

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

Complaint no.:	6598 of 2022
Order Reserved on:	21.09.2023
Order pronounced on:	19.10.2023

Mamta Sharma R/O: House No. 21A, Friends Colony, Jharsa Road, Gurugram Haryana - 122001	Complainant
Versus	
1. M/s Godrej Properties Ltd. Regd. Office: 3rd Floor, UM House, Tower-A, Plot No. 35, Sector- 44, Gurugram Haryana 2. M/s Godrej One Regd. office: Godrej One, 5th floor, Pirojshanagar, eastern expressway highway, Vikhroli, Mumbai- 400079	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Vaibhav Kaushik (Proxy Counsel)	Complainant
Shri Rajat Tanwar (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name and location of the project	"Godrej Habitat", sector-3, Gurgaon
2.	Nature of the project	Group housing colony
3.	Project area	7.46 acres
4.	DTCP license no.	18 of 2018 dated 26.02.2018 Valid up to 25.02.2028
5.	RERA Registered/ not registered	11 of 2019 dated 11.03.2019 Valid up to 25.02.2023
6.	Date of allotment	13.02.2020 (Page no. 19 of complaint)
7.	Unit allotted	Tower-4-0306, Tower-4, 3 rd floor (Page no. 28 of complaint)
8.	Unit admeasuring area	116.62 sq. mt. (carpet area) (Page no. 28 of complaint)
9.	Date of builder buyer agreement	01.02.2021 (Page no. 24 of complaint)
10.	Possession clause	7. POSSESSION OF THE UNIT 7.1 Schedule for possession of the said unit "The Developer agrees and understands that timely delivery of



		<p><i>possession of the Unit along with Car Park Space (if applicable) to the Allottee(s) and the Common Areas and Facilities and the Limited Common Areas and Facilities to the Association of Allottees or the Competent Authority, as the case may be, as provided under Rule 2(1) (f) of Rules, is the essence of the Agreement.</i></p> <p><i>The Developer shall offer possession of the units falling in the Project on or before February 25, 2023 with additional grace period of upto 12 (twelve) months as may be approved by Real Estate Regulatory Authority ("RERA") or such extended period as may be granted by RERA ("Completion Time Period") as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project, reasons beyond the control of the Developer and/or its agents, due to non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s). If the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Unit"</i></p> <p>(Page no. 36 of the complaint)</p>
11.	Grace period	<p>The respondent/promoter has sought the grace period of 12 months as may be approved by the Real Estate Regulatory Authority. However, as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having</p>

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		completion date on or after 25.03.2020, the Authority allowed the grace period of 6 months only being unqualified.]
12.	Due date of possession	25.08.2023
13.	Total sale consideration	Rs.1,43,04,927/- (Page no. 21 of complaint)
14.	Total amount paid by the complainants	Rs.14,30,000/- (Page no. 16 of complaint)
15.	Termination Letter	02.03.2021 (Page no. 56 of reply)
16.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint.

- I. That on the basis of assurances and representations made by the respondents who boasted of the project in relation to its location, clarity of title documents, strict observance to scheduled timelines of completion and quality of construction and other amenities and similar allurances made in their public advertisements also, the complainant was persuaded by the respondent no. 1 to purchase an apartment in the said project and accordingly, the claimant tendered various amounts towards booking and allotment amounts aggregating to Rs.14,30,000/-.
- II. That the amounts were to be tendered for a construction linked plan after execution of the agreement to sell but the respondent initially delayed the same and subsequently entered into an ante



dated 48 pages detailed agreement to sell which the complainant repeatedly requested to be rectified but the respondent maintained hostile attitude after initial assurances to do the needful shortly. The said agreement and the final request dated 09.09.2021, issued through speed post (requesting to rectify the error) are already on record.

- III. That the respondents instead of curing the material defect, have continued to maintain their hostile attitude ever since. That of late, the respondents have threatened to cancel the sale agreement and to usurp the entire money of the complainant which is being used and utilized by the respondents. The respondent no. 1 despite receipt of the aforesaid email, sent to them by her and without caring to comply with the requisitions contained therein, are hell bent to usurp the money infused by the complainant.
- IV. That the complainant has made huge payments to the respondents but the respondents have failed to comply with their obligation of providing a genuine sale agreement. The respondents are acting in most despotic and horrendous manner, which amounts to unfair trade practice as well as such act is against the settled principle of law and natural justice.
- V. That being aggrieved with the unabated acts of unwarranted harassment and exploitation by the respondents, the complainant does not want to continue with the said project and wants to

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withdraw from the said project and wants to get refund of her amount paid to the respondent along with interest and compensation, as already conveyed to the respondents.

- VI. That in view of Sections 3, 12, 18, 19(1), 19 (2), 59, 60 and Section 61 of the Act, 2016 the complainant is entitled to refund of entire amount paid to the respondents along with interest at the prescribed rate from the date of application for allotment. Furthermore, as per the provisions of Rule 15 of the Rules of 2017, the complainant is entitled for interest on the amount paid to the respondents at the rate prescribed under the Act, 2016 and for the sake of brevity and convenience the relevant provisions.

C. Relief sought by the complainant:

4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondent to withdraw the termination letter of the allotted unit and to adjust the amount already paid and handover/allot the unit of the complainant on the payment of remaining of the sale consideration with or without interest pay the interest as the authority may deem fit. (An application for amendment of relief sought seeking withdraw the termination letter of the allotted unit and to adjust the amount already paid instead of refund of the paid up amount).
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

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D. Reply by respondents:

6. The respondents have contested the present complaint on the following grounds:

- i. That the present complaint is a gross abuse of the process of law and has been filed with the sole intent of arm-twisting, harassing and coercing the respondent into accepting the illegal, unfair and unethical demands of the complainant. As such, the captioned complaint is a glaring example of a party to a contract, resorting to frivolous and vexatious litigation, in order to conceal its own default.
- ii. That the complainant has mischievously concealed the application form as the bare perusal of the same would reveal that the complainant after going through and understanding the payment schedule duly executed the application form out of her own free will and consent. That the complainant in its case has mischievously alleged that there was any discrepancy on the date of the impugned sale agreement. There is no defect on the BBA as alleged by the complainant and same issue has been raised as an afterthought in order to avoid forfeiture of the booking amount as agreed under the agreement.
- iii. That the Complainant with malafide intent concealed various emails wherein the respondent had shared the BBA and requested the complainant to come forward for the registration of



the BBA. However, the complainant delayed in execution of the same due to its in capabilities to fulfill contractual obligations. The said factum is evident from the emails dated 14.02.2020, 04.09.2020, 05.09.2020, 08.09.2020, 18.09.2020 wherein the respondent kept requesting the complainant to come forward and execute agreement but to no avail.

- iv. Thereafter, due to Covid restrictions imposed by the Government of India, the respondent granted another opportunity vide email dated 06.10.2020 requesting the complainant to give its consent with regard to the payment schedule and registration of the BBA to which the complainant gave its consent agreeing to the terms and conditions of the BBA. Relevant extract of the email dated 06.10.2020 is reproduced herein below:

"I agree your term and condition regarding registration"

- v. That the complainant vide email dated 06.10.2020 confirmed the terms and conditions of the BBA for the registration and she never raised any objection with regard to the payment schedule or any term in the BBA. Further, after several request, the complainant vide email dated 30.01.2021 confirmed 01.02.2021 as a date for the registration of BBA.
- vi. That the complainant from the inception failed to make timely payments of the installments in the manner specified in the

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'Schedule of Payments' set out in Schedule VI and committed default as per clause 9.3 of the agreement.

- vii. Despite granting several opportunities and reminders to clear its outstanding dues, the complainant defaulted in making payments as per the payment plan and as such the respondent was constrained to terminate and cancel the booking of the complainant in terms of the agreement.
- viii. That the complainant initially vide email dated 01.05.2019 sought cancellation of the unit booked. The respondent vide a reply dated 02.05.2019 communicated that in case of cancellation by the complainant due to reasons not attributable to the respondent's default, then the amount paid i.e., the booking amount by the complainant shall stand forfeited as per the agreed terms and conditions of the application form. However, upon realizing that there will be no refund to the amount paid, the complainant decided to continue with the project.
- ix. That the real reason for filing the instant complaint is the inability of the complainant to make timely payments as per the payment schedule and wants to arbitrarily seek exit without deduction of the earnest money.
- x. That the complainant booked an apartment with the respondent no. 1 in the above-mentioned project vide an application form dated 16.04.2019. The complainant unequivocally agreed to make

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timely payments as per the payment plan provided under the contractual documents. It was made clear to the complainant that timely payment will be the essence of the transaction. That the complainant made the booking after carefully going through the terms and conditions as mentioned in the application form.

- xi. That pursuant to the said application, the complainant was allotted a unit bearing no. 0306 on 3rd floor, in Tower - 4 of the said project vide an allotment letter dated 13.02.2020. Further, the respondent vide email dated 14.02.2020 sent the copy of the BBA and requested the complainant to come forward for registration of the BBA.
- xii. Thereafter approached the respondent multiple times for the execution and registration of the apartment buyer's agreement, however, the complainant kept on delaying the same on one pretext or another. It is pertinent to mention that the BBA was registered between the parties only on 01.02.2021, due to several delays on the part of the complainant.
- xiii. That the total cost of the apartment was Rs.1,27,73,146/- wherein the complainant opted for a construction linked plan and the complainant paid a sum of Rs.14,30,000/- towards the partial consideration.
- xiv. That as per the application form (Clause 4)/allotment letter & BBA, it was clearly stated that 10% of the cost of the property

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shall be treated as booking amount. The booking amount/earnest money was meant to ensure compliance on the part of the complainant. The clause of BBA is reproduced herein below for the ease of reference:

"4. It is to be understood by the Applicant(s) that 10% of the Cost of Property shall be construed, considered and treated as "Booking Amount", to ensure the performance, compliance and fulfilment of his/her obligation under this Allotment Letter / Agreement for Sale."

- xv. That as per clause 7.5 of the agreement, it was clearly understood between the parties that if the complainant withdraws from the project and without any defaults on part of the respondent, the respondent shall be entitled to forfeit various amounts paid by the complainant.
- xvi. That as per clause 9 of the agreement clearly stated that if the complainant fails to pay any instalment or part thereof of the balance consideration, then the respondent may cancel the allotment and/or terminate the apartment buyer's agreement and be entitled to forfeit the booking amount or the entire amount paid by the complainant.
- xvii. That the complainant vide email dated 01.05.2019 sought cancellation of the unit booked. The respondent vide a reply dated 02.05.2019 communicated that in case of cancellation by the complainant due to reasons not attributable to the respondent's default, then the amount paid i.e., the booking

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amount by her shall stand forfeited as per the agreed terms and conditions of the application form. However, upon realizing that there will be no refund to the amount paid, the complainant decided to continue with the project.

- xviii. That the complainant failed to clear the outstanding amount and as such the respondent was constrained to issue reminder letters dated 12.11.2019, 28.11.2019 & Pre-termination letter dated 19.01.2020 to clear the pending amount due to the respondent.
- xix. Thereafter, the respondent further raised 2 payment invoice on 06.10.2020 for an amount of Rs.14,30,492/- each for within 75 days from the date of the booking and within 180 days from booking and the same was due for payment on 09.10.2020. Thereafter, the complainant again failed to clear the outstanding amount and as such the respondent was constrained to issue reminder letters dated 21.10.2020, 05.11.2020, 25.11.2020 & 10.02.2021 to clear the pending amount due to the respondent.
- xx. That after several requests and repeated reminders from the respondent, the complainant finally agreed to execute and register the agreement on 01.02.2021.
- xxi. That owing to the continuous default on the part the complainant, the respondent sent the pre-termination letter dated 15.02.2021 for the apartment booked by the complainant and once again requested the complainant to clear the outstanding and intimated

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that the non-payment of the outstanding would result in the cancellation of the apartment and the respondent would be entitled to forfeit the amounts as specified in the application form/allotment letter.

- xxii. That pursuant to the issuance of the pre-termination letter dated 15.02.2021, the complainant submitted a cheque bearing no. 664867 dated 25.02.2021 for an amount of Rs.2,00,000/- towards the partial payment of the dues. However, the same was dishonored and returned stating "**Insufficient Funds**".
- xxiii. That the complainant failed to make full payment along with interest despite sending several reminder letters and emails and as such the respondent was constrained to issue the termination letter dated 02.03.2021 as per the terms of agreement. After the issuance of the termination letter, the complainant requested to alter the payment plan already agreed between the parties in the application form and the agreement executed. However, the respondent informed the complainant vide email dated 23.07.2021 that since the payment plan was already agreed and the agreement was already executed between the parties, the payment could not be changed.
- xxiv. Therefore, this authority after taking due cognizance of the preliminary submissions, which are taken in alternative and without prejudice to each other, stating clearly and unequivocally

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the grounds for dismissal of the instant complaint, may dismiss the present complaint forthwith with exemplary costs.

7. 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 these undisputed documents and submission made by the parties.
8. On the last date of hearing i.e., 21.09.2023 the counsel for the respondent submitted that they would be willing to cancel the termination subject to payment of the ~~remaining~~ ^{remaining} amount along with interest and the same was agreed by the complainant. Thereafter, an application with regard to amendment of relief sought from refund to re-allotment of the allotted unit was filed on 13.10.2023 by the complainant.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning



area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to withdraw the termination letter of the allotted unit and to adjust the amount already paid and handover/allot the unit of the complainant on the payment of remaining of the sale consideration with or without interest pay the interest as the authority may deem fit.

11. The complainant was allotted a unit in the project of respondent "Godrej Habitat", in Sector 3, Gurugram. The complainant has paid Rs.1,00,000/- as booking amount on 31.03.2019. An allotment letter dated 13.02.2020 for the allotment of the unit no. 0306, 3rd floor in

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Tower- 4, for the total consideration of Rs.1,43,04,927/-. Thereafter, a buyer's agreement was executed between the parties on 01.02.2021. The complainant submitted that she has suffered huge financial loss due to false and incorrect ante date of agreement to sell and further due to false assurances given by the respondent for rectifying the inherent defect in the sale agreement. The complainants started paying the amount due against the allotted unit and paid a total sum of Rs.14,30,000/-.

12. That the counsel for the respondent states that the complainant has been called several times through various letters to pay the outstanding dues, but the complainants failed to make the outstanding dues. Thereafter the complainants were given last opportunity to clear the dues vide reminder letters dated 12.11.2019 and 28.11.2019 and the pre-termination letter dated 19.01.2020. Thereafter, the complainant has making the dues as per demands letter and paid an total amount of Rs.14,30,000/- on 29.01.2020 against the sale consideration of Rs.1,43,04,927/-.
13. On the documents and submission made by the parties, the authority observes that the builder buyer agreement was executed between the parties on 01.02.2021 and the complainant was required to pay installments as per the time linked payment plan. As per the payment plan the next payment was to be made within 75 days of booking/BBA/allotment letter i.e., 28.04.2020 and during that period a nationwide lockdown was imposed by the government due to spread of covid-19 pandemic. In accordance with the payment plan agreed between the parties, the respondent has sent various reminder letters dated 21.10.2020, 05.11.2020, 25.11.2020 and 10.02.2021 to the complainant

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for clearing the outstanding dues. Thereafter, the respondent has also sent the pre-termination letter dated 15.02.2021. Further, the complainant has pay an amount of Rs.2,00,000/- through cheque bearing no. 664867 dated 25.02.2021 and the same was dishonoured and returned stating "Insufficient Funds". She has failed to make full payment along with interest despite sending several reminder letters and emails and such as the respondent was constrained to issue termination letter dated 02.03.2021 as per the terms of agreement.

14. The respondent/promoter in the builder buyer agreement under the clause 7.1 itself has sought the grace period of 12 months as may be approved by the Real Estate Regulatory Authority on account of force majeure events, court orders, government guidelines etc. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020. Thus, the said pre termination letter dated 18.05.2020 cannot be held valid in the eyes of law. In the instant complaint, the due date of handing over of possession comes out to be 25.02.2023 and grace period of 6 months on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Therefore, the due date shall be 25.08.2023.
15. During proceeding dated 21.09.2023, the counsel for the complainant states that much prior to the BBA the allottee through an e-mail dated


01.05.2019 requested for withdrawal of booking application. However, the responded vide e-mail dated 02.05.2019 that the entire booking amount is liable to be forfeited. BBA dated 01.02.2020 and executed only on 01.02.2021. However, the date of said BBA is even prior issuance of allotment letter which is dated 13.02.2020 at page 19 at Annexure-II.

Since the agreement executed is in contravention to the model BBA which provides for return of the money in case the agreement is not executed while the agreement provided by the builder provides for forfeiture of earnest money and the unit was terminated. On 01.03.2021 one e-mail is received by the allottee and same day in the evening cancelled the unit while the complainant sent an e-mail for submission of second cheque. No notice issued giving 7 days time for depositing outstanding amount.

16. The counsel for the respondent states that cancellation of unit was made after giving three reminders. The BBA was sent to the allottee vide e-mail dated 14.02.2020 but the allottee came forward to execute only in 2021 and finally executed on 01.02.2021. Four reminder letters dated 21.10.2020, 05.11.2020, 25.11.2020 and 10.2.2021 were issued and pre termination was issued on 15.02.2021 and after the same one cheque dated 25.02.2021 for Rs.2.00 lakh was submitted but the same was also bounced. Vide letter dated 01.03.2021 it was only an intimation that cheque has bounced as pre termination letter was also issued on 15.02.2021. The counsel for the respondent states that still unit can be considered for allotment if the allottee is willing to make the payment along with interest.

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17. Thereafter, an application with regard to amendment of relief sought was filed on 13.10.2023, from refund to withdraw the termination letter of the allotted unit and to adjust the amount already paid and handover/allot the unit of the complainant on the payment of remaining of the sale consideration with or without interest pay the interest as the authority may deem fit. The counsel for the respondent submitted that they would be willing to cancel the termination subject to payment of the remaining amount along with interest and the same was agreed by the complainant.
18. In view of the same, respondent is directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest. Accordingly, as per section 19(6) & 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding amount from the allottee. Thereafter, complainant/allottee shall make the requisite outstanding payments within next 6 weeks along with interest at the prescribed rate i.e., 10.75% as per the provisions of builder buyer agreement ^{which} the respondent/promoter may consider cancellation of the subject unit allotted to the complainant/allottee as per the terms of the buyer's agreement and the provisions as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

 G. **Directions of the Authority:**

19. 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) of the Act.
- i. The respondent is directed to withdraw the termination letter dated 02.03.2021 and restore the allotted unit of the complainants within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 10.75% p.a. on the outstanding amount towards complainant/allottee as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
 - ii. The complainant/allottee shall make the requisite payments at the prescribed rate of interest i.e. 10.75% of the subject unit as per the provisions of sections 19(6) & (7) of the Act of 2016, within a period of next 6 weeks failing which the respondent/promoter may consider cancellation of the subject unit allotted to the complainant/allottee as per the terms of the buyer's agreement and the provisions as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.
 - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,



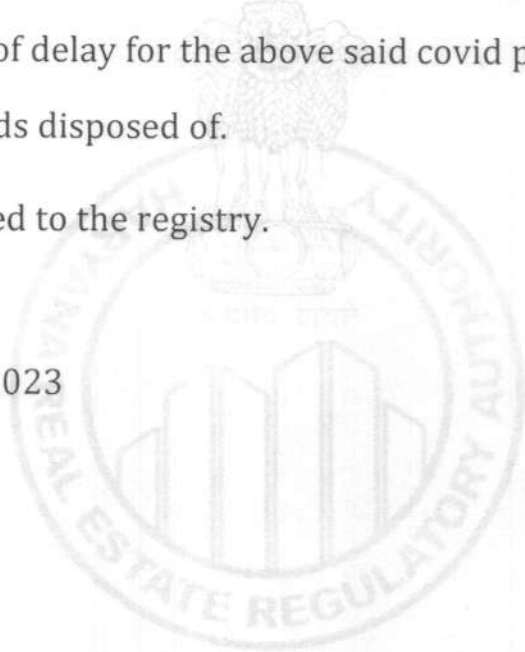
10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default in making payment as per section 2(za) of the Act.

- iv. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said covid period.

20. Complaint stands disposed of.

21. File be consigned to the registry.

Dated: 19.10.2023



V.K. - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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