

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

Complaint no.:	5822 of 2022
First date of hearing:	22.11.2022
Date of decision:	22.09.2023

1. Pawandeep Parmar
2. Manit Pal Singh Parmar through SPA holder Sonu Balhara

R/o D-1, Block D, Greenwoods City, Sector-46,
Gurugram

Complainants

Versus

M/s Capital Heights Pvt. Ltd.
Office address: C-96, Panchsheel Enclave, new Delhi

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Harshit Batra (Advocate)
Shri Abhijeet Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 29.08.2022 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 as provided 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 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. N.	Particulars	Details
1.	Name of the project	"Residences 360", Sector-70 A, Gurugram
2.	Nature of the project	Residential
3.	RERA Registered/ not registered	Un registered
4.	Unit No.	12-03, tower CR-02, 12 th floor. [pg. 26 of complaint]
5.	Unit admeasuring	1400 sq. ft. [pg. 26 of complaint]
6.	Allotment letter	06.05.2013 [pg. 26 of complaint]
7.	Date of execution of apartment agreement by buyer	Not executed [pg. 32 of complaint]
8.	Possession clause	6. Possession <i>6(a). The excavation work has begun on the project land much before the date of execution of this agreement and the same must not be misunderstood with or shall not be considered as the date of commencement of construction of the project. The company endeavours to offer the possession of the unit in the group housing to the allottee(s) within a period of 42 (forty-two) months from the date of commencement of construction of the project hereof, i.e., the date on which the raft of the tower as intimated to the allottee(s) must be casted (the</i>



		<p><i>"commencement of construction"), and this date shall be duly communicated to the allottee(s), subject to force majeure (defined hereinafter in clause 25) or any other reason beyond the control of the company, subject to the allotted(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions herein, and all amounts due and payable by the allotted(s) under this agreement having been paid in time to the company. The company shall offer in writing to the allottee(s) possession of the unit (the "notice of possession") upon furnishing necessary documents and possession to be taken within 30 (thirty) days from the date of issuance of notice of possession.</i></p> <p><i>6(b). The allottee(s) understands and agrees that company shall be entitled to an extension period of 180 (one hundred and eighty) business days over the said period of 42 months (the "grace period"), for handing over the possession of the unit to the allottee(s). If the possession of the unit gets further delayed due to any reason and/or conditions/ events which are unforeseeable then the company shall be entitled to an additional grace period of 180 (one hundred and eighty) business days (the "additional grace period") over and above the said grace period.</i></p>
9.	Due Date of possession	07.08.2018 (Calculated from the date of start of excavation i.e., 07.08.2014. Grace period of 6 months allowed being unqualified)
10.	Total sale consideration	₹ 99,38,400/- [As per BBA at pg. 69 of complaint]
11.	Basic Sale price	₹ 88,70,400/- [as per BBA at pg. 69 of complaint]
12.	Amount paid by the complainant as per SOA dated 01.08.2012 on page 44 of reply	₹ 36,57,799/-

13.	Occupation certificate	26.10.2021 [pg. 48 of the reply]
14	Offer of possession	Not Offered
15.	Demand Letters	01.05.2015, 01.12.2015, 25.06.2016, 07.12.2021, 05.01.2022 [pg. 31-41 of reply]
16.	Cancellation	01.06.2022 [Page 42 of reply]

B. Facts of the complaint.

3. The complainant pleaded the complaint on the following facts:

- a. The present complaint is filed by the complainants against the respondent company for seeking refund of the amount paid by the complainants to the respondent company because of the delay in handing over of the possession for more than 04 years to the complainants.
- b. In 2011-12, the respondent company had been advertising and marketing in newspapers and other media sources that they have launched an integrated residential colony in Gurgaon (Haryana) by the name of '**RESIDENCIES 360**' at sector 70A Gurgaon.
- c. That complainant being influenced by the advertisements, filed an application form on 01.08.2012 with the respondent company for a residential apartment in their project called '**RESIDENCIES 360**' which was proposed to be constructed on a land admeasuring 2.79 acres situated in Sector-70A, Village Palra, District Gurgaon, Haryana.
- d. That the complainant along with the application form also deposited a sum of ₹ 9,00,000/- as registration amount by way of

02 cheques no. 297178 dated 25.07.2012 drawn on HDFC BANK of ₹ 8,00,000/- and cheque no. 299164 dated 25.07.2012 drawn on HDFC Bank of ₹ 8,00,000/-.

- e. That complainants would like to bring to the notice of the Hon'ble Authority that the respondent company got the requisite approval and license for development of the said residential colony project from the Director, Town & Country Planning, Chandigarh on 29.05.2009 and got it revised on 31.05.2013.
- f. That respondent company has cheated and defrauded the complainants by stating false statements and averments that the respondent company has got the necessary approvals from the Director, Town & Country Planning, Govt. of Haryana, Chandigarh and building plans have been sanctioned. It is pertinent to mention here that without having the License to develop a residential colony the respondent and sanctioned building plans started accepting the application form and the advance amount for registering a residential apartment under the said project. It only came to the knowledge of the complainant when the flat buyer's agreement was executed between the parties.
- g. That respondent company, upon the application form filed by the complainant had sent an allotment letter along with the payment plan dated 06.05.2013 to the complainant and further started demanding instalments from the complainant stating it to be the registration amount.
- h. That as per the allotment letter issued by the respondent company dated 06.05.2013, residential apartment no. 12-03 on 12th floor in tower no. CR-02, ad-measuring saleable area 1400 sq. ft. was

allotted to the complainants for a basic sale consideration of ₹ 88,70,400/-.

- i. That respondent company raised the 2nd installment as per the payment schedule plan of ₹ 9,55,620/- which was duly paid by the complainants vide cheque bearing no. 299170 dated 15.09.2012 drawn on HDFC Bank in favor of the respondent company. The complainants made timely payment as asked by the respondent company and a receipt was issued for the same, acknowledging the payment received.
- j. That after the lapse of almost 26 months from the date of accepting the application form and after collecting more than 30% of the total sales consideration, the respondent company had entered into a registered flat buyer's agreement with the complainants dated 08.11.2014 and promised to deliver the possession of the residential apartment vide its clause 06 within 42 months from the date of commencement of the construction of the project. The due date for offer of possession come to be 08.02.2018 i.e., 42 months from 07.08.2014 this is the date when respondent company raised the demand on the account on 'ON EXCAVATION'.
- k. It is pertinent to mention that the respondent company had never started the construction work on the project site since inception and continued to raise demands/installments. It is submitted that the complainants opted for the construction linked plan and they are obliged to make the instalments only in case the milestone has been achieved by the builder. In no circumstances does the respondent company have authority/power to raise the demand

letters if the milestone as per the payment schedule plan is not complete.

- i. That the complainants continued to make the payments towards the sale consideration of the unit as per the demands raised by the respondent company from time to time, since it was development linked payment plan only till completion of the ground floor slab. When the complainants realized that the construction had not even started at the project site and the respondent company took ₹ 36,57,798/- the complainants stopped making further installments and asked the respondent company to refund the money paid against the apartment in question.
- m. That further the emails sent by the respondent company would show that the construction of the project and/or apartment in question is still not complete. The respondent company sent an email dated 05.07.2021 wherein they have given the construction update which shows that the project is yet to be completed and that further they have not even applied for the occupation certificate.
- n. Further an email dated 30.10.2021 was received by the complainant which was sent by the respondent company in which as per the averments made by the respondent company the construction is almost completed and a demand of ₹ 29,63,174/- is raised but the respondent company is silent whether they have applied for the occupation certificate.
- o. That in an arbitrary manner, the respondent company on 01.06.2022, sent a cancellation letter to the complainants and has not refunded any amount to the complainants. Further as per the RERA Act, 2016, 10% of the basic sale price shall be the earnest

money, in the present case, the respondent company has kept all the money i.e., ₹ 36, 57,798/- with them.

- p. It is pertinent to mention here that as per the flat buyer's agreement between the parties, the apartment was supposed to be completed and the possession of the same ought to have been handed over to the complainants by 08.02.2018. The respondent company enjoyed the money paid by complainants for 10 years and when the project was about to be complete after a delay of more than 04 years cancelled the allotment of the apartment and kept all the money.
- q. That the complainant signed a one-sided agreement which casted upon heavy penalties in case of default by the buyer and the builder had nominal penalties in case of delay in handing over possession. That as per clause 02 of the agreement binds the buyer herein for very high interest i.e., 18% per annum for not paying timely installment as per the payment plan as a penalty &/or the respondent company also have the right to cancel the agreement and forfeit the earnest money. Whereas on the other hand, in case of delay in handing over the possession to the allottee, the builder has to only pay a nominal interest to the allottees.
- r. A time of more than 04 years has lapsed since the booking of the complainants in the said project. As per section 18(1) of the RERA Act, the complainants have the right to withdraw from the project of the respondent and claim refund of the total amount paid to the respondent along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- a. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
 - b. Compensation for mental agony - ₹ 5,00,000/-
 - c. Cost of litigation- ₹ 1,50,000/-
5. Any On the date of hearing, the authority explained to the respondents/promoters about the contravention 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.

6. The respondent has contested the complaint on the following grounds:
- a. That the callous conduct of the complainants can be evident from the fact that to this date the complainants have not executed a builder buyer agreement. The respondent vide its letter dated 5th December 2014 has shared the copy of builder buyer agreement and complainant has duly acknowledged the receipt of the said letter.
 - b. That the complainants had approached the respondent sometime in the year 2012 for purchase of a unit in the project "RESIDENCIES 360" situated in Sector 70A, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit at their own will and accord, un-influenced in any manner by the respondent.

- c. That thereafter the complainants vide application form dated 01.08.2012 applied to the respondent for provisional allotment of a unit in the project. The complainants had been allotted apartment bearing no. 12-03 on 12th floor in tower no. CR-02 in the said project. Thereafter, a provisional allotment letter dated 06.05.2013 and acknowledgement receipt dated 11.10.2013, pertaining to the said unit also issued by the respondent in favor of the complainants. A copy of the application form was provided to the complainants and after fully understanding and agreeing to the terms & conditions of the application form, the complainants made the booking. The complainants are shooting arrow in the dark with the hope and aspiration of making easy money while misusing the jurisdiction of this Hon'ble Authority. However, the respondent is hopeful and confident that once the present reply will be considered by this Hon'ble Authority, the present complaint filed by the complainants will be dismissed by this Hon'ble Authority with costs to set out an example that frivolous complaints will not be encouraged by this Hon'ble Authority.
- d. That the complainant has come before this Hon'ble Authority with unclean hands. That the complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants requires detailed deliberation by leading the evidence and cross-examination, thus only the civil court has jurisdiction to deal with the cases which require detailed evidence for proper and fair adjudication. It is pertinent to mention here that complainants have

- not disclosed about the fact that despite of the several reminders sent by the respondent company to the complainants to clear the outstanding dues timely, complainants being regular defaulters were not able to clear the outstanding dues in respect of the unit booked by them. Moreover, the complainants have also concealed the facts that the respondent company had sent various reminders and oral communication were also done between the complainant and respondent to clear the outstanding dues. The complainants instead of clearing their outstanding dues deliberately neglected the reminders that have been sent on various occasions dated 01.05.2015, 01.12.2015, 25.06.2016, 07.12.2021, 05.01.2022 and final notice dated 03.02.2022 by the respondent company in which it was clearly stated that the complainant has failed to clear the outstanding dues excluding the interest on delay penalty payments.
- e. That presently, this Hon'ble Authority is not the right forum for the relief sought by the complainants. As there is no question of a refund to be given in view of the catena of judgements passed by this Hon'ble Authority, Gurugram. That the complainants are attempting to seek an advantage of the slowdown in the real estate sector and trying to seek undue advantage by concealing the true facts. It is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent to unjustly gain from them.
- f. The complainant is a habitual defaulter and till date the complainant has only paid ₹ 35,48,160/- without taxes against the total sale consideration amount of ₹ 99,38,400/- without taxes. The

complainants paid the last installment in February 2015 and thereafter the complainants did not even contact the respondent. It is only when the respondent has cancelled the unit of the complainants vide cancellation letter dated 01.06.2022, they have filed the instant complaint.

- g. That it is important to note that on 02.06.2015, the complainant wrote an email to the respondent stating their inability to make the payment and requested the respondent to change the payment plan of the complainant. However, despite agreeing to the same, the complainants never approached the respondent for the necessary documentation work in this regard.
- h. It is humbly submitted that the tower in which the unit of the complainants is located, has received an occupation certificate from the Director General, Town and Country Planning, Haryana Chandigarh vide letter dated 21.10.2021. That the present complaint has been filed by the complainants only to make some quick money while misusing the jurisdiction of this Hon'ble Authority. That it is pertinent to mention that from a bare perusal of the complaint it can be seen that there is no fault on the part of the respondent company and the complaint is merely based on conjectures and surmises, which deserves no consideration from this Hon'ble Authority. That the alterations in the timeline for the completion of the project cannot be attributed to the respondent company and are the result of external factors which were beyond the control of the respondent. Further, the timeline as postulated within the agreement executed between the parties are intended and tentative and based on the timely payments made by the

allotees, investors, force majeure events etc. and in the event any such force majeure event occurs, the respondent shall be entitled to extension of time based on such events.

7. 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

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

E.I. Territorial jurisdiction

9. 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

10. 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.

11. 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.
12. 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. (Supra)* 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to refund entire amount paid by the complainants along with the interest.

14. The complainant was allotted unit bearing no. 12-03, on 12th floor in tower CR-02 vide allotment letter dated 06.05.2013 for a total sale consideration of ₹ 99,38,400/- and the complainant has paid a sum of ₹ 36,57,799/-.
15. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
16. The due date of possession as per unsigned space buyer's agreement as mentioned in the table above is 07.02.2018. The respondent submitted that the promoter has applied for grant of occupation

certificate on 12.03.2021 and obtained the occupation certificate for the said project on 26.10.2021 and raised the demand letter 07.12.2021 & thereafter on 05.01.2022. Despite rising demand in respect of the subject unit, the complainant did not comply with the demands which resulted in cancelling the said allotment on 01.06.2022. The complainant thereafter filed a present complaint on 29.08.2022 for refund of amount paid along with interest before the authority. Accordingly, the complainant failed to abide by the terms of the agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The reluctant behavior of the complainant led to issuance of notice of cancellation by the respondent on 01.06.2022. Now, the question before the authority is as to whether the cancellation is valid or not?

17. The complainant has pleaded that the possession is delayed, and the construction is still incomplete. The plea of the complainant, however, is devoid of merit. At the cost of repetition, it is highlighted that the occupation certificate has already been granted by the concerned authority and thus, it is unfair to say that the project is still incomplete.
18. The allottee in this case has filed present complaint on 29.08.2022 which is 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 except this complaint.
19. As per clause 24(a) of the agreement to sell, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 24(a) of the agreement to sell is reproduced as under for a ready reference:

"24. (a) Timely Payments of all the amounts) as per this Agreement, payable by the Allottee(s) shall be the essence of this Agreement. If the Allottee(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Company any of the instalments or other amounts and charges due and payable by the Allottee(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Allottee(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Company shall be entitled to cancel/ terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money, along with brokerage expenses(if paid by the Company) and other dues of non-refundable nature and interest. The Company is not under any obligation to send reminders for the payments to be made by the Allottee(s), as per the Payment Plan and for the payments to be made as per the demand by the Company."

20. The respondents issued demand letters and thereafter, issued a cancellation letter to the complainant. The occupation certificate for the project of the allotted unit was granted on 26.10.2021. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
21. However, the fact that the respondents have not refunded any amount after certain deduction to the complainant even after cancellation of subject unit; the complainant's rights to file a suit for refund remains intact.
22. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. Though vide letter dated 01.06.2022, the details of amount to be returned after deductions have not been given but it is pleaded by the allottee that she has not received any amount after cancellation of the unit. The issue with regard to deduction of earnest money on cancellation of a contract arose 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., (2015) 4 SCC 136, and wherein it was 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 provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

23. Keeping in view the aforesaid facts and legal position, the cancellation of the allotted unit is held to be valid and forfeiture of the 10% of the

earnest money of basic sale price cannot be said to be wrong or illegal in any manner.

24. The respondents are directed to refund the paid-up amount of ₹ 36,57,799/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 88,70,400/-. The refund should have been made on the date of cancellation i.e., 01.06.2022. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

F.II. Compensation for mental agony- ₹ 5,00,000/-

F.III. Cost of litigation- ₹ 1,50,000/-

25. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

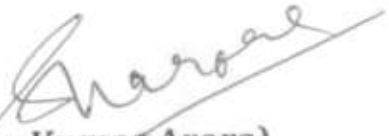
- a. The respondents are directed to refund the paid-up amount of ₹ 36,57,799/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 88,70,400/-.

The refund should have been made on the date of cancellation i.e., 01.06.2022. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

- b. 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.

27. Complaint stands disposed of.

28. File be consigned to registry.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.09.2023

HARERA
GURUGRAM