



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

Complaint no.	2696 of 2022
Date of filing complaint	30.05.2022
Reserved on:	26.07.2023
Date of pronouncement	04.10.2023

1. Gagan Bansal 2. Amit Bansal Address: - 1401, Tower-5, The Close South, Nirvana Country, South City-II, Gurugram-122018, Haryana	Complainants
Versus	
Emaar India Limited Address: - Emaar Business Park, MG Road, Sikanderpur, Sector-28, Gurugram-122002	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Akhil Agarwal (Advocate)	Complainants
Shri Dhruv Rohatgi (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Occupation certificate granted on	17.10.2019 [page 138 of reply]
3.	Unit no.	PGN-02-0404 [page 60 of complaint]
4.	Area of the unit	1720 sq. ft
5.	Provisional allotment letter issued on	17.01.2014 [page 56 of complaint]
6.	Date of execution of buyer's agreement	31.01.2014 [page 62 of complaint]
7.	Possession clause	10. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's</i>

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		<p><i>Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty six) months from the date of execution of Agreement, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied) [page 51 of complaint]</p>	
8.	Due date of possession	<p>31.01.2017 [Note: Grace period is not included]</p>	
9.	Total consideration	As per statement of account dated 11.03.2021, at page 150 of reply	As per payment plan annexed with the buyer's agreement
		Rs.1,46,94,823/-	Rs.1,40,31,676/-
10.	Total amount paid by the complainant as per statement of account dated 11.03.2021, at page 150 of reply	Rs.58,49,379/-	
11.	Offer of possession	<p>02.11.2019 [page 144 of reply]</p>	
12.	Cancellation letter issued by the respondent on	<p>31.03.2021 [Page 152 of reply]</p>	

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- i. That the Complainants were approached by the Respondent No.1 December, 2013 regarding the lucrative investment in the Project of the Respondent No.1. That the Respondent No.1 made tall assurance and promises, however, to the surprise of the Complainants all such claims proved to be completely false and were merely the tactic of the Respondent No.1 to lure the Complainants invest into the Project.
- ii. That Respondent No.1 sold a palace of dreams to the Complainants in order to lure him into investing the Project by falsely claiming/assuring the Complainants of huge return on investment (for short "ROI") of the Project by making multiple false claims/assurances/promises. A copy of the Welcome Letter dated 17.01.2014 issued by the Respondent No.1.
- iii. That based on the tempting and magnificent claims, assurances and proposals of the Respondent No.1, the Complainants were lured into buying a unit in the Project at the Basic Sale Price (BSP) of Rs.1,20,38,280/- and total consideration amounted to Rs.1,40,31,676.24/-. In pursuance of the same, the Respondent No.1 raised a huge demand from the Complainant of Rs.7,50,000/- on 09.01.2014 as booking amount.
- iv. That the provisional allotment letter was issued by the Respondent No.1 to the Complainants on 17.01.2014. That subsequently the Builder Buyer Agreement (for short "BBA") was executed between the Complainants and Respondent No.1 on

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31.01.2014. Following this, the Complainants paid Rs.6,66,999/- and Rs.18,32,274.49/- to the Respondent No.1 by 10.03.2014 as per the demands raised by the Respondent No.1. That by 10.03.2014, Complainants had paid a total amount of Rs.32,49,273/- to the Respondent No.1.

v. That in March, 2014, Complainants had informed that they wish to take loan for payment of the balance consideration and in pursuance of the same Respondent No.1 issued a letter dated 11.04.2014 to Respondent No.1 No.2 giving its permission to mortgage the said Unit to Respondent No.2 for the loan with respect to balance consideration. That in respect of the same a Tripartite Agreement dated 11.04.2014 was entered into and executed between the Complainants, Respondent No.1 and Respondent No.2 and in furtherance of which a Loan Agreement was executed between the Complainants and Respondent No.2 on 14.04.2014 for the sanctioned loan amount of Rs.1,05,00,000/-.

vi. As per the demand raised by the Respondent No.1, the Respondent No.2 disbursed a loan amount of Rs.21,94,762/- on 15.04.2014 directly to the Respondent No.1. As a result, Complainants had to pay a pre-EMI to Respondent No.2 every month amounting to Rs.24,261/-.

vii. That as per clause 10(a) of the BBA, the Respondent No.1 was supposed to hand-over the possession to the Complainants within 36 months from the date of execution of BBA, i.e. the due date of possession was 30.01.2017. However, the Respondent No.1 outrightly and abundantly failed to offer possession within the time line as promised.

- viii. That when the Respondent No.1 failed to deliver possession even after a span of huge two years, the Complainants made multiple requests to the Respondent No.1 to terminate the BBA and refund the amount to the Complainants. However, for reasons best known to the Complainants the Respondent No.1 never adhered to the multiple requests made by the Complainants.
- ix. On the contrary, the Respondent No.1 offered the Unit for possession on 02.11.2019 (however, the said communication was not received by the Complainants) and started pressurising the Complainants to take the possession when the Complainants were repeatedly making requests that they were no longer interested in taking the possession due to huge delay in possession and requested for the refund.
- x. That in order to force the illegal possession on the Complainants, the Respondent No.1 issued a letter dated 01.03.2021 to the Complainants threatening that in case the Complainants do not take the possession an entire amount shall stand forfeited and only a meagre amount of Rs.3,91,183/- shall be refunded which was not just contrary to law but was an abuse by the Respondent No.1 of its dominant position.
- xi. The Complainants against sternly objected to the same by visiting the office of the Respondent No.1 personally but to no avail and Respondent No.1 continuing with its illegal and malicious conduct cancelled the Unit without any intimation to the complainants. That the Complainants became aware of the same only vide letter dated 20.08.2021 issued by the Respondent No.2 to the Complainants wherein the Respondents had foreclosed the loan

Agreements. That it was only due to the default of the Respondent No.1 that the Complainants were forced to pay a huge amount of Rs.21,70,116/- to the Respondent No.2 as pre-Emi till 2021 and the Complainants are therefore, cheated and put to huge loss and damages due to failure of the Respondent No.1 to comply with its contractual obligations under BBA.

xii. That when the Respondent No.1 deliberately chose to ignore the requests raised by the Complainants despite various visits and phone calls to the Respondent No.1 for refund of the money. However, the Respondent No.1 outrightly denied to refund the hard-earned money of the Complainant which is contrary to the law.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondents to refund the entire paid-up amount along with interest at the prescribed rate.
- ii. Direct the respondent to pay compensation and litigation costs.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:

- i. That the complainants has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 31.01.2014, as shall be evident from the submissions made in the following paras of the present reply. The



Respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the Buyer's Agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the Respondent as well as the Complainants.

- ii. That the Complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. It is submitted that the Respondent has already offered possession of the unit in question to the Complainants, who has failed to complete all the formalities and take the possession of the unit, as such, the Respondent has already complied with its obligations under the Buyer's Agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel.
- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- iv. That the Complainants are not "Allottees" but are Investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- v. That the instant complaint is barred by limitation. The Complainants have alleged that the Respondent was obligated to offer possession of the unit in question by January, 2017 and by



way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favour of the Complainants in 2017 and consequently the instant complaint is barred by limitation.

vi. That the Complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.

vii. That the Complainants had approached the Respondent expressed an interest in booking an apartment in the residential group housing colony developed by the Respondent and booked the unit in question, bearing number PGN-02-0404, situated in the project developed by the Respondent, known as "Palm Gardens" at Sector 83, Village Kherki Daula, Gurugram, Haryana. That thereafter the Complainants vide application form dated 04.01.2014 applied to the Respondent for provisional allotment of a unit bearing number PGN-02-0404 in the project. 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 the Respondent to undertake development of the same, that the Complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the Respondent. The Complainants consciously and willfully opted for a completion linked payment



plan for remittance of the sale consideration for the unit in question and further represented to the that the Complainants shall remit every installment on time as per the payment schedule. The Respondent had no reason to suspect bonafide of the Complainants. That the Respondent issued the provisional allotment letter dated 17.01.2014 to the Complainants.

viii. That subsequently, Respondent sent the Buyer's Agreement to the Complainants, which was executed between the parties on 31.01.2014. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed by the Complainants after reading and understanding the contents thereof to their full satisfaction. It is submitted that the rights and obligations of the Complainants as well as the Respondent are completely and entirely determined by the covenants incorporated in the Buyer's Agreement which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the Buyer's Agreement provides that subject to the Allottee having complied with all the terms and conditions of the Agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of execution of this Agreement. It has further been specified in the same clause that the Respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the Respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the Respondent as per the schedule of payment under the Buyer's



Agreement, the time for delivery of possession shall also stand extended.

- ix. That it is pertinent to mention that Clause 12(c) of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such Allottees who are not in default of their obligations envisaged under the Agreement and who have not defaulted in payment of installments as per the payment plan incorporated in the Agreement. Therefore, the Complainants, being defaulters, are not entitled to any compensation from the Respondent. That the Complainants are conscious and aware of the fact that they are not entitled to any right or claim against the Respondent. The Complainants has intentionally distorted the real and true facts and has filed the present complaint in order to harass the Respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- x. That it needs to be highlighted that the Complainants were not forthcoming with the outstanding amounts as per the schedule of payments. The Respondent had categorically notified the Complainants that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the Respondent to the Complainants that in the event of failure to remit the amounts mentioned in the said notice, the Respondent would be constrained to cancel the provisional allotment of the unit in question.
- xi. That furthermore, in clause 12(d) of the Buyer's Agreement it has been specified that in case of delay caused due to non- receipt of



occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. It needs to be highlighted that the Respondent completed construction and had submitted an application on 11.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo dated 17.10.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the Respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the Respondent does not exercise any influence over the same. Therefore, it is respectfully submitted that the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for the implementation of the project.

- xii. That in the meanwhile, the project was registered under the provisions of the Act. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017 has been appended with this reply as Annexure R-7. Furthermore, the registration has been extended by the Hon'ble Authority vide certificate dated 02.08.2019. Without admitting or acknowledging in any manner the truth or legality of the allegations leveled by the Complainant and without prejudice to the contentions of the Respondent. It is



respectfully submitted that the complaint preferred by the Complainant is devoid of any cause of action. It is submitted that the registration of the project was valid till 31.12.2019.

xiii. It is pertinent to mention that the Respondent on receipt of the Occupation Certificate, offered possession of the said unit to the Complainants vide the letter of offer of possession dated 02.11.2019 and subsequent reminders subject to making payments and submission of necessary documents. The copy of the letter of offer of possession dated 02.11.2019 along with reminder for possession. The Complainants have failed to comply with its obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued in favor of the Complainants in the facts and circumstances of the case.

xiv. That it is pertinent to mention that the Complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the Complainants refrained from obtaining possession of the unit in question. The Complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the Buyer's Agreement. Therefore, there is no equity in favor of the Complainants. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The Complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The Complainants have consciously and maliciously

refrained from obtaining possession of the unit in question. Consequently, the Complainants are liable for the consequences including holding charges, as enumerated in the Buyer's Agreement, for not obtaining possession or even cancellation of their allotment.

xv. That it is the obligation of the Complainants under the Act to take the possession of the Unit in question within two months of receipt of Occupancy Certificate of the Unit in question and to thereafter execute the Conveyance Deed. The Complainants are in breach of the Buyer's Agreement but also Section 19(10) of RERA (assuming without in any manner admitting the provisions of the Act to be applicable to the project in question), by failing to take possession of the unit even after two months from the date of receipt of the Occupation Certificate. The Complainants are responsible for all the consequences of breach of the Buyer's Agreement and violation of RERA.

xvi. It is submitted that the price of the said unit is Rs. 1,46,94,824/- plus stamp duty, registration charges etc. It is submitted that the Complainants had paid only an amount of Rs. 55,00,500/- to the Respondent till date. It is submitted that the Respondent issued multiple payment request letters but no heed was given to them by the Complainants.

xvii. That it is pertinent to note that due to the non-compliance of terms and conditions of the Buyer's Agreement and despite of issuing Letter of offer of possession, payment requests letters, notices, reminders, the Respondent didn't come forward to clear the outstanding dues and to take the possession of the said unit in



question, hence, the Respondent was constrained and left with no other option, but to cancel the said unit in question and to forfeit the money paid by the Complainants as per the terms and conditions of the Buyer's Agreement. That the cancellation letter dated 31.03.2021 cancelling the said unit in question was issued to the Complainants informing them about the termination of the Buyer's Agreement and forfeiture of the earnest money on accordance with the Buyer's Agreement. It is pertinent to note that the Complainants were duly informed about the refund of their balance amount after deducting all the charges as per the Buyer's Agreement.

xviii. That pursuant to the cancellation of the unit in question, the Respondent has refunded the money after deductions as per the Buyer's Agreement to the allottee as well as to the financier Bank of the Complainant. The copy of the Bank statement of the Respondent, reflecting the refund to the Bank.

xix. That, without admitting or acknowledging the truth or legality of the allegations advanced by the Complainants and without prejudice to the contentions of the Respondent it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the Complainant for seeking refund or

interest cannot be called in to aid, in derogation and in negation of the provisions of the Buyer's Agreement.

xx. That the Respondent has duly fulfilled its obligations under the Buyer's Agreement, by completing construction of the unit/tower, obtaining the occupation certificate in respect thereof from the competent authority and by offering possession of the same to the Complainants and even by compensating the Complainants as per the terms and conditions of the Buyer's Agreement. There is no default or lapse in so far as the Respondent is concerned. It is the Complainants, who have defaulted by not remitting the installments to the Respondent No. 1, hence, the allotment of the said unit of the Complainants was cancelled after deductions of the legitimate charges.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

7. 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

8. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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.

10. 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 Honble 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."

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. Entitlement of the complainants for refund:

F.1 Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

11. The complainants were allotted unit no. PG-02-0404, in the project "Palm Gardens, Sector 83," by the respondent builder for a total consideration of Rs. 1,40,31,676/- and they paid a sum of Rs. 58,49,379/- which is approx. 41% of the sale consideration. A buyer's agreement dated 31.01.2014 was executed between parties with regard to the allotted unit and the due date for completion of the



project and offer of possession was fixed on 31.01.2017. The complainants failed to pay amount due against the allotment unit.

12. As per 1.2 (b) the terms of the builder buyer agreement the complainants was liable to made the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

(b) Payment Plan

The Allottee(s) agrees and undertakes to pay the balance amount of the Total Consideration strictly in accordance with the payment plan detailed in "Schedule of Payment" annexed hereto at Annexure - 3 hereto. In the event the Allottee(s) fails, neglects and/or delays the payment of installments then, notwithstanding the right of the Company to cancel such allotment at its sole discretion at any time after such default in such payment occurs, the Company at its sole option and discretion, without prejudice to any other rights provided to it under this Agreement, waive such failures, neglects and/or delays in the payment of installments but on the condition that the Allottee(s) shall pay interest on the installment due, in addition to the installment due, to be calculated from the due date of outstanding installment charge simple interest @ 24% per annum till the date on which such installment is paid by the Allottee(s) to the Company. It is made clear and so agreed by the Allottee(s) that the exercise of such discretion to waive such failures, neglects and/or delays in the payment of installments by any one allottee(s) shall not be construed to be a precedent and/or binding on the Company to exercise such discretion in case of other allottee(s). In case of delay in making payment by the Allottee(s) to the Company as per the Schedule of Payments as stated in Annexure- 3, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money along with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature including brokerage paid by the Company to the brokers etc. ("Non Refundable Amounts"). The Company shall also be entitled to charge simple interest @ 24% p.a. at the time of every succeeding installment from the due date of installment, as per the Schedule of Payments, till the date of payment. However, the Company may in its sole discretion, waive its right to terminate this Agreement and enforce all the payments and seek specific performance of this Agreement. In such a case, the Parties agree



that the possession of the Unit will be handed over to the Allottee(s) only upon the payment of all outstanding dues, penalties etc., along with interest by the Allottee(s) to the satisfaction of the Company.

13. The respondent issued a reminder letter and thereafter, issued cancellation letter to the complainants. The Occupation Certificate for the project of the allotted unit was granted on 17.10.2019. It is evident from the above-mentioned facts that the complainants paid a sum of Rs. 58,49,379/- against sale consideration of Rs. 1,40,31,676/- of the unit allotted to them 17.01.2014. The complainants have failed to adhere to the terms and conditions of the builder buyer agreement. The respondent cancelled the unit of the complainants with adequate notices. Thus, the cancellation of unit is valid.
14. 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."

15. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after

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deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 30.03.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F.II Direct the respondent to pay litigation expense incurred by the complainants

16. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer to seek the relief of compensation.

G. Directions of the authority



17. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the paid-up amount of Rs. 58,49,379/- after deducting 10% of the sale consideration of Rs. 1,40,31,676/- with interest at the prescribed rate i.e., 10.75% on such balance amount, from the date of cancellation i.e., 31.03.2021 till the actual date of refund.
- 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.

18. Complaint stands disposed of.

19. File be consigned to registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.10.2023