant unequivocally admitted his financial incapability to make the timely payments vide an email dated 31.05.2021 and accordingly sought cancellation of the apartment / unit in the project.

XVI. Since, the complainant miserably failed to perform his obligation insofar as the complainant failed to make timely payments as per the agreed terms of the apartment buyer agreement and the payment plan opted by the complainant. Accordingly, the respondent was constrained to terminate / cancel the allotment

of the complainant and vide its email dated 26.08.2021 the respondent terminated the apartment buyer agreement executed between the parties hereto. It is submitted that the application form as well as the apartment buyer agreement clearly stipulated and defined the amount of earnest money to be 20% of the cost of the property was to be considered / treated as earnest money which was meant to ensure performance, compliance, and fulfillment of obligations and responsibilities of the buyer.

XVII. It is further submitted that the term requiring forfeiture of earnest money in the event of default was meant to ensure compliance on the part of the complainant of his contractual obligations. It is further submitted that the 20% earnest money amount was a genuine pre-estimate of damages and was not in the nature of penalty. It is submitted that in the present case, the parties clearly agreed and understood that earnest money shall amount to 20% of the cost of the property and it was in the nature of a security in order to ensure due performance of obligations by the complainant.

XVIII. It is submitted that in view of application form as well as the apartment buyer agreement executed between the parties hereto, in the event of default by the complainant herein, the agreed amount of earnest money i.e. 20% of the of the sale consideration/cost of the property is liable to be forfeited along with other charges as detailed in the apartment buyer agreement. Since the complainant has been unable to meet his contractual obligations, the said amount is liable to be forfeited as per the

terms of the apartment buyer agreement as there was no default on part of the respondent.

- XIX. It is relevant to state here that the respondent has not only lost the opportunity to sell the said flat to some other person, (at the time when complainant booked the flat) who would have adhered with the terms of the contract and paid the entire sale consideration in time. Thus, in view of the aforementioned facts and circumstances the respondent is in compliance with the directions passed by the appropriate authorities and is also in compliance with the terms and conditions as envisaged under the application form. without prejudice to the aforesaid, respondent denies each and every allegation raised in the instant complaint unless specifically admitted hereinafter.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* 2021-2022(1) RCR(Civil), 357 and reiterated in case of *M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other SLP(Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. 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/allottee.

- F. I Direct the respondent to refund the entire amount paid by the complainant to the respondent amounting to Rs,1,43,64,332/- along with interest.

12. In the present complaint, the complainant intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

by the promoter in respect of the unit with interest at the prescribed rate. The allottee in this case has filed this application/complaint on 10.11.2021 after possession of the 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 and only when offer of possession was made to him and demand for due payment was raised then only filed a complaint before the authority. The occupation certificate/part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after obtaining occupation certificate. Section 18(1) gives two options to the allottee if the promoter fails to complete or is 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:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

16. The right under section 18(1)/19(4) accrues to the allottee 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 allottee has 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 him, it impliedly means that the allottee has 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 he has paid to the promoter are protected accordingly. Further 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*. it was observed

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

17. 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."

18. Keeping in view, the request of the complainant, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the basic sale consideration and shall return the amount along with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of request of withdraw/surrender i.e. 31.05.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid.*

G. Directions of the authority

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to refund the paid-up amount of Rs. 1,45,88,900.98/- after deducting 10% of the sale consideration of Rs. 1,65,56,606/- with interest at the prescribed rate i.e. 10.70% is

allowed on the balance amount from the date of request of withdraw/surrender i.e., 31.05.2021 till the 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.

20. Complaint stands disposed of.

21. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2023

HARERA
GURUGRAM