BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**1304 of 2022**
Date of filing complaint:	**06.04.2022**
First date of hearing:	**30.08.2022**
Date of decision :	**03.03.2023**

Kamaljeet Punia R/O: Flat No. 901, Rose Apartments, Sector -28, Gurgaon, Haryana- 122009	**Complainant**
Versus	
Wonder City Buildcon Pvt.Ltd Regd.Office: Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai-400079	**Respondent**

CORAM:	
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Prashant Sheoran (Advocate)	Complainant
Sh. Rohan Malik (Advocate)	Respondent

ORDER

1. The present complaint 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Name of the project	"Godrej-101", Sector 79, Gurgaon
2.	Nature of the project	Group Housing Residential Project
3.	RERA Registered/ not registered	Registered vide no. 61 OF 2017 DATED 17.08.2017
4.	Unit no.	D0203, Second Floor, Tower- D (Page no. 32 of complaint)
5.	Carpet Area	1572 sq. ft. (Page no. 32 of complaint)
6.	Date of Application	13.09.2015 (Page 23 of the complaint)
7.	Letter of Allotment (Provisional Allotment of unit)	24.02.2016 (Page 83 of the complaint)
8.	Date of execution of agreement to sell	09.05.2016 (Page no. 29 of the complaint)
9.	Possession clause	**4.2 Possession Time and Compensation** The developer shall endeavor to complete the construction of the Apartment and to initiate possession of apartment within **48 months from date of issue of Allotment Letter** along with a grace period of **12 months over** and above this period. (Page 94 of the Complaint)

10.	Due date of possession	24.02.2021 (Inadvertently mentioned in the proceedings of the day as 24.02.2020) (Calculated from the allotment letter = 12 months grace period allowed being unqualified.)
11.	Total sale consideration	Rs.11,742,840/- (Page 83 of the Complaint)
12.	Amount paid by the complainant	Rs. 1,00,81,627/- (As pleaded by complainant on page 18)
13.	Occupation certificate	21.12.2020 (Page 99 of reply)
14.	Offer of possession	Offered on 16.07.2021 (Page 92 of the complaint)
15.	Demand Letters	04.08.2021, 17.09.2021, 13.10.2021, 23.11.2021, 16.12.2021 (Page 110, 111,112,113 and 114 of reply)
16.	Cancellation Letter	16.12.2021 (Page 99 of complaint)

B. Facts of the complaint:

3. That That a project by the name of GODREJ 101" situated in sector 79, Gurugram., Haryana was being developed by the respondent. In the year 2015, the complainant was interested in purchasing a suitable unit for her residential needs. That at that point in time the respondent was quite aggressively marketing and advertising the said project. The complainant approached the offices of the respondent where the representatives of the respondent confirmed that the said project was being developed by the

respondent with full vigor and the respondent was holding all the permissions, sanctions as well as the requisite financial capacity to develop and complete the said project in a time-bound manner

4. That the complainant relied upon the representations which were made by the representatives of the respondent and decided to seek allotment of a unit in the said project. That initial booking was made by the complainant in the year 2015 and she paid an amount of Rs. 5,00,000/- & Rs. 21,212/- for a unit in the said project as advance. At the time of applying for booking of unit vide application form respondent assured that a flat buyer agreement shall be executed soon and possession of the flat will be delivered within 48 months from the date of allotment. That thereafter respondent further demanded and amount of Rs. 16,60,830, 162,396 & 1,03,752 which was duly paid by the complainant. That after receiving of said amount respondent allotted an apartment measuring 146 sq meter for a total sale consideration of Rs. 1,17,42,840 and issued an allotment letter dated 24.02.2016. Thus, as per agreed terms the date of possession comes to 23-02-2020.

5. That it is high handedness of respondent that it took 9 months for execution of flat buyer agreement and ultimately on 09.05.2016 apartment buyer agreement was executed between the parties. That it is pertinent to mention here that prior to execution of flat buyer agreement respondent vide letter dated 24-02-2016 allotted a unit to the complainant measuring an area of 146 sq. meter. Thus, the period of handing over of possession had already started from date of allotment itself. That even the apartment buyer agreement executed was a formal one-sided, unilaterally prepared, and heavily tilted in favour of the respondent, with no scope of negotiation. That

since the complainant had already paid a hefty amount to the respondent; she has left with no other option but to sign the said agreement, as it was.

6. . That it is clear that respondent was only entitled to 48 months from date of issuance of allotment letter and in the present case said date was 24-02-2016. That it is further submitted that in the said clause it also mentioned the builder was also entitled for 12 months grace period, however same was

7. subjected to events mentioned in sub-clauses of clause 4.2 and also with a condition that in case of such events, if any, builder shall communicate/inform the same to the buyer as soon as possible. Since respondent never informed/communicate at any point of time, in itself proof of the fact that there were no such circumstances ever existed, which entitles respondent to avail additional 12-month grace period. It is also pertinent to mention here that even the Covid hit the nation in the march 2020, however the date of possession was already lapsed prior to date of lockdown. It is pertinent to mention here that Hon'ble High court of Delhi is similar circumstances has already held that " Pre-COVID 19 breach of contract cannot be excuse to invoke Force Majeure clause". Thus the respondent in no manner is entitled to raise said plea as well.

8. That after execution of apartment buyer agreement complainant paid following payments: Rs. 103,752 on 3.3.2017, Rs. 22,04,482 on 3.3.2017, Rs. 190,951 on 3.3.2017, Rs. 51,34,251 on 22.12.2017. Till 22.12.2017 respondent had received a total amount of Rs. 1,00,81,626 out of total sale consideration of Rs. 1,17,42,840. i.e 85.85 %, whereas complainant was only liable to pay 80% of the total sale consideration prior date of possession and rest of the 20% of the total sale

consideration was to be paid at the time of possession. However respondent malafiedly demanded and received more mount that agreed price.

9. That the complainant has always remained steadfast and committed to making the payment of all the instalments as and when demanded by the respondent however as the facts would speak for themselves, the respondent miserably failed in developing the said unit in a timely fashion resulting in severe losses being suffered by the complainant. As per the flat buyer agreement it had been agreed that the possession of the said unit shall be offered 48 months of the date of issuance of allotment letter which comes to 23.02.2020, but the respondent miserably failed to deliver the possession of the unit within the agreed time frame.

10. That after a delay of more than 1.5 years respondent vide letter dated 16.07.2021 sent an offer of possession to the complainant. That the complainant was shocked to read the contents of said letter, since as per said letter respondent had demanded an amount of Rs. 24,76,610 against instalment due & Rs.2,45,364 against interest & Rs 81,247 against maintenance & Rs 12,243 against electricity charges & Rs. 500,300 against stamp duty. However, there was no explanation as to how these charges were demanded. It is submitted that as already stated above complainant has already paid 5.85% more amount than agreed payment, thus it is the respondent who has to pay interest on the same and moreover since the project was delayed by more than 1.5 years thus as per RERA complainant was entitled for delayed possession charges to the tune of approximately Rs. 14,00,000 @ 9.3 % P.A. on the date of offer of possession. That since total sale consideration was Rs. 11,742,840 and out of it complainant had already paid an amount of Rs. 10,081,626 leaving behind an amount of Rs. 16,61,214 & as already stated above since the possession is delayed by 1.5

years complainant is entitled for delayed possession charges as per RERA i.e., approximately 14,00,000 as on date of intimation of possession. However, respondent without adjusting above stating amount mischievously demanded an amount which it was not entitled to. It is submitted that the said letter was quite shocking for the complainant since the amount demanded was much higher than the amount which was left to be paid.

11. That after receiving of said offer of possession complainant immediately contacted the respondent and demanded an explanation of why such an additional demand was raised by the respondent and also requested to grant delayed possession charges as per prescribed rate of interest as per RERA. That the respondent initially requested the complainant to provide some time so that they can look into the matter and assured that the there might be some sort of calculation mistake in the amount and they will soonrectify the same and assured that they will compensate the complainant with the delayed possession charges as per prescribed rate of interest as per RERA.

12. That initially respondent kept on buying time on one pretext or another however matter was not sorted out by the respondent. That instead of providing any resolution, respondent in November 2021 sent a reminder letter whereby respondent threatened to cancel the allotment of the complainant in a completely arbitrary manner. That even the said letter dated 23.11.2021 respondent admitted the fact that total sale consideration was Rs.11,72,85,79 only and that they have received an amount of Rs. 1,00,81,626 but still demanded an amount of Rs. 28,16,632.96 without any explanation. It is submitted that thereafter complainant again contacted the respondent and demanded an explanation about such an illegal conduct and issuance of such illegal letter qua termination. That since the respondent

has no explanation for the fault, thus to hide its mistake and to deduct money of the complainant, instead of providing any sort of explanation cancelled the allotment of complainant vide letter dated 16.12.2021 in a highly illegal manner.. That yet the respondent in order to further cause loss to the complainant deducted an amount of Rs. 31,27,665. That said amount is approximately 26.63 percent of total sale consideration, whereas as per RERA only 10% of the sale consideration can be deducted as earnest money.

13. That since the respondent has already cancelled the allotment and even complainant has lost her faith in respondent after going through all above stated atrocities at the hand of respondent, thus complainant by way of present complaint seeks complete refund of the amount paid along with interest as per rules prescribed under RERA.

14. That even after pursuing respondent for more than a year complainant felt hopeless and was left with no other option to approach hon'ble authority for justice.

15. That in view of the above mentioned facts and circumstances it is only appropriate that this Hon'ble Authority may be pleased to hold that the respondent company is liable to refund the entire amount paid by the complainant with the interest. Thus, the complainant was left with no other option but to file the present complaint seeking refund of the entire amount paid against allotment of the unit.

C. Relief sought by the complainant:

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

i. Direct the respondent to refund the total amount of Rs. 1,00,81,627/- paid by the complainant along with interest.

ii. Direct the respondent to set aside the cancellation.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

17. That That the respondent has developed a residential group housing complex by the name of "**Godrej 101**" comprising of multi-storied residential buildings and other amenities, facilities, services etc situated at Sector-79, Gurgaon.

18. That That the complainant vide application form dated 13.09.2015 (booked in respondent's system on 18.09.2015) applied for allotment of a residential unit i.e. D-203, 2nd Floor, Tower-D for a total consideration of Rs. 1,17,42,840/- exclusive of the applicable taxes. At the time of booking on 22.09.2015, the complainant paid an amount of Rs. 5,21,212/- as part payment towards the booking amount/earnest money of the unit. Thereafter, in terms of the opted payment plan i.e. within 60 days from the date of booking of the unit, the respondent issued invoices dated 03.11.2015, thereby requesting the complainant to make a payment of Rs. 5,68,326/- (including outstanding payment of Rs. 5,051/-) along with an amount of Rs. 51,876/-towards the part payment of EDC-IDC and an amount of Rs. 92,756/- towards other charges as per the application form. It is to be noted that the due date for payment of the aforesaid amounts was 21.11.2015. However, the complainant failed to clear the said invoice within the due date and the payment was received after a delay of almost 1.5 months i.e. on 05.01.2016. It is pertinent to note that the complainant started defaulting in making timely payments from the very first demand.

19. Thereafter, in terms of the payment plan, the respondent issued invoices dated 29.12.2015, for an amount of Rs. 18,04,262/- (including the pervious

19. Thereafter, in terms of the payment plan, the respondent issued invoices dated 29.12.2015, for an amount of Rs. 18,04,262/- (including the pervious outstanding amount of Rs. 7,12,958/- claimed vide invoices dated 03.11.2015) along with an amount of Rs. 51,876/- towards the part payment of EDC-IDC and an amount of Rs. 93,130/- towards other charges as per the application form.

20. That the complainant paid the aforesaid invoices after a delay of 48 days i.e on 05.01.2016, and along with the same also paid the outstanding against invoices dated 29.12.2015. Upon receipt of the aforesaid amounts being the booking amount, the unit was allotted to the complainant vide letter dated 24.02.2016 .Subsequently, apartment buyer's agreement was executed on 09.05.2016 .

21. That in terms of clause 4.2 of the buyer's agreement , the respondent was to make endeavours to complete the construction of the unit and to intimate the complainant for possession of the Unit within 60 months from the date of issuance of the Allotment Letter i.e. 48 months along with grace period of 12 months ("Tentative Completion Period"). It is pertinent to mention that the Respondent was entitled to an unconditional 12 months grace period over and above 48 months. Thus, the respondent was obligated to handover the possession of the unit within 60 months from the date of issuance of the allotment letter.

22. Therefore, it is submitted that since the signing of the application form the complainant was aware of the fact the total amount of Rs. 1,17,42,840/- was exclusive of the applicable taxes. However, now the complainant is now trying to mislead this Hon'ble Authority by stating wrong and incorrect facts.

23. That in the backdrop of the aforesaid agreed terms of the buyer's agreement and the opted payment plan, the respondent issued an invoice dated 16.01.2017 i.e. after completion of superstructure, requesting the complainant to pay an amount of Rs. 24,99,185.51/- (including the pervious outstanding amount of Rs. 22,290/-). The said invoice was to be paid by the complainant on or before the due date of 03.02.2017. Yet again, the complainant failed to pay the outstanding amount within the stipulated time and paid the same with a delay on 03.03.2017.

24. Thereafter, upon completion of the finishing work (bricks & plaster), in terms of the opted payment plan, the respondent issued an invoice dated 03.08.2017 requesting the complainant to pay a sum of Rs. 52,59,471.84/-. It is to be noted that the due date of the said invoice was 21.08.2017. However, the complainant yet again failed to pay the said outstanding within the stipulated time and in view of the same the respondent was constrained to issue three reminder letters dated 25.10.2017, 14.11.2017 and 19.12.2017 informing the complainant about the outstanding dues and levy of interest on delayed payment and requesting her to clear the said outstanding along with the accrued interest. However, the complainant chose to neglect all the reminders and continued to commit default under the terms of buyer's agreement. It will not be out of place to mention that the complainant cleared the said outstanding with a delay of 123 days on 22.12.2017.

25. That the complainant often did not comply with the opted payment plan and as can be seen that she has time and again delayed in making the payment and has also further failed to make any payment towards the interest on delayed payment which the respondent is entitled to as per the buyer's agreement. The complainant has completely disregarded the fact that she had opted for a construction linked payment plan and the essence

of the same is timely payments. Thus, it is highlighted that there have been multiple delays/defaults on account of the complainant in adhering to the terms of agreed payment plan.

26. That at this stage, the attention is drawn to clause 4.2 of the , in terms of which the possession of the said unit was to be handed over to the complainant within 60 months from the date of the allotment letter (24.02.2016) i.e., on 24.02.2021. However, in the year 2020, the entire world fell in the clutches of Covid-19 pandemic and the country was in complete lockdown from for several months. It is a matter of common knowledge that the pandemic hampered every small and big business, the respondent was also equally affected since its hands were also tied due to the nation-vide lockdown and other disruptions in material supply chain and labour issues. It is to be noted that even the Government of India had declared Covid-19 as a *force majeure* event.

27. That despite the lockdown and other related challenges, the respondent in order to protect the interest of its customers obtained the occupation certificate dated 21.12.2020. Thereafter, the respondent issued an intimation for possession to the complainant on 16.07.2021 i.e. within the possession timelines, considering the 6 months extension due aforesaid *force majeure* events. It is most humbly submitted that there is no delay in offering possession to the complainant in view of the HRERA notification dated 26.05.2020. That along with the intimation of possession, the respondent raised the final invoice in term of the opted payment plan i.e. on intimation of possession. Vide the final invoice dated 16.07.2021, the respondent demanded a payment of Rs. 24,76,609.64/- and the due date for the said payment was 03.08.2021. Since the complainant had been delaying in making payments, the respondent also claimed the due and payable interest on the same. Further, with the said invoice, in terms of the buyer's

agreement, the respondent also issued an invoice for payment of common area maintenance and common area electricity charges along with the same also demanded requisite stamp duty payable on the conveyance deed.

28. That the complainant again failed to pay any amount towards the said invoice within the due date and upon such on non-payment, the respondent issued a demand letter dated 04.08.2021 , 17.09.2021 and 13.10.2021 vide email.. Even after sending several communication with respect to outstanding payments the complainant failed to clear the outstanding. In view of the same, the respondent was constrained to issue last and final reminder dated 23.11.2021 and requested the complainant to pay the outstanding amount of Rs. 28,16,632.96/- including the accrued interest of Rs. 3,40,023/- on account of delay in payments. That after giving sufficient time and reminders and in light of the non-payment, the respondent was constrained to terminate the allotment of the unit vide termination letter dated 16.12.2021 and forfeited the Earnest Money along interest on delayed payments in terms of clause 8.3(i) of the buyer's agreement.

29. That it is also pertinent to mention that due to COVID 19 pandemic, the real estate sector was one of the worst hit sectors and there was a drop in prices of property around this time. It is submitted that due to the complainant's successive defaults in discharging her financial obligation, despite the unit being ready for possession, led to losses being caused the respondent which are more than 10 percent of cost of property. The same is duly reflected from the bookings done by the other customers in the recent past of a similarly placed units.

30. That the complainant has miserably failed to perform her part of the obligation in as much as she has failed to adhere to the terms and conditions of the buyer's agreement, thereby committing a material breach thereof.

Further, aforesaid consequently led to non-payment of agreed total price of the said unit, thereby defeating the very concept of a construction linked payment plan.

31. That copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

32. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

34. 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.

35. 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 judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (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."

36. 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 respondent:

F.I Objection regarding delay due to force majeure

37. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete

the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

38. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 24.02.2021. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much later to the event of outbreak of Covid-19 pandemic. According to the clause 4.2 a grace period of 12 months is already allowed while calculating the grace period so no further grace period is allowed. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the total amount of Rs. 1,00,81,627/- paid by the complainant along with interest.

39. The subject unit was allotted to the complainant on 24.02.2016. A buyer's agreement was executed with regard to the allotted unit between the parties on 09.05.2016 and the complainant started making payments against the allotted unit and paid a sum of Rs.1,00,81,627/- against total sale consideration of Rs. 1,17,42,840/-. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has already cancelled the unit so there is no point of asking

40. It is an admitted fact that the buyer's agreement was executed between the parties on 09.05.2016. So, the due date for completion of the project and handing over possession of the allotted unit is taken from clause 4.2 and the same comes to be 24.2.2020. Though the respondent is seeking a grace period of twelve months in completion of the project but the same is allowed being unqualified. Hence the due date for completion of the project and offer of possession comes to be 24.02.2021.

41. The respondent raised various demands on 04.08.2021, 17.09.2021, 13.10.2021 , 23.11.2021 , 16.12.2021 against the complainant for the amount due which were not cleared by him. So, the respondent cancelled the unit of the complainant on 16.12.2021.

42. The due date of completion of project expired on 24.02.2021. Thus, it is evident from the facts mentioned above that the complainant is no longer interested in the project and is seeking refund of the paid-up amount as per the provisions of Act of 2016.

43. It has been pleaded by counsel for respondent that occupation certificate has already been obtained and it has already made payment of required taxes to the government. The occupation certificate was obtained on 21.12.2020 after due date of handing over of possession i.e., 24.02.2020. However, the complainant approached the Authority seeking relief of refund on 06.04.2022. The Authority observes that the respondent has already made payment towards taxes to the governmental authorities. Hence, the respondent is entitled to deduct from refundable amount to the complainant, taxes which are not refundable from government and respondent-promoter cannot charge from subsequent allottee as GST provision prohibit charging of GST after receipt of occupation certificate.

44. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

> *"5. AMOUNT OF EARNEST MONEY*
>
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

45. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land . But in the case in hand , after cancellation of the unit , the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in ***Maula Bux V/s Union of India***,**AIR 1970 SC, 1955** and ***Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors, Civil Appeal No. 7266 of 2009*** decided on 01.12.2015 , followed in ***Jayant Singhal v/s M3M India ltd.*** *Consumer case no. 27669 2017 decided on 26.07.2022* and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view, the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale

26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view, the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to return the balance amount after deducting 10% of the basic sale price (less VAT , statutory dues , brokerage @ 0.5%) from the date of cancellation of the unit i.e, 16.12.2021 till the date of refund along with interest @ 10.70 % per annum within a period of 90 days.

G.II Direct the **respondent to set aside the cancellation.**

46. After dealing with relief no. 1, the aforesaid relief sought by the complainant-allottee became redundant. Hence, no direction to this effect

H.Directions of the Authority:

47. Hence, the authority hereby passes this order and issues the following directions under section37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i) The respondent-promoter is directed to refund the amount of Rs. 1,00,81,627/- after deducting 10% of the basic sale price of the unit (less VAT , statutory dues , brokerage @ 0.5%) being earnest money along with interest @ 10.70% p.a. on the refundable amount, from the date of cancellation i.e. 16.12.2021 till the actual date of refund of the amount.

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.

48. Complaint stands disposed of.

49. File be consigned to the registry.

(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.03.2023