

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

Complaint no.	:	2705 of 2021
First date of hearing:		28.07.2021
Date of decision	:	21.02.2023

Praveen Aggarwal R/o: 906 B, The Aralias, DLF Golf Links, Sector-42, Phase-V, Gurugram-122009	Complainant
Versus	
M/s Ireo Pvt. Ltd. Regd. Office at: A-11, 1 st floor, Neeti Bagh, New Delhi-110049	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Sukhbir Yadav	Advocate for the complainant
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint dated 08.07.2021 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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.



A. Unit and project related details

2. The particulars of 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.	Name and location of the project	Skyon", Sector 60, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	18.10 acres
4.	DTCP license no.	192 of 2008 dated 22.11.2008
5.	Name of license holder	M/s High Responsible Realtors Pvt. Ltd. and M/s Five River Buildcon Pvt. Ltd
6.	RERA Registered/ not registered	367 OF 2017 dated 24.11.2017 valid upto 21.11.2018
7.	Unit no.	B0001, Ground Floor, Tower B (page no. 77 of complaint)
8.	Unit measuring	2563 sq. ft. (page no. 77 of complaint)
9.	Date of allotment letter	25.02.2011 (page no. 65 of complaint)
10.	Date of approval of building plans	27.09.2011 (annexure R-21 on page no. 105 of reply)
11.	Date of buyer's agreement	17.01.2012 (page no. 74 of complaint)
12.	Date of environment clearance	31.07.2012 (annexure R-22 on page no. 108 of reply)



13.	Agreement to sell	24.08.2012 (page no. 111 of complaint)
14.	Transfer agreement	28.08.2012 (annexure R8 on page no. 76 of reply)
15.	Tripartite agreement	14.07.2014 (page no. 123 of complaint)
16.	Possession clause	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 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. (Emphasis supplied)
17.	Total sale consideration	Rs.2,39,52,252/- [as per payment plan on page no. 110 of complaint]
18.	Amount paid by the complainant	Rs.2,13,33,935/- [as per statement of account on page no. 125 of reply]
19.	Due date of possession	27.03.2015 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
20.	Occupation certificate	14.09.2017 [annexure R-25 on page no. 121 of reply]
21.	Offer of possession	21.09.2017 [annexure R-26 on page no. 123 of reply]

B. Facts of the complaint

3. That the booking application form was filed by the original allottees on 12.02.2011 in regard to the unit bearing no. 0001, ground floor, Block B admeasuring 2563 sq. ft. for a total sale consideration of Rs. 2,32,51,880/-. On 25.02.2011 the respondent issued an allotment letter allotting the said unit.



4. That on 17.01.2012 after delay of almost one year the respondent executed the apartment buyer agreement with the original allottees i.e., Mr. Sushil Singhal and Mrs. Puja Singhal.
5. That the complainant after believing the assurances of the respondent company entered into an agreement to sell on 24.08.2012 with the original allottees and purchased a said unit. The complainant paid an amount of Rs. 63,00,000/- to the original allottees against the above said unit including the amount of Rs. 59,02,655/- which was already paid by them to the respondent.
6. That on 14.07.2014 a tripartite agreement was executed between the respondent, complainant and PNB Housing Finance Limited.
7. That as per possession clause 13.3 of the agreement the possession was to be handed over within 42 months from the date of approval of building plans or fulfilment of preconditions imposed thereunder. The building plan was sanctioned on 29.03.2011 and the due date comes out to be 29.03.2015.
8. That the complainant raised a request vide email dated 18.02.2017 for failure of the respondent in fulfilling its obligations and duties to complete the project and deliver possession of the unit within stipulated period.
9. That the complainant received a vague and non-reliable response from respondent vide email dated 20.02.2017 stating that the occupation certificate has been obtained for many of the towers except the tower in question where his allotted unit was situated.
10. That the respondent issued a letter for notice of possession on 21.09.2017 in favour of complainant w.r.t the allotted unit of complainant. Under the notice of possession, it was stated that the complainant was liable to complete various formalities in terms of



pending payments and documentation to take over the possession of the allotted unit of complainant. The demands raised by respondent were completely arbitrary, unjustifiable and illegal in nature. The respondent raised a huge demand of Rs. 57,02,101/- dishonestly/unfairly by adopting restrictive practices. The project was incomplete, and the unit was not ready and unfit for habitation.

11. The demand raised by respondent has following irregularities illegalities and arbitrariness:

- That the respondent false and arbitrarily claimed Rs. 27,467/- towards infra augmentation charges, Rs. 87,468 towards labour cess, Rs. 1,59,760/- towards applicable carrying cost and Rs. 12,000/- towards utility advances despite being aware of the fact that these were not a part of the agreement and were never communicated to the complainant.
- Further, the Respondent wrongfully and arbitrarily claimed Rs 1,49,186/- towards VAT liability amnesty and Rs. 4,59,990/- towards CGST/SGST. It is humbly submitted that the respondent cannot pass over its liability for VAT on the complainant as it was completely liable for making payment towards VAT. The same has already been held by various courts that the builder cannot compel the buyers for making payment towards VAT as the builder is liable for the same.
- The complainant has been charged GST and whereas GST is the new tax regime that came into force on in July 2017, however the due date for possession was in March 2015.

12. That the complainant visited the site of the project just to find out the actual status of his allotted apartment, however, to the utter shock, the complainant was restricted to visit the site of the project on one or

another pretext. Thereafter, the complainant made repetitive request to the respondent to allow him to visit the site of the project and to find out the actual status of his unit.

13. That on 26.10.2017, the complainant visited the site of the project. It is imperative to note that the complainant was appalled to see the condition of his apartment, as the status of the apartment was far behind from completion and was completely uninhabitable. There were various works which were still pending in the apartment such as Electrification, Floor work, sanitary works, Whitewash etc., along with the Club and other amenities. Hence, the allotted apartment was not in a condition for living of a family as all the pending works were basic amenities which are of absolute requirements for living purpose.
14. That the complainant being aggrieved to see the status of the allotted apartment sent a letter on 27.10.2017 along with the photographs showcasing the uninhabitable status of the unit through speed post and also by email addressing the current situation of the allotted apartment inspected by him on his visit to the project site on 26.10.2017. It is submitted that during the site-visit of the complainant, the good-self of respondent specifically mentioned that "Upon receipts of entire outstanding amount and completion of the documentary formalities, mentioned above, it will take us about 6 weeks to make your apartment ready for the final handing over.
15. That complainant again sent a letter along with pictures through email and speed post to the respondent on 06.12.2017 wherein it was reiterated that, in view of the unit being incomplete and not in habitable condition, the applicant was not willing to take possession.
16. That the complainant repaid the entire loan amount along with interest to PNBHFL and thereby requested to close the loan account.

And the same was closed by PNBHFL on 27.01.2018 and subsequently issued a Letter in regard to such closure of loan account in favour of complainant. It is further submitted that no dues certificate has been issued by PNBHFL on 20.04.2018 in favour of the complainant.

17. That the complainant again sent an email dated 25.05.2018 requesting to provide the current status of the allotted apartment and requested to provide with the latest pictures of the apartment.

18. That during period between 11.02.2011 to 13.03.2015 the complainant has made a total payment of Rs. 2,13,33,935/- against a total sale consideration of Rs. 2,39,52,252/-.

19. That the respondent failed to complete the apartment and deliver the possession of the unit as per the terms and conditions of the agreement. Hence, the complainant is seeking refund.

C. Relief sought by the complainant:

20. The complainant has sought the following relief:

- Direct the respondent to refund the entire amount of paid by the complainant along with interest @ 18% p.a. from the date of deposit till its actual realisation.
- To declare the notice of possession dated 21.09.2017 sent by respondent with respect to the unit allotted to the complainant as null and void.
- Direct the respondent to pay compensation of Rs. 20,00,000/- for mental agony and harassment to complainant.
- Direct the respondent to pay a sum of Rs. 3,00,000/- as litigation cost.

21. 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.

22. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between original allottees and the respondent 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.
23. That there is no cause of action to file the present complaint.
24. That the complainant has no locus standi to file the present complaint.
25. That the complainant is estopped from filing the present complaint by his own acts, omissions, admissions, acquiescence's, and laches.
26. 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 buyer's agreement.
27. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. 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:
28. That the original allottees i.e., Sushil Singhal and Puja Singhal after checking the veracity of the project namely, 'Ireo Skyon', sector 60, Gurugram applied for allotment of an apartment vide booking application form dated 18.02.2011. The complainant agreed to be

bound by the terms and conditions stipulated in the application for provisional registration of the residential apartment.

29. That based on the application for booking, the respondent vide its allotment offer letter dated 25.02.2011 allotted to the complainant apartment no. B0001 having tentative super area of 2563 sq.ft for a total sale consideration of Rs. 2,39,52,252/- and the buyers agreement was executed between the original allottee and the respondent on 17.01.2012.
30. That the respondent raised payment demand from the original allottees in accordance with the agreed terms and conditions of the allotment as well as the payment plan and they defaulted in making payments. Vide payment request dated 25.02.2011, the respondent had raised the first payment demand. However, the due amount was credited only after reminder dated 03.05.2011 was sent by the respondent.
31. That vide payment request dated 07.10.2011, the respondent had raised the demand of third installment for net payable amount of Rs. 18,53,999/-. However, the original allottees remitted the due amount only after reminder dated 14.11.2011 was sent by the respondent.
32. That the original allottees and the complainant thereafter signed the nomination/transfer agreement on 28.08.2012 and submitted the same to the respondent wherein the complainant admitted that all rights, title and interest of the original allottees would vest with him and shall enjoy the same subject to the obligations in the agreement. The complainant had also addressed a letter dated 28.08.2012 to the respondent wherein he acknowledged that he would be bound by all the terms and conditions of the respondent including the terms and conditions of the agreement. It was also admitted by the complainant



in the said letter that he would pay the entire balance sale consideration along with other charges as per the terms and conditions. The respondent had after scrutiny of the application as well as of the documents, vide letter dated 05.09.2012 assigned all the rights of the original allottees to the complainant and all the documents were endorsed in his name.

33. That vide payment request letter dated 01.02.2013, the respondent raised the fourth installment demand for the net payable amount of Rs.18,61,620.97. However, the complainant remitted the amount only after reminder dated 27.02.2013 was sent by the respondent.
34. That vide payment request letter dated 05.06.2014, the respondent raised the eighth installment demand for the net payable amount of Rs.19,49,847.82. However, the complainant remitted the amount only after reminders dated 01.07.2014 and 22.07.2014 were sent by the respondent.
35. That vide payment request letter dated 05.12.2014, the respondent raised the ninth installment demand for the net payable amount of Rs.15,35,016.46. However, the complainant failed to remit the due amount despite reminders dated 31.12.2014, 21.01.2015 and final notice dated 11.02.2015.
36. That as per possession clause 13.3 of the agreement the time of handing over of possession was to be computed from the approval of building plans and/or fulfilment of the preconditions imposed thereunder (commitment period). It is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction could not be raised in the absence of the necessary approvals. It has been specified in sub- clause (v) of clause 17 of the memo of approval of building plan dated 27.09.2011 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. It is submitted that the environment clearance for construction of the said project was granted on 31.07.2012. The fire scheme approval was granted on 25.09.2013 and the time period for calculating the date for offering the possession according to the agreed terms of the buyers agreement would have commenced only on 25.09.2013. Therefore, 60 months from 25.09.2013 (including the 180 days grace period and extended delay period) would have expired on 25.09.2018. However, the same was subject to the complainant complying with his contractual obligations and the occurrence of the force majeure events.

37. That the respondent completed the construction of the tower in which the unit allotted to the complainant is located and applied for the grant of the occupation certificate on 17.02.2017. The occupation certificate was granted by the concerned authorities on 14.09.2017. Furthermore, the respondent offered the possession of the unit to the complainant vide notice of possession dated 21.09.2017 and intimated him to remit the due amount and complete the documentation formalities by 23.10.2017. However, the complainant failed to do the needful and the respondent was constrained to issue reminders dated 26.10.2017 and 16.11.2017.
38. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent, and which materially affected the construction and progress of the project. Some of the force majeure events/conditions



- which were beyond the control of the respondent and affected the implementation of the project and are as under :
39. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November-December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.
40. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of respondent and the said period is also required to be added for calculating the delivery date of possession.
41. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.



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

44. 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

45. 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

46. 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.

47. 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.

F. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- Direct the respondent to refund the entire amount of paid by the complainant along with interest @ 18% p.a. from the date of deposit till its actual realisation.
 - To declare the notice of possession dated 21.09.2017 sent by respondent with respect to the unit allotted to the complainant as null and void.
48. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation



18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

49. Clause 13.3 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"13.3 POSSESSION

" 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 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 charges, 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."

50. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.



51. As per the possession clause 13.3 of the agreement the possession of the unit was to be handed over within 42 months from the date of approval of building plans or preconditions imposed thereunder. The due date for handing over of possession comes out to be 27.03.2015 calculated from the date of approval of building plans.
52. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and the builder. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoter/developer to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoter/developer. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoter/developer or gave them the benefit of doubt because of the total absence of clarity over the matter.
53. The respondent/ promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions



imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

54. Further, in the present case, it is submitted by the respondent promoter that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions.
55. The authority has gone through the possession clause of the agreement in the present matter. On a bare reading of the said clause of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which are so vague and ambiguous in itself. Nowhere in the agreement, it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the unit in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject unit. According to the established principles of law and natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the



agreement which are totally arbitrary, one sided and against the interests of the allottee must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainants. Accordingly, in the present matter the due date of possession is calculated from the date of approval of building plans i.e., 27.09.2011 which comes out to be 27.03.2015.

56. The allottee in this case has filed this application/complaint on 08.07.2021 after possession of the unit was offered to him on 21.09.2017 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 authority is of the view if the allottee wants to withdraw from the project of the respondent-promoter then the deduction should be made.
57. The Hon'ble Apex Court of land in cases of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
58. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority



Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-

"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.

59. It is evident from the above-mentioned facts that the complainant had paid a sum of Rs.2,13,33,935/- against total sale consideration of Rs.2,39,52,252/- of the unit allotted to him. The complainant has requested to withdraw from the project of the respondent on 08.07.2021 so, the respondent was bound to act and respond to the pleas for surrender/cancellation and refund.
60. **Admissibility of refund along with prescribed rate of interest:**
The complainant is seeking refund the amount paid by them along with interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced

by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

61. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
62. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
63. 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 cancel the same by forfeiting the 10% of the basic sale consideration of the said unit as per payment schedule 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, from the date of surrender i.e., 08.07.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

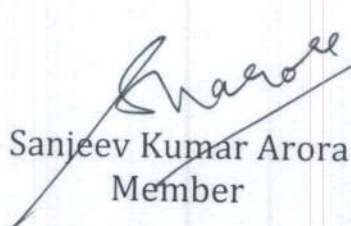
H. Directions of the authority

64. 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):

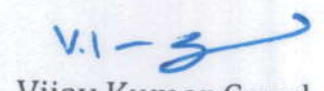
- i. The respondent/promoter is directed to refund to the complainant the amount i.e., Rs.2,13,33,935/- after deducting 10% of the basic sale price of the unit along with interest @ 10.70% p.a. on the refundable amount from the date of surrender i.e., 08.07.2021 till the date of its payment.
- ii. A 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.

65. Complaint stands disposed of.

66. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.02.2023

HARERA
GURUGRAM