BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**895 of 2022**
Date of complaint :	**03.03.2022**
Order pronounced on	**25.10.2023**

1. Neha Singh,
2. Rajesh Singh,

Both R/o: - 5A, Naman Villa,
New Patliputra Colony, Patna – 800013 (Bihar). **Complainants**

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj,
Western Avenue, Carippa Marg, Sainik Farms,
New Delhi- 110062. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Aditya (Advocate) Complainants
Garvit Gupta (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed *inter se* them.

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	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Date of environment clearances	23.10.2013 [**Note**: - the date of EC is taken from the complaint no. 737/2021/3678/2019 of the same project being developed by the same promoter]
7.	Date of revised environment clearances	31.07.2017 [**Note**: - the date of revised EC is taken from the complaint no. 737/2021/3678/2019 of the same project being developed by the same promoter]
8.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
9.	RERA registration valid up to	31.01.2023 5 Years from the date of revised Environment Clearance i.e., 31.07.2022 + 6 months in view of covid -19.
10.	Unit no.	C-272, 27th floor, Tower/block- C

		(Page 43 of the complaint)
11.	Unit area admeasuring	1197.830 sq. ft. (Page 43 of the complaint)
12.	Allotment letter	01.08.2014 (Page 37 of the reply)
13.	Date of execution of agreement to sell – Raheja Revanta	01.08.2014 (Page 39 of the complaint)
14.	Possession clause	**4.2 Possession Time and Compensation** *That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser* ***within thirty-six (36) months in respect of 'TAPAS' Independent Floors*** *and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above****. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the*

		Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....." (Page 53 of the complaint).
15.	Grace period	**Allowed** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by August 2018. As per agreement to sell, the construction of the project is to be completed by August 2018 which is not completed till date. **Accordingly, in the present case the grace period of 6 months is allowed.**
16.	Due date of possession	01.02.2019 (Note: - 48 months from date of agreement i.e., 01.08.2014 + 6 months grace period)

17.	Basic sale consideration as per BBA at page 73 of the complaint	Rs.96,04,781/-
18.	Amount paid by the complainants	Rs.30,74,457/- (As per customer ledger dated 23.01.2023 at page 21 of the reply)
19.	Occupation certificate /Completion certificate	Not received
20.	Cancellation letter	21.10.2016 (Page no. 87 of the complaint)

B. Facts of the complaint

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

I. That for marketing and promotional purposes, the respondent advertised the project through print media as well as through its channel partners. In 2014, the complainants came across such advertisements and were approached by the channel partners of the respondent seeking investment in the project.

II. That the complainants thus decided to purchase a unit in the project and accordingly made payment of Rs.30,74,457/- towards purchase of the same in June 2014. Thereafter, the respondent issued an 'Allotment Letter' dated 01.08.2014 to the complainants in reference to allotment of unit no. C-272, Tower C in the said project, admeasuring 1197.83 sq. ft. An agreement to sell was executed on 01.08.2014 itself between the parties in furtherance of the purchase of the unit.

III. Thereafter, on 07.09.2015 the complainants received a communication from the respondent calling upon the complainants to make further payments towards purchase of the unit. However,

due to financial crises, the complainants were unable to make further payments and responded *vide* email dated 21.09.2015 seeking time for making further payments. In the said email, the complainants informed the respondent that they had been trying to get in touch with their executives to discuss the same who were not attending to the calls of the complainants for reasons best known to them. The complainants further intimated the respondent that they were ready and willing to make payments in small instalments till April 2016 post which the complainants would take a bank loan to clear the remaining payment.

IV. That no response was received to the abovementioned email dated 21.09.2015, the complainants repeatedly followed up telephonically with the executives of the respondent regarding the above and the complainants were assured that the issue was being considered and looked into by the respondent.

V. That after a period of more than one year, the complainants were shocked to receive a 'Termination/ Cancellation Notice' dated 21.10.2016, wherein the respondent unilaterally cancelled the allotment of the unit made in favour of the complainants without providing sufficient opportunity of being heard. The said notice contained incorrect averments including the purported amount pending against various instalments on the part of the Complainants which was arbitrarily arrived at. While it was admitted in the said notice that Rs.30,74,457/- has been paid by the complainants towards purchase of the unit, the respondent purported to wrongly forfeit major portion of the abovementioned payment which was calculated in a whimsical manner and without any justification.

VI. Thereafter, the complainants visited the office of the respondent several times to discuss the matter but were brushed away after being repeatedly told that the unit in their name stood terminated and no details were available with the respondent. They continued to follow up with the respondent but the issue remained unaddressed.

VII. That the complainants have been approaching the respondent for years now, it appeared that the respondent had no intention to address the matter and work towards a resolution. Therefore, they were constrained to send an email to the respondent on 25.10.2021 seeking return/refund of the entire monies paid by them towards purchase of the unit along with interest.

VIII. That the complainants sent a follow up communication on 16.11.2021. The said email was subsequently acknowledged by the respondent *vide* their response dated 17.11.2021. However, the said response was vague and dilatory in nature wherein it was stated that *"We have noted all your concerns and deliberating the same internally. You are requested to kindly bear with us for some time to give an update on the same."*

IX. That no response was forthcoming from the respondent, the complainants, through their counsels, issued a legal notice to the respondent on 15.12.2021, *inter alia* calling upon the respondent to immediately make payment of the entire amount paid by the complainants towards purchase of the unit i.e., Rs.30,74,457/- along with interest at 18% compounded monthly till date of payment.

X. That the respondent cannot forfeit amount in excess of 10% of the total sale consideration of the unit under the applicable law

including the relevant regulations 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.

XI. That the respondent is acting in an arbitrary and whimsical manner inasmuch as the respondent has failed to return the monies to the complainants which is in clear violation of the mandate of the 2016 Act, 2017 Rules and the 2018 Regulations. The complainants thus have no alternative but to seek redressal before this authority for the fraud and illegal acts committed upon them by the respondent.

C. Relief sought by the complainants:

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

I. Direct the respondent to refund the entire paid-up amount to the complainants along with prescribed rate of interest.

D. Reply by the respondent

5. The respondent contested the complaint on the following grounds: -

i. That the agreement to sell was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the RERA Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project vide registration no. 32 of 2017 dated 04.08.2017 with the Authority.

ii. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the

dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 14.2 of the buyer's agreement.

iii. That the complainant had applied for allotment of a plot in the project named "Raheja's Revanta" at Sector 78, Gurgaon Haryana vide his booking application form. Thereafter, a buyer's agreement dated 01.08.2014 was executed between the parties for unit no. C-272, tower-C, and the complainant agreed to be bound by the terms contained therein.

iv. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement as per clause 4.2.

v. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainants made the payment of the earnest money and part-amount of the total sale consideration and was bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage. However, the complainants defaulted in adhering to their contractual obligations.

vi. That it was agreed vide clauses 3.14 of the agreement that timely payment of the installment was the essence of the allotment and in the failure of the complainants to adhere to the same.

6. 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 submissions made by the parties.

E. Jurisdiction of the authority

7. The authority has complete territorial and 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, 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

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) 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.*

10. 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.

11. 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. 2021-2022 (1) RCR (Civil), 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."*

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

F. Findings on the objections raised by the respondent

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

13. Another objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The*

Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

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

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

16. The agreement to sell entered into between the two sides on 01.08.2014 contains a clause 14.2 relating to dispute resolution between the parties. The clause reads as under: -

> *"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

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

consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

18. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*
>
> > *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
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> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*
>
> *...*
>
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

19. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in *case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

20. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction

to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to refund the entire paid-up amount to the complainants along with prescribed rate of interest.

21. The complainant was allotted unit no. C-272, 27th floor, in tower/block- C, in the project "Raheja Revanta" by the respondent/builder for a total consideration of Rs.96,04,781/-. A buyer's agreement was executed on 01.08.2014. The possession of the unit was to be offered within 48 months from the date of the execution of the Agreement to sell plus the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. Therefore, the due date of possession comes out to be 01.02.2019 along with grace period of 6 months.

22. The respondent-builder cancelled the unit of the complainant vide letter dated 21.10.2016 after issuance of demand letters and reminders dated 30.06.2015, 30.072015, and 23.09.2015, respectively on account of non-payment of consideration amount by the allottees.

23. On considering the documents available on record as well as submissions made by the parties, it can be ascertained that the complainant has 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. Accordingly, the respondent after giving reminders dated 30.06.2015, 30.07.2015, and 23.09.2015 cancelled the unit of the complainant vide letter dated 21.10.2016. The respondent has given sufficient opportunities to the complainant before proceeding with termination of allotted unit and the same is

held to be valid as per the terms and conditions of buyer's agreement dated 01.08.2014. But while cancelling the unit, it was an obligation of the respondent to return the paid up amount after forfeiting the amount of earnest money. As per clauses 3.6 and 3.7 of the agreement to sell, the respondent /promoter has a right to cancel the unit in case the allottees breached the agreement to sell executed between both the parties. Clauses 3.6 and 3.7 of the agreement to sell is reproduced as under for a ready reference:

3.6 Earnest Money 3.6

That the Purchaser agrees that out of the amount(s) paid by him towards the sale price, the ***Seller shall treat 10% of the Sale Price as Earnest Money to ensure fulfilment by the Purchaser of the terms and conditions as contained herein.*** *Timely payment is the essence of the terms and conditions, of this Agreement to Sell and the Purchaser is under an obligation to pay the sale price as provided in the payment plan along with the other payments such as PLC, EDC, IDC, parking charges, club membership charges,, applicable stamp duty, registration fee, maintenance security etc, and other charges on or before the due date or as and when demanded by the Seller, as the case may be and also to perform and observe all other obligations of the Purchaser under this Agreement.*

3.7 Failure/Delay in Payment

If there is delay or default in making payment of the installments by the Purchaser, then the Purchaser shall pay to the Seller interest which shall be charged @ 18% per annum from the due date of payment of installment on monthly compounded basis. However, if the payment is not received within 90 days from the due date or in the event of non-fulfilment/breach of any of the terms and conditions of this allotment, Agreement to sell or Conveyance Deed by the Purchaser, including withdrawal of the application and/or also in the event of failure by the Purchaser to sign and return to the Seller Agreement to sell on Seller's standard format within thirty (30) days from the date of its dispatch by the Seller, the booking will be cancelled at the discretion of the Seller and earnest money paid to the Seller by the Purchaser along with interest on delayed payments and brokerage paid, if any shall stand forfeited and the Purchaser shall be left with no right, title, interest, lien or claim of whatsoever nature on the said apartment. The balance amount after above deductions shall be refundable to the Purchaser without any interest, after the said unit is allotted to some other Purchaser. The dispatch of said cheque by registered post/speed-post to the last available address with the Seller as filled up in the application form (as applicable) shall be full and final discharge of all the obligations on the part of the

Seller or its employees and the Applicant (s)/intending allottee (s) will not raise any objection or claim on the Seller after this. The Seller may at its sole discretion condone the breach by the Purchaser and may revoke cancellation of the allotment provided the unit has not been re-allotted to some other person and the Purchaser agrees to pay the upto-date interest and the unearned profits (difference between his booking price and prevailing sales price) in proportion to total amount outstanding on the date of restoration and subject to such additional conditions/undertaking as may be decided by the Seller. Further if any Purchaser at any stage wants to withdraw his application for booking for any reason whatsoever, it shall be deemed as cancellation by the Purchaser and in that eventuality, Seller shall be entitled to forfeit earnest money paid by the Purchaser. The balance amount (after deducting the earnest money, outstanding interest for delayed payments, brokerage/ commissions etc. if any) shall be refundable to the Purchaser without any interest, after the said unit is allotted to some other intending Purchaser.

24. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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 farmed 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."*

25. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the paid-up amount of the complainant after deducting 10% of the sale consideration being earnest money along with interest at the prescribed rate i.e., 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 termination/cancellation i.e., 21.10.2016, till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

26. 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.30,74,457/- after deducting 10% of the sale consideration being earnest money along with interest at the prescribed rate

i.e., 10.75% on the refundable amount, from the date of termination/cancellation i.e., 21.10.2016 till date of actual 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.10.2023