

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

Complaint no.	:	3011 of 2021
First date of hearing:		16.09.2021
Order Reserve On	:	03.05.2023
Order Pronounce On:		16.08.2023

Sangeeta Sumbly Akshay Bhardwaj R/o: E-70, Gound Floor, Suncity Sector-54, Gurgaon, Haryana	Complainants
Versus	
Ireo Grace Realtech Private Limited Registered Office: - C-4, 1st Floor, Malviya Nagar, New Delhi-110017	Respondent
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Ms. Shriya Thakkar	Advocate for the complainants
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint dated 30.07.2021 has been filed by the complainants/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 complainants, 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.	803, 8 th floor, tower C6 (as per allotment letter on page no. 30 of reply)
7.	Unit measuring	1475.86 sq. ft. (as per allotment letter on page no. 30 of reply)

8.	Date of approval of building plan	23.07.2013 (annexure R-18 on page no. 43 of reply)
9.	Date of allotment	07.08.2013 (annexure R-6 on page no. 30 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-19 on page no. 104 of reply)
11.	Date of execution of builder-buyer's agreement	Not executed
12.	Request for withdrawal by complainants	24.09.2013 (page no. 59 of complaint)
13.	Letter by complainants for withdrawing complaints/grievances etc.	19.01.2015 (page no. 38 of reply)
14.	Date of cancellation letter	05.01.2017 (annexure R-21 on page no. 58 of reply)
15.	Total consideration	Rs. 1,45,33,240/- [as per payment plan on page no. 58 of complaint]
16.	Total amount paid by the complainants	Rs. 60,33,760/- [as per page no. 99-100 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	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

		<p>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.</p> <p>(Emphasis supplied)</p>
19.	Occupation certificate	31.05.2019 (annexure R-24 on page no. 66 of reply)
20.	Offer of possession	Not offered but cancelled

B. Facts of the complaint

The complainants have submitted as under:

3. That the complainants on believing the assurances of respondent booked a unit in the project of the respondent for a basic sale price Rs. 8570/- per sq. ft. and for the booking it has paid a sum of Rs. 14,50,000/-.
4. That the respondent after considerable period of time sent the payment acknowledgment receipt without providing any other details relating to the allotment of unit.
5. That the respondent, vide letter of April 14, 2013, asked the complainants to pay the second instalment, for the unit type 2BHK+S That neither there was any allotment nor was there any provisional allotment made by the respondent, despite that the respondent asked the complainants to make the payment for second instalment.
6. That the complainants having no other option had to pay the demand raised by the respondent because it was clearly mentioned in the said letter that in case of delay, interest for the delay payment will be levied upon the complainants.
7. That thus even before the allotment was made the complainants had already made payments to the tune of Rs. 28,00,000/-. The respondent, thereafter, vide letter dated August 7, 2013, offered allotment to the complainants. Even the said allotment was provisional in nature and the complainants were referred to as "Proposed Allottee". The complainants were allotted the apartment no. CD- C6-08-803 in group housing project "The corridors" situated at sector-67A, Gurgaon, Haryana.
8. That the offer of allotment projected super area for the flat to be 1475.86. sq. ft. at clause of 2 of their allotment letters, the opposite

party unilaterally mentioned certain points with regard to terms and conditions which the complainants never had agreed. The respondent along with the letter had also sent a chart showing payment plan with basic sale price of Rs. 9,200/- per sq. feet, whereas the complainants had never agreed to pay rate beyond Rs.8,750/- per sq. feet.

9. That the complainants requested the respondent not to increase the price and unit size arbitrarily as it was against their promises and assurances and was done without consent of the buyers /complainants. That the complainants vide email dated 24th September 2013 immediately raised the said issues and asked the respondent to cancel the allotment and refund the entire amount paid however in vain.
10. That thereafter the complainants again requested the respondent to cancel the unit and refund the amount, since the respondent was offering the unit at a price which was not agreed at the time of application form.
11. That at last the respondent sent the builder buyer agreement to the complainants for signing the same along with next installment demand, to be paid within 21 days. over and above all the earlier issues raised by the complainants about size, rates, floor level, PLC and other charges, one sided payment plan etc were being kept intact by the respondent. The builder buyer agreement carried several terms and conditions which were either contrary or one sided adversely affecting the interest of the complainants. The agreement contained several clauses which were not acceptable to the complainants and thus as a matter of protest and a sign of not accepting the contract, the complainants did not sign the agreement. Thus, there is no buyer's agreement governing the rights and duties of the parties since the complainants refused to sign the

agreement, which was unfair, illegal and contrary to the initial understanding between the parties.

12. That despite repeated request the respondent failed to return the amount deposited by the complainants. The conduct of the respondent was oppressive and taking undue advantage of their position and the fact that money already collected by the respondent, the complainants were forced to sign the agreement, which the complainant's blatancy refused to do so. Even the terms of the application form cannot be termed to be valid contract since the same was signed on the basis of misrepresentation made by the agents of the OP and cannot be termed to be valid contract. The complainants signed the said application form under the bonafide belief that the representations made by the channel partners were true and correct which on contrary were not. The respondent had collected the amount from the complainants on misrepresentation of facts and thus is not a valid contract and under such circumstances the complainants are entitled to the refund of the entire amount deposited by the complainants along with interest as prescribed under the RERA Act, 2016 along with compensation for the loss of opportunity, which the complainants have suffered.
13. That being aggrieved by the act of the respondent, and being continuously threatened to forfeit the amount already deposited, the complainants filed a Civil Suit before the Ld. Civil Court at Gurugram seeking Declaratory relief, however the said suit was primarily dismissed by the Ld. Civil Court at Gurugram, on application moved by the OP under Order 7 Rule 11.
14. That it is pertinent to mention here that during the pendency of the said civil suit the respondent vide letter dated 05.01.2017 has cancelled the allotment of the complainants and forfeited the entire amount paid by

the complainants regardless of the fact that they themselves were at fault.

15. That the complainants thereafter preferred an appeal against the order dated 31.10.2017 passed by Ld. Civil Court at Gurugram vide Civil Appeal No. 115 of 2017, however the same was also dismissed vide order dated 05.05.2018.
16. That the complainants are not aggrieved by the act of cancellation of the unit vide Letter dated 05.01.2017 but are aggrieved by the forfeiture of the amount done by the respondent. There was no valid agreement between the parties due to the misrepresentation made by the respondent at the time of signing the booking application form and thus the respondent had no right to forfeit any amount deposited by the complainants.
17. That even the bare perusal of various clauses of the application form reflect that the same were unilateral, arbitrary and one sided. The complainants were misrepresented to sign the application form and thereafter were forced to sign the buyer agreement under the threat of forfeiture. That, after being in receipt of such large amount of money before the execution of the apartment buyer's agreement, the opposite party enjoyed an upper hand over the complainants throughout the whole transaction. That this also gave the opposite party the liberty to impose arbitrary and unilateral clauses on the complainants vide the apartment buyer's agreement which were not agreed upon by the complainants. The opposite party has shown utter disregard to the law and has framed such an agreement under which it gets the impunity to delay the construction without being affected much.
18. That the complainants being aggrieved by the actions of the respondent is filing a present complaint under Section 31 of Real Estate (Regulation

and Development) Act, 2016 with the Authority/ for violation/ contravention of provisions of the RERA Act, 2016.

19. That the complainants till date had already made a payment of Rs 60,33,760/- including the delayed interest charged by the respondent for the delay in making payment to the respondent.
20. That the cause of action to file the present case arose on 05.01.2017 i.e. the date of cancellation of unit. The cause of action is further arising on each day when the complainants requested the respondent to make the payments and despite that respondent has failed to make the payments.

C. Relief sought by the complainants:

21. The complainants have sought following relief(s):
 - (i) Direct the respondent to refund the total amount deposited by the complainants from the date of payment till the date of refund along with interest @ 20% p.a.
 - (ii) Direct the respondent to pay an amount of Rs. 5,00,000/- as compensation for mental agony and harassment.
 - (iii) Direct the respondent to pay an amount of Rs. 1,00,000/- towards litigation expenses.
22. 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: -

23. 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.

24. That there is no cause of action to file the present complaint.
25. That the complainants have no locus standi to file the present complaint.
26. That the present complaint is barred by res-judicata.
27. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
28. That the present complaint is barred by limitation.
29. That the complainants are estopped from filing the present complaint by his own acts, omissions, admissions, acquiescence's, and laches.
30. That the complaint is not maintainable for the reason that the booking 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 i.e., clause 54 of the booking application form.
31. That the complainants have 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:
32. That the complainants, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of an apartment by filling the application for provisional registration of residential apartment and the booking application form and also deposited the part earnest amount of Rs. 12,00,000/- vide Cheque No. 884838 dated 22.02.2013 drawn on RBS Bank. The complainants had agreed to be bound by the terms and conditions of the application for provisional registration of residential apartment and booking application

form. It is pertinent to mention herein that complainants undertook vide clause 'D' of the application for provisional registration of residential apartment to execute all documents/agreements and to accept all the terms and conditions contained therein and to pay all charges as applicable therein.

33. That as per the agreed payment schedule, vide payment request dated 14.04.2013, the respondent raised a demand for the second installment of net payable amount of Rs. 15,99,516/-. The complainants deposited part of the demanded amount only after three reminders dated 14.05.2013, 28.05.2013 and 03.09.2013 were issued to them by the respondent.
34. That based on the application for booking, the respondent vide its allotment offer letter dated 07.08.2013 allotted to complainants apartment no. CD-C6-08-803 having tentative super area of 1475.86 sq. ft. for a total sale consideration of Rs. 1,45,33,240.26. Vide letter dated 21.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to complainants. However, complainants failed to execute the same despite reminders dated 28.05.2014 and 17.07.2014.
35. That vide payment request dated 18.03.2014, the respondent had raised the demand of third installment for net payable amount of Rs. 16,75,361.32. Upon failure of the complainants to make payment, the respondent issued reminders dated 13.04.2014 and 04.05.2014. Despite the said reminders, the complainants did not make any payment upon which the respondent issued a final notice dated 29.08.2014.
36. That in order to create false evidence, the complainants sent a completely baseless and false legal notice dated 22.11.2014 to the respondent and the same was duly replied to by the respondent.

37. That the complainants made the payment of the third installment due on 18.03.2014 and also sent a letter dated 15.01.2015 stating that they are unconditionally withdrawing all their complaints/grievances/legal notices etc. against the company and also undertook not to raise any dispute/claim against the company of any nature whatsoever at any point of time in future.
38. That vide payment request dated 12.02.2015, the respondent raised the demand of fourth installment for net payable amount of Rs. 16,59,058.14/-. Upon failure of the complainants to make payment, the respondent issued reminder dated 24.03.2015. However, complainants again failed to pay the due installment amount.
39. The respondent had also issued an offer letter dated 20.04.2015 intimating the complainants that as a goodwill gesture, the respondent is offering the rate of basic sale price @ Rs. 8750/- per sq. ft. exclusive of car parking and calling upon the complainants to clear the outstanding payment to the company.
40. That it is pertinent to mention here that timely payment of installments within the agreed time schedule was the essence of allotment. However, the complainants miserably failed to abide by their contractual obligations. The complainants are real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, their calculations went wrong on account of slump in the real estate market and complainants did not possess sufficient funds to honour their commitments. The complainants were never ready and willing to abide by their contractual obligations and they also did not have the requisite funds to honour their commitments.
41. That according to clause 43 of Schedule- I of the booking application form, the respondent was to offer the possession to the complainant

within a period of 42 months + 180 days grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder. Furthermore, complainants had undertaken in clause 44 of schedule- I of the booking application Form for an extended delay period of 12 months from the date of expiry of the grace period. From the aforesaid terms of the booking application form, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction could not 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 Memo of 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. It is submitted that 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 duly was to be duly approved by the fire department before the start of any construction work at site. It is submitted that the fire scheme approval was granted on 27.11.2014 and the time period for offering the possession, according to the agreed terms of the Booking application form, would have expired only on 27.11.2019. There could not be any delay till 27.11.2019.

42. That on account of non-fulfilment of the contractual obligations by complainants despite several opportunities extended by the respondent, the allotment of complainants was cancelled, and the earnest money was forfeited vide cancellation letter dated 05.01.2017 in accordance with clause 7 read with clause 11 of the booking application form and they are

now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.

43. That despite failure of the complainants to adhere to their contractual obligations of making payments, the respondent has completed the construction of the tower in which the unit allotted to the complainants was located. Moreover, the respondent had applied for the grant of occupation certificate vide application dated 06.07.2017. The occupation certificate was granted to the respondent on 31.05.2019.
44. That the complainants are habitual litigators who filed several baseless, false cases against the respondent company on untenable grounds and most of them have already been dismissed by the competent authorities. A similar suit was filed by the complainants against the respondent and the respondent had filed an application for rejection of the plaint and the Hon'ble Civil Judge (Junior Division), Gurugram on the basis of averments raised by the parties accepted the application filed by the respondent and dismissed the suit vide order dated 31.10.2017. Moreover, the complainants had also filed an appeal against the said order and the same was rightly dismissed vide order dated 05.05.2018. Furthermore, the complainants had also filed a consumer complaint alongwith others before the National Consumer Disputes Redressal Commission, New Delhi previously. The present complaint is also barred by res-judicata. The malafide tactics adopted by the complainants cannot be allowed to succeed and the present complaint is liable to dismissed with heavy costs payable to the respondent.
45. That the fact of the matter is that the complainants are real estate investors who had booked the apartment in question for earning quick profit. However, on account of the slump in the real estate sector, their calculations went wrong. The only intention of the complainants is to

keep the defendants entangled in false, baseless and untenable litigation. The complaint being an abuse of the process of law is liable to be dismissed with special costs payable to the respondent.

46. 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

47. 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

48. 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

49. 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.

50. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

51. 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.*** SCC Online SC **1044** decided on 11.11.2021 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."

52. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021**". The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

53. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a

complaint seeking refund of the amount paid by allottee alongwith interest at the prescribed rate.

F. Findings on the objections raised by the respondent.

F.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

54. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
55. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

56. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

57. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in

accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

58. The respondent submitted 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 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".

59. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the

buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, 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.

G. Findings regarding relief sought by the complainants.

- (i) Direct the respondent to refund the total amount deposited by the complainants from the date of payment till the date of refund along with interest @ 20% p.a.
60. The complainants have booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 1,45,33,240/-The complainants was allotted the above-mentioned unit vide allotment letter dated 07.08.2013.
61. As per the payment plan respondent started raising payments from the complainants. The complainants in total has made a payment of Rs. 60,33,760/- . The respondent vide letter dated 18.03.2014 raised the demand towards third instalment and due to non-payment from the complainants it sent reminder on 13.04.2014 and 04.05.2014 and thereafter various instalments for payments were raised but the

complainants failed to pay the same. Thereafter the respondent cancelled the allotment of the unit on 05.01.2017. The authority is of the view that cancellation is as per the terms and conditions of agreement and the same is held to be valid. However, while cancelling the allotment of the respondent forfeited the total paid up amount by way of earnest money, interest on delayed payment, brokerage and applicable taxes. It is contended on behalf of respondent that it was entitled to forfeit the paid-up amount on account of earnest money, interest on delayed payments, statutory taxes and brokerage etc. So, the complainants are not entitled to claim any amount from it. But the plea advanced in this regard is devoid of merit. The cancellation of unit was made by the respondent after the Act of 2016 came into force. So, the respondent was not justified in forfeiting the whole of the paid amount under the above-mentioned heads. It could have at the most deduct 10% of the sale price of the unit.

62. The issue w.r.t. deduction of earnest money arose before the hon'ble Apex Court of the land in cases of *MaulaBux V/s Union of India (1970)1 SCR 928* and *Sirdar KB Ramchandra Raj Urs V/s Sarah C Urs (2015) 4SCC 136* and followed by NCDRC in cases of *Ramesh Malhotra V/s EMAAR MGF Land Limited and Mr. Saurav Sanyal V/s M/s IREO Pvt. Ltd.* decided on 12.04.2022 and wherein it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of "earnest money".
63. 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

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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."

64. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money within 90 days along with an interest @ 10.75% p.a. on the refundable amount, from the date of cancellation i.e., 05.01.2017 till the date of its payment.

(ii) Direct the respondent to pay an amount of Rs. 5,00,000/- as compensation for mental agony and harassment.

(iii) Direct the respondent to pay an amount of Rs. 1,00,000/- towards litigation expenses.


65. The complainants in the aforesaid relief are 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 an allottee is 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

complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority: -

66. 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/promoter is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money within 90 days along with an interest @ 10.75% p.a. on the refundable amount, from the date of cancellation i.e., 05.01.2017 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.
67. Complaint stands disposed of.
68. File be consigned to the registry.

HARERA
GURUGRAM


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.08.2023