

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

Complaint no. : 3799 of 2019
First date of hearing: 15.10.2019
Order Reserve On : 20.01.2023
Order Pronounce On: 31.03.2023

M/s Murli Infratech LLP

Address: 303, Roots Tower, Laxmi Nagar,
New Delhi-110092

Complainant

Versus

Ireo Grace Realtech Private Limited
Registered Office: - C-4, 1st Floor, Malviya Nagar,
New Delhi-110017

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Shri Riju Mani
Shri M.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 04.09.2019 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 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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:

S. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	202, 2nd Floor, Tower C7 (annexure C-3 on page 62 of the complaint)
7.	Unit measuring	1592.7 sq. ft. (annexure C-3 on page 62 of the complaint)

8.	Date of approval of building plan	23.07.2013 (annexure R-31 on page no. 100 of reply)
9.	Date of allotment	12.08.2013 (annexure C-3 on page 62 of the complaint)
10.	Date of environment clearance	12.12.2013 (annexure R-32 on page no. 108 of reply)
11.	Date of execution of builder buyer's agreement	Not executed
12.	Date of fire scheme approval	27.11.2014 (annexure R-33 on page no. 119 of reply)
13.	Cancellation letter	01.09.2016 (annexure R-28 on page no. 94 of reply)
14.	Restoration of unit	30.05.2017 (vide email on annexure R-31 at page no. 97 of reply)
15.	Total consideration	Rs. 1,80,16,336/- (as per statement of account on page no. 77 of complaint)
16.	Total amount paid by the complainant	Rs. 1,64,70,593/- (as per statement of account on page no. 77 of complaint)
17.	Due date of delivery of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
18.	Possession clause (Taken from executed buyers agreement of same project in similar complaint in CR/1105/2021)	13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and



		<p>conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p>(Emphasis supplied)</p>
19.	Occupation certificate	31.05.2019 (annexure R36 on page no. 123 of reply)
20.	Offer of possession	17.06.2019 (annexure R-37 on page no. 126 of reply)

B. Facts of the complaint

The complainant has submitted as under:



3. That the complainant being lured by the representations made by the respondent decided to make application for the booking in the project namely, Ireo Corridors situated at sector-67 A, Gurugram and paid a booking amount of Rs. 14,50,000/-.
4. That at the time of the booking, the agents and the representatives of the respondent had represented to the complainant that the basic sale price of the unit shall be Rs. 8750/- per sq. ft. The same even finds mentioning in the application form made by the complainant.
5. That believing the assurances of the respondent, the complainant further made the payment of Rs. 15,71,124/-. Upon such payments, the respondent issued the offer of allotment letter to the complainant along with their standard draft of the apartment buyer agreement.
6. That upon perusing the offer of allotment letter and its terms and conditions, the complainant was shocked in dismay. The respondent had unilaterally changed and enhanced the rate of BSP from Rs. 8750/- per sq. ft. to Rs. 9200/- per sq. ft.
7. That the complainant after perusal of the draft of agreement were further shocked as there was no scope for the complainant to seek compensation for the delay, but on the other hand the respondent had entitled itself to charge huge rate of interest @ 20%. p.a.
8. That even as per the clause 13.3 of proposed flat buyers' agreement the delivery of the flat would be done within 42 months from the date of approval of the building plan. Clause 13.3 of the flat buyers agreement is reproduced hereunder:

"subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this agreement and not having defaulted under any provision(s) of this agreement including but not limited to the timely payment of all dues and charges including the total sale

consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of building plans and/ or fulfilment of the preconditions imposed thereunder ('Commitment Period'). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

9. That the building plans for the project were approved on 23.07.2013 by the Directorate of Town & Country Planning, Haryana Sector-18, Chandigarh. The respondent was supposed to deliver the possession of the apartment latest by January 2017 if we calculate this period from the date of approval of the building plan i.e., 23.07.2013. The Hon'ble National Consumer Commission in the case of Vishal Dua versus Ireo Grace Realtech Pvt. Ltd. CC/2498/2017 also upheld this contention of the allottees.
10. That the respondent was supposed to deliver the possession of the apartment within a period of 3 years, which is the reasonable time period for the delivery of the apartment. That even if three years are calculated from the date of offer of allotment, the time period for the delivery would come out to be 12.08.2016. That in neither scenario, the respondent company has delivered the possession of the apartment.
11. The complainant firm has made more payment than the total proposed consideration of the apartment but despite this, the respondent company had failed to deliver the apartment, either within the proposed and assured time period or within the reasonable time period.
12. That the respondent company has proposed to complete the possession not before June 2021 which it has proposed in several other cases pending before this Hon'ble Authority. The circumstances of the

complainant firm do not permit the company to continue with the booking in the project of the respondent company and therefore it is only appropriate that the money paid by the complainant firm be refunded along with 18% interest p.a.

C. Relief sought by the complainant:

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

(i) Direct the respondent to refund the amount to the tune of Rs. 1,64,70,094/- to the complainant along with 18% interest from the date of payment made by the complainant till the date of refund.

(ii) Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainant.

14. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

The respondent has contested the complaint on the following grounds: -

15. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

16. That there is no cause of action to file the present complaint.

17. That the complainant has no locus standi to file the present complaint.



18. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
19. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyers agreement.
20. That the complainant has not approached this authority with clean hands and have intentionally suppressed and concealed the material facts. The present complaint has been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
 21. That the complainant, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form and agreed to be bound by the terms and conditions stipulated therein.
 22. That based on the application for booking, the respondent vide its letter dated 12.08.2013 allotted to the complainant apartment no. CD-C7-02-202 having tentative super area of 1592.7 sq. ft for a total sale consideration of Rs. 1,56,64,007/-. Vide letter dated 22.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainant. However, the complainant failed to return the signed copies of the agreement despite reminders dated 28.05.2014 and 17.07.2014 by the respondent.
 23. That vide payment request dated 18.03.2014, the respondent had raised the demand towards third installment demand for net payable amount of Rs. 18,08,540/-. However, despite reminders dated 13.04.2014, and



- 04.05.2014, the complainant failed to remit the due amount and the same was adjusted in the next installment demand as arrears.
24. That vide payment request dated 27.01.2015, the respondent had raised the demand towards the fourth installment for net payable amount of Rs. 17,90,430/-. However, despite reminders dated 22.02.2015 and 24.03.2015, the complainant failed to remit the due amount and the same was adjusted in the next instalment demand as arrears.
25. That vide payment request dated 05.06.2015, towards the fifth installment demand for net payable amount of Rs. 33,17,256/-. However, the complainant yet again failed to remit the due amount despite reminders dated 09.07.2015 and 19.10.2015 and the due amount and the same was adjusted in the next instalment demand.
26. That vide payment request dated 29.07.2015, towards the sixth installment demand for net payable amount of Rs. 48,44,082/-. However, the complainant yet again failed to remit the due amount despite reminder dated 28.08.2015 and the due amount and the same was adjusted in the next instalment demand.
27. That vide payment request dated 02.09.2015, the respondent raised the demand towards seventh installment demand for net payable amount of Rs. 65,13,408/-. However, despite reminders dated 28.09.2015 and 12.11.2015 the complainant failed to remit the due amount and the same was adjusted in the next instalment demand as arrears.
28. That vide payment request dated 05.10.2015, the respondent raised the demand towards eighth installment demand for net payable amount of Rs. 80,40,233/-. However, despite reminders dated 05.11.2015 and 10.02.2016 the complainant failed to remit the due amount and the same was adjusted in the next instalment demand.

29. That vide payment request dated 04.11.2015, the respondent raised the demand towards ninth installment demand for net payable amount of Rs. 95,67,059/-. However, the complainant yet again failed to remit the due amount despite reminders dated 07.01.2016 and 16.02.2016 and the final notice dated 28.07.2016.
30. That the complainant is a real estate investor company that had booked the unit in question with a view to earn quick profit in a short period. However, its calculations went wrong on account of slump in the real estate market and the complainant did not possess sufficient funds to honour its commitments. On account of non-fulfilment of the contractual obligations by the complainant despite several opportunities extended by the respondent, the allotment of the complainant was cancelled, and the earnest money was forfeited vide cancellation letter dated 01.09.2016 in accordance with clause 7 read with clause 11 of the booking application form. However, on the request of the complainant, the respondent being a customer-oriented company has restored the allotment of the unit, subject to certain conditions and the same was intimated to the complainant vide the email dated 30.05.2017.
31. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 43 of the schedule - I of the booking application form states that subject to the allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed



thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)..... Furthermore, the complainant had further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per Clause 13.5 of the apartment buyer's agreement.

32. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.
33. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, will expired only on 27.11.2019. Furthermore, the revised date of offering the possession as submitted before this Hon'ble Authority at the time of registration of the project is 30.06.2020.
34. That the respondent had applied for the grant of occupation certificate on 06.07.2017 and the same was granted by the concerned authorities on

31.05.2019. Furthermore, the respondent has even offered the possession of the unit to the complainant vide notice of possession dated 17.06.2019. The complainant is bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the apartment buyer's agreement and the same is known to the complainant as is evident from a bare perusal of the notice of possession.

35. 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

36. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

37. 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



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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all 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.

39. 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.

40. 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(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."

41. 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 respondents.

F.1 Objection regarding complainant is in breach of application form for non-invocation of arbitration

42. The respondent submitted that the complaint is not maintainable for the reason that the application form contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"54. Dispute Resolution by Arbitration

"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 a resolution of the Board of Directors of 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 even if the person so appointed, is an employee or Advocate of the Company or is



otherwise connected to the Company 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 company and the allottee will share the fees of the Arbitrator in equal proportion".

43. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the application form 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*, 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.
44. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and

builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

45. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court 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 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, 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. The



relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

46. 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 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. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings regarding relief sought by the complainant.

(i) Direct the respondent to refund the amount to the tune of Rs. 1,64,70,094/- to the complainant along with 18% interest from the date of payment made by the complainant till the date of refund.

47. The complainant has booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 1,56,64,007/- out of which it has made payment of



Rs. 1,64,70,593/-. The complainant was allotted the above-mentioned unit vide allotment letter dated 12.08.2013. The apartment buyer agreement was not executed between the parties. As per the payment plan respondent started raising payments from the complainant. But the complainant failed to pay the same which led to issuance of various reminders and finally a cancellation letter dated 01.09.2016. Further on 30.05.2017 the unit of the complainant was restored.

48. As per possession clause 13 taken from the file of the same project, the unit was to be handed over within 42 months from the approval of building plans or fulfillment of preconditions imposed thereunder. The due date of possession comes out to be 23.01.2017. There is a delay in handing over the possession whereas the occupation certificate for the unit was obtained on 31.05.2019 and offer of possession was made on 17.06.2019 and this becomes a case to grant delay possession charges.
49. The authority has observed that interest of every month of delay at the prescribed rate of interest be granted to the allottee. But now the peculiar situation is that the complainant wants to surrender the unit and want refund of the paid-up amount.
50. The authority is of the view that the complainant allottee wants to surrender his unit and now wants refund. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY

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

amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

51. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the amount of Rs. 1,64,70,593/- after deducting 10% of the basic sale price of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 and statutory dues along with an interest @10.70 % p.a. on the refundable amount, from the date of surrender i.e., 04.09.2019 till the date of its payment.

(ii) **Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainant.**

52. The complainant in the aforesaid relief is seeking 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.** (Decided on 11.11.2021), has held that allottees are entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority: -

53. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations



cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

- i. The respondent is directed to refund the amount of Rs. 1,64,70,593/- after deducting 10% of the basic sale price of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 and statutory dues along with an interest @10.70 % p.a. on the refundable amount, from the date of surrender i.e., 04.09.2019 till the date of its payment.
 - 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.
54. Complaint stands disposed of.
55. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member



(Ashok Sangwan)
Member

HARERA
GURUGRAM
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.03.2023