

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

Order pronounced on 05.10.2023

Name of the Builder		SS Group Pvt. Ltd.	
Project Name		The Leaf	
1.	CR/4128/2022	Meera Krishnan & Anr. V/s SS Group Pvt. Ltd	Mr. Sheresth Nanda Proxy Mr. Rahul Bhardwaj
2.	CR/4206/2022	Sushil Yadav V/s SS Group Pvt. Ltd	Mr. Dhruv Lamba Mr. Rahul Bhardwaj

CORAM:	
Shri Vijay Kumar Goyal	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Leaf being developed by the same respondent/promoter i.e., SS Group Pvt. Ltd. The terms and conditions of the application form fulcrum of the issue involved in

both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund, set aside the cancellation letter.

3. The details of the complaints, reply status, unit no., date of allotment letter, total sale consideration, amount paid up, date of cancellation letter are given in the table below.

Project: The Leaf, Sector 85, Gurugram, Haryana, Sector 85, Gurugram, Haryana						
1	2	3	4	5	6	7
Sr. no	Complaint no./title/Reply status	Unit no. & area admeasuring	Allotment letter	Date of BBA Due date	Total sale consideration/ Amount paid	Relief sought
1.	4128/2022 Meera Krishnan & Anr. VS S.S. Group Pvt Ltd. Reply received	8D, 8 th floor, Tower T-2 Admeasuring : 1575 sq.ft.	10.09.2012	16.10.2013 16.10.2016	Rs.87,42,375/- Rs. 34,02,353/-	Refund Set-aside the Cancellation letter
Date of Cancellation Letter: 27.11.2021 (page 73 of reply) Date of occupation certificate: 09.05.2022 (page 74 of reply)						
2.	4206/2022 Sushila Yadav VS S.S. Group Pvt Ltd. Reply received	9/4A, 4 th floor Building: 9 Admeasuring 2280 sq.ft.	10.09.2012	11.09.2013 11.09.2016	Rs.1,21,12,200/- Rs. 36,26,259/-	Refund Set-aside the Cancellation letter
Date of cancellation letter: 24.11.2021 (page 85 of reply) Date of occupation certificate: 28.06.2022 (page 86 of reply)						

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the application form executed between the parties *inter se* in respect of said unit for not handing

over the possession by the due date, seeking refund, set aside the cancellation letter.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/ allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 4128/2022 titled as Meera Krishnan & Anr. Vs. M/s S.S. Group Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund.

A. Unit and project related details

7. 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:

CR 4128/2022 titled as Meera Krishnan & Anr. Vs. M/s S.S. Group Pvt. Ltd

S.N.	Particulars	Details
1.	Name of the project	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	RERA Registered/ Not Registered	23 of 2019 dated 01.05.2019 Valid upto 20.01.2020
4.	DTPC License no.	81 of 2011 dated 16.09.2011

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	Validity upto	15.09.2024
	Licensed area	11.9 Acre
5.	Unit no.	8D, 8 th floor, building no. 2 [page no. 24 of complaint]
6.	Unit measuring	1575 Sq. Ft. (page no. 24 of complaint)
7.	Date of allotment	10.09.2012
8.	Date of execution of floor buyer's agreement	16.10.2013
9.	Possession clause	<p>8. Possession</p> <p>8.1 Time of handing over the possession</p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.</p>

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		*Note: Taken from another file of the same project
10.	Due date of possession	16.10.2016 Grace period not allowed
11.	Total sale consideration	Rs. 87,42,375/- (Page no. 25 of complaint)
12.	Total amount paid by the complainant	Rs. 34,02,353/- (As alleged by the complainant)
13.	Cancellation letter	27.11.2021
14.	Occupation certificate dated	09.05.2022
15.	Offer of possession	Not offered

B. Facts of the complaint

8. That in the year 2011, the respondent launched a group housing residential project by the name of "The Leaf" in Sector 85, Gurgaon comprising of various buildings, parking spaces and other utilities and landscaping.
9. That the respondent promoted the said project with extensive and aggressive print and electronic media advertisements and through various agents and sale representatives. The respondent left no stone unturned in depicting the grandeur of the project which included colourful brochures and other printed media.. The respondent created a rosy picture of the project and misrepresented various information/facts about the project to lure buyers into investing in the project.
10. The complainants were looking for a residential apartment in the Delhi NCR and during such time, they came in contact with the



representatives of respondent who informed them about the project and boasted about the specification and grandeur and made various false and incorrect representations about the construction and delivery of possession. The representatives assured the complainants that respondent had obtained all the requisite sanctions and approvals from all competent authorities for starting constructions at the project site and the construction at the project site would start soon and the possession would be delivered in promised time. The complainants were impressed by the highlights of the project and the representations made by the agents of the respondent and decided to book a unit in the aforesaid project. Having trusted the representations made by the respondent and investing a huge amount of hard-earned money in the project, the complainants are now aggrieved as none of the promises made by respondent have fulfilled.

11. The complainants made an application dated 04.07.2012 for allotment of a residential unit in the project and paid the requisite booking amount of Rs. 7,50,000/-. Pursuant to making application, an allotment letter dated 10.09.2012 was issued to the complainants and unit no. 8D in tower-2 was allotted to the complainants.
12. At the time of booking, the complainants opted for construction linked payment plan for payment of total consideration under which the respondent was supposed to demand installments from the complainants upon start/ completion of particular construction milestone/ stage as per the payment plan. However, no buyer

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agreement was executed with the complainants even after lapse of one year from date of booking.

13. That on 16.09.2013, a buyer agreement was executed between the parties for unit no 8D, 8th floor, tower T-2 admeasuring 1575 sq.ft. for a sale consideration of Rs. 87,42,375/-.
14. That the buyer agreement was deliberately executed after one year of allotment i.e. in September 2013 because the building plans for the project were not approved. As per the law in force, the launching of a project and inviting and accepting booking from buyers were illegal and prohibited. The building plans for the project were approved only on 04.08.2013. Therefore, soon after the approval of the building plan, the buyer agreement was executed on 16.09.2013. This was done to hide their unfair trade practices and illegal acts of launching a project prior to approval of building plan. The respondent has taken 10% of the total sale consideration from the complainants prior to the execution of the builder buyer agreement.
15. That as per the clause 8.1(a) of the buyer agreement, the possession of the unit was to be handed over within 36 months from the date of execution of the buyer agreement. The clause also allowed a grace period of 90 days in addition to the 36 months. The buyer agreement was executed on 16.09.2013. Therefore, as per clause 8.1(a) of the agreement, the respondent was contractually obligated to hand over the possession of the unit to the complainants by 16.09.2016 (36 months from 16.09.2013) and latest by 16.12.2016 (with 90 days grace period). However, the respondent failed to comply with its contractual obligation and

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- complete the project and deliver the possession within the prescribed time period of either 16.09.2016 or 16.12.2016.
16. That till 30.05.2015, the complainants paid a total sum of Rs. 34,02,353/- which is around 40% of the total consideration of Rs. 87,42,375/-.
 17. During of the visits to the project site in July 2015, the complainants found that there was no progress and the construction barely started at the project site. There were only some excavations at the site and no construction was carried out. On the one hand, the construction wasn't even started and on the other, the respondent had collected 40% of the total consideration i.e. till completion of lower basement slab. The complainants informed that they would not be making any further payments till actual construction is started at the site and would only make payments when the construction stage claimed to have been completed in the demand letter is actually completed at the site.
 18. Instead of providing clarification and sending any updates, the respondent sent a notice for cancellation of unit dated 27.11.2021 to the complainants informing them that their allotment would be cancelled if the outstanding dues of Rs. 40,79,156/- along with interest is not paid within 30 days.
 19. That by sending the cancellation letter by delaying the development of the project, the respondent escaped from their contractual responsibilities and liabilities; and to hide their incompetency and to avoid to any future penalty or any responsibilities. Since the inception of the project, the respondents had malafide intentions and had the intention of cheating and

illegally grabbing money from the buyers including the complainant on the pretext of the construction/completion of the project.

20. At the time of booking, the respondents proposed to complete the construction within 36 months from booking. However, they unilaterally and fraudulently changed the possession date from 36 months from booking to 36 months from date of execution of the agreement and increased the duration by more than 1 year. It is settled law that the developers need to complete a real estate contract within a reasonable time period. The Hon'ble Supreme Court in *Fortune Infrastructure and Ors versus Trevor D'Lima and Ors* had held that a time period of 3 years is reasonable time to complete a contract.

C. Relief sought by the complainants:

The complainants have sought the following relief:

- a) Direct the respondent to set aside the cancellation letter.
- b) Direct the respondent to pay refund the entire amount paid by the complainant along with prescribed rate of interest.

D. Reply by the respondent

The respondent by way of written reply made the following submissions.

21. That at the outset, each and every averment made by the complainants in the captioned complaint is denied. No averment in the complaint may be deemed to have been admitted merely owing to omission on the part of the respondent to specifically deny the same.

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22. That the complainants has approached the respondent and expressed an interest in booking a unit in the residential project developed by the respondent known as "The Leaf", prior to making the booking the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project, that the complainants took an independent and informed decision, un-influenced in any manner by the respondent, to book the unit in question.
23. That thereafter the complainants vide an advance registration form booked a unit in the project constructed by the respondent. The complainants, in pursuance of the aforesaid advance registration form dated 04.07.2012, a provisional registration of the unit was made. The complainants consciously and wilfully opted for a construction linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he would pay every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favour.
24. That pursuant of the signing of the advance registration form an allotment letter dated 10.09.2012 was executed between the parties, wherein the complainants were allotted a residential unit bearing no. 8- D, tower 2, 8th floor admeasuring 1640 sq.ft. The allotment letter being the preliminary and the initial draft contained the basic and primary understanding between both the parties, to be followed by the buyer's agreement to be executed

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between the parties. After certain documentation and procedures, the allotment letter dated 10.09.2012 was issued in favour of the complainants allotting a residential unit bearing no. 8D, tower 2, 8th floor admeasuring 1640 sq.ft. Thereafter, immediately on 16.09.2013, a buyer's agreement was executed between the parties which contained the final understanding between the parties stipulating all the rights and obligations.

25. That the complainants were allotted the unit bearing no. 8D, tower 2, 8th floor having an approximately super area 1575 sq.ft. of the project "The Leaf". The total sale consideration of the unit booked by the complainants was Rs. 75,60,000/- without taxes and other miscellaneous charges. However, the sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stage. The complainants defaulted in making payments towards the agreed sale consideration of the unit from the very inception i.e., after signing, the allotment letter.
26. That the complainants have failed to pay the remaining sale consideration amounting to Rs. 40,79,156/- without interest. Initially on account of non-payment of the outstanding amount, the respondent sent numerous demand letters to the complainants.
27. That the construction of the project was within the time line as stipulated in the buyer's agreement and accordingly, the complainants were supposed to pay the instalments of the said unit by way of construction linked payment plan. However, the respondent from the very inception had to run after the complainants to clear the outstanding dues. It is pertinent to bring

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to the kind notice of the Authority that from 2012 to 2021 i.e., before the cancellation of the unit, the respondent sent numerous demand letters from 08.09.2012, 29.09.2012, 08.10.2013, 27.06.2013, 26.08.2015, 11.12.2015, 05.04.2016, 14.03.2017, 14.04.2018.

28. That the complainants till the issuance of the final demand letter have only paid Rs. 33,57,036/- towards the total sale consideration amounting to Rs. 87,42,375/- which only accounts to approx.. 20% of the total sale consideration. The complainants were very well aware of the continuous delays and were reminded on continuous basis through the demand letters. Both the parties agreed as per the terms and conditions and the complainants were well aware that "time being the essence" the total sale consideration to be paid according to the construction linked plan.
29. That the complainants after being the wilful defaulter in complying with the terms and conditions of the buyer's agreement are trying to take a shelter under the grab of the Act, 2016 and are shifting the burden on the part of the respondent whereas, the respondent has suffered huge financial loss due to such wilful defaulters, Several allottees, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Despite there being a number of defaulters in the project, the respondent itself infused huge amount of fund into the project.
30. That the complainants have miserably and wilfully failed to make the outstanding payments in time as well in accordance with the

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terms and conditions of the buyer agreement. The complainant is a repeated defaulter, who repeatedly delayed towards the outstanding payment on various occasions under different instalment. Thereafter on non-clearing the outstanding dues after persistent efforts of the respondent, the respondent cancelled the said unit dated 27.11.2021.

31. That the project at present date has been completed and accordingly, the respondent has received the occupational certificate of the project by the competent authority dated 09.05.2022.
32. That the complainants have no cause of action to file the complaint as the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the term and conditions of the buyer's agreement of the respondent as well as the complainants. The complainants are investors and therefore booked the unit in question to yield gainful returns by selling the same in the open market. However, due to the ongoing slump in the real estate market, the complainants have filed the present purported complaint to wriggle out of the agreement. The complainants do not come under the ambit and scope of the definition an allotted under section 2(d) of the Act, 2016 as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.
33. That it is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most

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respectfully submitted that the complaint deserves to be dismissed at the very threshold.

34. All other averments made in the complaint were denied in toto.
35. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

36. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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

37. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

38. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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

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allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

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

39. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
40. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 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

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exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.

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

G. Findings on the objections raised by the respondent.

G. I Objection regarding the complainants being investors.

42. The respondent has taken a stand that the complainants are the investors and not consumer. Therefore, they have not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the

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apartment buyer's agreement, it is revealed that the complainants are buyers and paid considerable payment to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

43. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding untimely payments done by the complainants.

44. The respondent has contended that the complainants have made defaults in making payments as a result thereof, it had to issue numerous demand letters dated 08.09.2012, 29.09.2012, 08.10.2013, 27.06.2013, 26.08.2015, 11.12.2015, 05.04.2016, 14.03.2017, and 14.04.2018 respectively, it is further submitted that the complainants have still not cleared the dues. The counsel for the respondent referred to clause 6 of the buyer's agreement

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dated 16.10.2013 wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

6.In case of delay of 60 days in making payment by the Applicant to the Company as per the Schedule of Payments, the Company shall have the right to terminate the Allotment/Agreement and forfeit the Earnest Money. The Company shall also be entitled to charge interest @ 18% pa from the due date of installment, as per the Schedule of Payments, till the date of payment...."

45. At the outset, it is relevant to comment on the said clause of the allotment letter i.e., 6. **TIMELY PAYMENT ESSENCE** wherein the payments to be made by the complainants have been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by the allottees in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. There is nothing on the record to show as to what were the terms and conditions of allotment of the unit in favour of the complainants. The total sale price of the allotted unit to the complainants as per letter of buyer's agreement was Rs. 87,42,375/-. The complainants admittedly paid a sum of Rs. 34,02,353/- to the respondent from time to time. The complainants admittedly made default in making payments but what was the status of construction at the spot at the time when termination of the unit was made by the respondent. Moreover, if the complainants were committing default in making payments due as alleged by the respondent, then after cancellation



of the unit vide letter dated 27.11.2021, it was obligatory on it to return the remaining amount after deducting earnest money of the sale consideration. There is nothing on the record to show that after deducting earnest money of the basic sale price, the respondent sent any cheque or bank draft of the remaining amount to the complainants, 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 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Keeping in view the principles laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the consideration amount being bad and against the principles of natural justice. Thus, keeping in view in the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainants, the respondent did not return any amount and retained the total amount paid by the complainants.

H. Findings on the relief sought by the complainants.

H. I Direct the respondent to set aside the cancellation.

H.II Direct the respondent to refund the entire amount paid by the complainant.

46. The complainants were allotted unit no 8D, 8th floor, building no. 2 ground floor in tower A in the project "The Leaf" by the respondent builder for a total consideration of Rs. 87,42,375/-and they paid a sum of Rs. 34,02,353/-. The respondent had sent various reminder letters to the complainants to make payment of the outstanding



- amount. The complainants continued with their default and again failed to make payment even after receipt of final reminder letter.
47. While discussing earlier it has been held that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of agreement. Now, the issue for consideration arises as to whether the complainants are entitled for refund of the entire amount paid by them.
48. The complainants received cancellation notice dated 27.11.2021 but there is nothing on record which shows that respondent builder refunded the balance amount paid by the complainants.
49. As per cancellation notice dated 27.11.2021, the earnest money shall stand forfeited against amount of Rs. 34,02,353/- paid by the complainants. As per the complaint, the said unit was booked under construction linked plan and till date an amount of Rs. 34,02,353/- was paid against total consideration of Rs. 87,42,375/- which is approx. 44% of total consideration. Upon perusal of documents on records from page no. 57-72 of reply, various reminders for payment were raised by the respondent, the complainants received cancellation notice dated 27.11.2021. It is observed that the respondent has raised various demand letters to the complainants and as per section 19 (6) & (7) of Act of 2016. Section 19(6) & (7) the is reproduced as hereunder:

"19(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13 shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration

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charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

19(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)".

50. The allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. When sufficient time and opportunities have been given to the complainants to make a payment towards consideration of allotted unit, it would be violation of section 19 (6) & (7) of Act of 2016. As per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent builder has to return the remaining amount after deducting 10% of consideration as earnest money. The authority observes that the complainants are not entitled to refund of the entire amount as their own default, the unit has been cancelled by the respondent after issuing proper reminders. The cancellation of the allotted unit by the respondent is valid. So, the complainant is not entitled for refund of entire amount. However, the respondent has contravened the provision of sec 11(5) of the Act and illegally held the monies of the complainants. In cases of ***Maula Bux Vs. Union of India (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. Vs. Sarag 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 the contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. Even keeping in view, the principles

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laid down in the above-mentioned cases, the authority made regulations w.r.t forfeiture of earnest money and regulation 11 (5) of 2018 provides 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 amount of the real estate i.e. apartment/ plot/ building as the case may be in all case where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

51. Thus, keeping in view of aforesaid circumstances and the law of the land, though the cancellation of the allotted unit is held to be valid, but the respondents was not justified in retaining whole of the paid-up amount on cancellation. It could have retained 10% of the consideration of the unit and was required to return the remaining amount on cancellation. Since that was not done, so the respondent is directed to refund the paid-up amount after deducting 10% of the consideration of the unit being earnest money within 90 days from the date of this order along with an interest @10.75 % p.a. on the refundable amount from the date of cancellation i.e., 27.11.2021 till the date of its actual realization.
52. Vide proceeding dated 24.08.2023, the counsel for the respondent states that the complaint has been filed after cancellation of the unit on 27.11.2021 and on failure of the complainant-allottee, payment

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of requisite due instalments, the respondent is entitled for deduction of 10% of the earnest money but also statutory taxes paid. Further, the counsel for the respondent is claiming deduction of statutory taxes as per earlier decision of the Authority in *CR No. 5031 of 2019 titled as Shivani Dewan V/s S.S. Group Pvt. Ltd. decided on 10.02.2020*. The counsel for the complainant states that the Authority in *CR No. 1544 of 2021 titled as Prem Prakash Gupta V/s S.S. Group Pvt. Ltd. decided on 08.08.2022* has not allowed the deduction of statutory taxes in view of the regulation of the Authority framed in the year 2019.

53. The Authority after considering arguments of both the parties concludes that it has been settled principle of law that the respondent can deduct only 10% of consideration as per regulation 11 of 2018 which only provided about deduction of earnest money. Thus, for deduction of statutory taxes there must be certain other facts effecting the decision of the Authority, such as cancellation being barred by the limitation etc. in the instant complaint, no such matrix of facts is involved. Thus, as per the settled principle and as per regulation 11 of 2018, the respondent is entitled for deduction of 10% of consideration amount only.

I. Directions of the Authority:

54. 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 Section 34(f) of the Act of 2016:



- i) The respondent/promoter is directed to refund the paid-up amount (as provided in para 3) to complainants-allottees after deducting 10% amount of the consideration as earnest money and such balance amount be paid with interest at the prescribed rate i.e., 10.75% from the date of cancellation till the date of its actual realization.
- 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.
55. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
56. The complaints stand disposed of. True certified copies of this order be placed in the case files of each matter.
57. File be consigned to the Registry.


सत्यमेव जयते
HAREERA
GURUGRAM

V.1 - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 05.10.2023