

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

Complaint no. :	8031 of 2022
Date of Filing Complaint:	03.01.2023
Date of Decision:	15.09.2023

1. Praveen Kumar Gupta 2. Rekha Bansal R/O: F-203A, Laxmi Nagar, Delhi-110092	Complainants
Versus	
M/s Pareena Infrastructures Pvt. Ltd. Regd. office: Flat no. 2, Palm Apartment, Plot no. 13B, Sector-6, Dwarka, New Delhi-110075	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Pankaj Chandola (Advocate)	Complainants
Sh. Prashant Sheoran (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 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 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 complainants, 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	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered Vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment Letter	25.05.2016 (page no. 41 of complaint)
7.	Date of Builder Buyer Agreement	08.07.2015 (Page no. 43 of complaint)
8.	Unit no.	1001, 10th Floor, Tower T1 (page 49 of complaint)
9.	Unit area admeasuring (super area)	1999 sq. ft. (super area) (page 49 of complaint)



10.	Possession clause	13. Completion of Project <i>That the Developer shall under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within 4 years of the start of construction or execution of agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) with additional floors for residential units if permissible with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them.</i>
11.	Date of start of construction	08.06.2016 (Date of start of excavation)
12.	Due date of possession	08.06.2020 (4 years from the date of start of construction) Note: Inadvertently in proceedings dated 15.09.2023 the due date is taken as 08.06.2019 i.e., 3 years from the date of construction.
13.	Pre cancellation Letter	02.05.2022 (page no. 116 of complaint)
14.	Cancellation Letter	18.10.2022 (Page no. 118 of complaint)
15.	Total sale consideration	Rs.1,15,42,511/-

		(as per payment schedule on page 72 of complaint)
16.	Amount paid by the complainants	Rs.54,31,215/- (as per payment receipts on page 17-18 of complaint)
17.	Occupation certificate	03.01.2023 (page no. 26 of reply)
18.	Offer of possession	Not offered but cancelled

B. Facts of the complaint:

3. That the complainants herein booked a unit admeasuring to 2035 Sq. ft. and paid an amount of Rs. 10,00,000/- via cheque dated 14.06.2014, for further registration.
4. That on 11.08.2014, the complainants herein paid an amount of Rs. 15,00,000/- vide cheque dated 11.08.2014, as and when demanded by the respondent company against the total sale price for the respective unit.
5. That inspite after paying more than 20% of the total sale price neither any allotment was done in favour of the complainants, nor any builder buyer agreement was executed which ought to have been executed in accordance with the provisions of Section 13 Act of 2016.
6. That on 25.05.2015 the respondent vide allotment letter allotted a unit no. 1001 admeasuring to 1999 sq. ft. in the aforesaid residential project being developed by the respondent.
7. That after much pursuance, a builder buyer agreement was executed on 08.07.2015, between the complainants and the respondent. Wherein,



the said unit was allotted to the complainants for a total basic sale price of Rs. 95,95,200/- in the said project.

8. That as per the provision of clause 13 of the agreement the respondent assured/committed to complete the construction of the said unit with a period of 4 (Four) Years from the start of construction or execution of agreement i.e., on or before 08.07.2019.
9. That further on 11.06.2016, the complainants herein made a payment of Rs. 9,40,104/- as and when demanded by the respondent towards the total sale price for the respective unit.
10. That on 01.04.2019, the Ministry of Finance (MOF) vide said letter clarified the issue pertaining to the rates of GST which the promoters in the real estate sector could levy during the course of construction. However, in accordance with the said letter the Ministry of Finance directed that w.e.f. 01.04.2019, the rates of GST as applicable on construction of residential apartment by promoters in real estate project would be 5 %.
11. It is a matter of fact, that since inception the respondent herein had been charging unjustified amount of GST of 12% upon the demands and failed to provide any input credit benefit to the complainants which was in contravention to the directions made by the Ministry of Finance on 01.04.2019.
12. Subsequently, on 20.05.2019, the complainants vide email disputed the amount of GST being charged by the respondent company on few instalments and also opposed that other promoters were passing on the input credit benefit to home buyers which had not been done by respondent.



13. That vide said email the complainants intimated the respondent that despite charging 12% GST, the input credit benefit was also not provided to the complainants; and even the government had revised GST to 5% which the respondent was entitled charged to charge for earlier instalments as well.
14. That in response, the respondent vide email dated 21.05.2019, provided a vague reply asking the complainants to make the payment against the demand letters. It is to note, that the respondent in the said email informed the complainants that they are charging 9% GST from other allottees by providing 3% rebate. The said email was followed by the email dated 24.05.2019.
15. That the respondent was deliberately charging higher rate of GST while providing rebate of 3% to other allottees. The respondent time and again threatened the complainants to make the payment without revising the rate of GST failing which the complainants was threatened to impose higher interest on the due amount. Also, the respondent neither raised a revised demand letter nor provided any rebate to the complainants which ultimately lead to delay in making payments.
16. That in June 2019, the complainants made multiple visits to the office of the respondent and requested them for waiver of interest levied upon the dues as the delay in making the payment was occurred due to delay from the respondent in providing justification for GST.
17. That during the visit of the complainants to the office of the respondent on 29.06.2019, the authorised representative of the respondent assured the complainants that the interest levied upon the dues shall be waived off and accordingly, the complainants handed over three cheques dated 29.06.2019, 05.07.2019 and 20.07.2019 amounting to Rs. 24,66,467/- after deducting the amount of excess GST, amounting to Rs. 75,942/-



and agreed interest waiver assured by the respondent amounting to Rs. 5,93,165/- as full and final payment till date. It was agreed between the complainants and the respondent that the said cheques can be encashed only upon providing the written confirmation of waiver of the interest levied on due payments.

18. That the respondent with ulterior motive without providing any written confirmation for waiver of interest had presented the first cheque dated 29.06.2019 for encashment which was got dishonoured as the complainants were waiting for the written confirmation regarding interest waiver before maintaining the minimum amount required for making the payment.
19. That upon such stop payment the respondent herein called upon the complainants vide email dated 04.07.2019 and directed the complainants to get the RTGS done forthwith without providing any confirmation regarding waiver of the GST amount which the respondent had agreed on the last visit of the complainants.
20. That aggrieved by the said malafide act of the respondent, the complainants vide email dated 05.07.2019 expressed their resentment over the said dishonest act and raised their concern for violating the agreed understanding and assurance. The complainants further requested the respondent to not to present the remaining 2 cheques as the same were marked "Stop Payment". The complainants further reminded the respondent that the interest waiver was assured to be provided as the delay was occurred due to delay in providing clarification on the issue of GST.
21. Further, vide same email dated 05.07.2019, the complainants assured the respondent that the said 3 cheques shall be replaced as soon as the written confirmation for waiver of interest will be received by the



complainants. It is to note, that the complainants herein were ready time and again to make the payments as and when demanded but it was the respondent only who delayed first waiving of the illegal exorbitant rate of interest and secondly providing requisite justification/clarification for levying 12% of GST Whereas, the Ministry of Finance had already revised the rates to 5%.

22. Despite after assuring prima-facie to waive of the exorbitant rate of interest as being levied by the respondent due to their own default only, the respondent company vide email dated 08.07.2019, backed out from its own promises and refused to provide such waiver of the interest which was contrary to the initial understanding between the complainants and the respondent company.
23. That in accordance with the terms of clause 13 of the agreement, the respondent company agreed and assured to handover the possession of the said unit on or before 08.07.2019. It is evident that the complainants herein had been diligently paying the instalments as and when demanded only upon the trust and faith that the said unit would be handed over within the proposed plan but the construction of the said unit was not complete and far away from completion.
24. Subsequently, on 10.07.2019, the complainants being unsatisfied in response to the email dated 08.07.2019, of the respondent opposed that the delay in making payment had purely occurred upon the default of the respondent company in providing first the waiver of interest and secondly the clarification with regard to the GST. That vide same mail the complainants even disputed that the complainants were waiting for the confirmation with regard to the waiver of interest which was not provided inspite after assurance/commitments.



25. That inspite after ignoring the delay the complainants further offered to provide the cheque for the next month instalment as well only upon the waiver of the interest being levied by the respondent company illegally. That vide same mail only the complainants even opposed the plc being charged by the respondent company which was never intimated or disclosed to the complainants at the time of booking.
26. Thereafter, on 18.07.2019, the complainants vide email reminded the respondent that they were waiting for the confirmation regarding the penal interest waiver and are ready to make the payment to be made for the respective unit.
27. It is a matter of fact, that the complainants herein were willing and ready to pay the instalments as and when demanded by the respondent company but it was the respondent who failed to first clarify the amount of GST being levied and then to handover the possession of the said Unit within the proposed timelines.
28. Upon such resentment by the complainants and breach on account of the respondent company in coming upto the promises the respondent vide email dated 19.07.2019, intimated the complainants that they have decided to reduced the interest being charged by them from 10.45% to 8.75%.
29. It is a matter of fact that since the date of booking the complainants were ready to make the payment as and when demanded but the delay was caused only upon the default on account of the respondent in providing adequate clarification with respect to the GST and also upon charging exorbitant rate if interest which the complainants were not liable to pay.



30. That in response of the email dated 19.07.2019, the complainants vide email dated 19.07.2019, showed resentment regarding the delay which had been caused on account of the respondent and also reminded the assurance provided at the time of handing over the last instalments cheques that the interest shall be waived off.
31. But, on such refusal of the respondent to waive off the interest the complainants offered to pay all the payments including next month instalments in week or month.
32. That vide email dated 02.08.2019, the complainants called upon the respondent company to response upon the issue pertaining to the arbitrary and unfair/unjustified interest being charged by the respondent company and requested the respondent to issue credit note for GST benefit.
33. It is a matter of fact, that the complainants herein under the trust and faith had been diligently adhering to the demands along with unjustified rate of interest and/or GST so demanded by the respondent. However, upon asking for justification the respondent company had failed to provide any cogent reason substantiating the reason for charging exorbitant rate of GST despite after being aware of the fact that no input credit has been provided. Also, the respondent herein had been raising the demands but had failed to provide the exact status as to when the possession of the said unit would be delivered.
34. That the complainants vide email dated 11.08.2019, called upon the respondent seeking clarification in regard to the reminder dated 13.07.2017, which was served upon the complainants on 07.08.2019 and also intimated the respondent that the complainants have already settled the issue of demand letter vide cheque dated 29.06.2019, on the consent that no delay interest would be levied on the complainants due



- to non-issuance of the GST credit note and requisite clarification as sought by the complainants and promised by the respondent company.
35. That again on 22.09.2019, the complainants vide email opposed the demand letter dated 13.07.2017, being raised against the respective unit and called upon the respondent to recall the understanding wherein the respondent agreed to waive of the interest and requested the respondent to raise a revised demand letter to further enable to pay the instalments immediately via cheques of the month of July 2019, which were already kept in deposited with the respondent.
36. Subsequently, upon several reminders and follow-ups the respondent herein served upon the complainants an undertaking cum consent wherein the respondent assured the complainant to waive off the interest levied on the due payments. That upon consistent follow-ups from the complainant, the respondent agreed to waive-off the interest levied on the due payment as the delay was occurred due to the default of the respondent only.
37. That in response to email dated 15.09.2020, the complainants herein vide email dated 17.09.2020 post vetting the said undertaking cum consent, returned the signed copy of the same for further execution and sought confirmation from the respondent company with regard to issue of complete waiver of interest till date. However, upon receiving such confirmation the complainants herein were ready to make all payments by 31.10.2020.
38. That time and again the complainants were ready to pay the instalments as and when demanded only upon the waiver of the exorbitant rate of interest which the respondent company had arbitrarily and illegally levied on account of the default only on account of the respondent company itself.



39. That the complainants herein have evidently paid an amount of Rs. 54,31,215/- as and when demanded by the complainants towards the total sale consideration.
40. Despite, after being aware of the fact that the construction of the project has been delayed for more than three years and instead of offering/adjusting delay interest and/or compensation to the complainants on account of the delay so caused in completion of the project the respondent herein issued a pre-cancellation letter dated 02.05.2022, providing 30 days' time to the complainants to clear the arbitrary/unfair and unjustified demands of Rs. 76,40,306/- and further threaten to cancel the said Unit inspite after receiving more than 50% of the total sale price.
41. That inspite after receiving an amount of Rs. 54,31,215/- and delaying the project for more than three years the Respondent, being in a dominant position, arbitrarily vide cancellation letter dated 18.10.2022, illegally cancelled the unit allotted to the complainants on the unfair grounds for not making the payment. However, the respondent itself was in default of first not clarifying the issue pertaining to the GST and then for not completing the construction of the project within the proposed timelines.
42. Subsequently, post illegally cancelling the unit of the respondent offered to return only an amount of Rs. 93,392/- after making unjustified deductions against the total paid up amount of Rs. 54,31,215/- .
43. That upon such illegal cancellation the complainants vide email dated 13.11.2022, reminded the respondent that the complainants had already met the managing director of the respondent company who himself agreed to provide time to the complainants to clear the dues and



further called upon that respondent about various reminders and follow-ups which the complainants had made to get clarification/justification with regard to the GST being charged by the respondent company but the same was left unanswered due to which the delay occurred in making the payments.

44. That since inception the complainants herein were ready to adhere to the payment schedule and had paid the instalment as and when demanded inspite after not receiving any cogent reasons for charging the gst even when the respondent was not providing any input credit to the complainants. However, having ill intention to cheat and harass the complainants, the respondent completely ignored the said request of the complainants.
45. That even after receiving more than 50% of the total sale consideration had failed to provide any cogent reason for raising unjustified demands but had also arbitrarily and illegally cancelled the unit being allotted to the complainants.
46. It is a matter of fact; the complainants has been running behind the respondent for the possession of the said unit and for revoking the cancellation letter issued with respect to the unit in question, however, the request of the complainants was utterly refused and ignored by the respondent. And, by such act.and omission the complainants have not only suffered loss of money, loss of time, loss of resources but has also aggrieved of harassment, mental stress and agony.
47. That acts of the respondent dragged the complainant to the status of financial turmoil as the respondent unlawfully and illegally cancelled the allotment of the plot in question and the same amounts to gross deficiency and negligence on account of the respondent. The respondent has failed to adhere the provisions of the RERA Act, 2016



and thus liable to be penalized under the provisions of the RERA Act, 2016.

C. Relief sought by the complainants:

48. The complainants have sought following relief(s):
- (i) Direct the respondent to revoke the cancellation letter dated 18.10.2022.
 - (ii) Direct the respondent to handover the possession of the said unit along with delayed possession charges at prescribed rate of interest.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

49. That as per apartment buyer agreement the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company shall endeavor to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months is also agreed between the parties at the discretion of respondent, however said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondent and it was also agreed by the complainants that if the project gets delayed due to force majeure circumstances than the said period consumed during concerned circumstances shall stand extended. That in the present case construction was started on 08-06-2016 and demand was raised by the respondent in this regard and payment was also made by complainants but in a delayed manner. Thus it is admitted fact by both the parties that construction was started on



08-06-2016, thus the starting dated for calculation of date of possession would be 08-06-2016 and final date of possession shall be calculated after considering all the relevant circumstances.

50. That since prescribed period of 4.6 years is subject to force majeure circumstances. It is submitted that there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent, which directly impeded the ability and even the intention of the respondent to continue with the development and construction work of the said project. It will be detailed hereinafter that on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondent, respondent could not raise construction.
51. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01-04-2021 to 30-06-2021.
52. It is further submitted that whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required gathering resources and re-commence



construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.

53. That above stated orders are absolute and beyond the control of developers. That there are several others order and notifications which cases delay in the construction of project and are beyond the control of developer.
54. That even the Hon'ble Apex court has already held that notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property comes under force majeure and period for handing over of the possession stood extended during the prevalence of the force majeure event.
55. That though the matter in issue is beyond the jurisdiction of Hon'ble authority, yet in order to properly appreciate the matter in issue it is submitted that project is not only delayed due to force majeure events but also get delayed due to non-payment of allottees and in the present case complainants themselves made several defaults since inception till the date of cancellation.
56. That the complainants have not come before the honourable authority with clean hands. It is submitted that the complainants have tried to manipulate and twist the facts and circumstances in order to gain undue benefit from the honourable authority. It is submitted that since very beginning complainants are committing defaults and after execution of Apartment buyer agreement the respondent raised several demands against the ongoing construction however the complainants failed to pay the same either on time or never paid at all.



57. That since the complainants failed to pay amount demanded by respondent, even after several reminders the respondent is entitled to forfeit the earnest money as well as the interest and other charges like taxes and brokerage thereon. As there is no fault on the part of respondent. Thus, as a last resort respondent vide letter dated 15-06-2022 sent a pre-cancellation letter giving him one more opportunity to pay the amount due but even this time complainants chose not to pay the amount, resultantly vide letter dated 18-10-2022 unit/allotment of the complainants were cancelled and sent a letter of cancellation to the complainants. The complainants have wilfully defaulted against the payments of due instalments. That this honourable authority would appreciate the fact that the respondent gave sufficient time to complainants to pay the amount due but each and every time complainants refused to pay. In these circumstances the complainants does not deserve any relief whatsoever from this honourable authority. The complainants cannot be allowed to be benefitted from his own wrongs.
58. 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.

E. Jurisdiction of the authority:

59. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

60. 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

61. 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.

62. 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. Entitlement of the complainants:

- (i) Direct the respondent to revoke the cancellation letter dated 18.10.2022.

- (ii) Direct the respondent to handover the possession of the said unit along with delayed possession charges at prescribed rate of interest.
63. The complainants had booked the unit bearing no. 1001, 10th Floor in Tower T1 in the project of the respondent namely 'Micasa' situated at sector 68, Gurugram vide allotment letter dated 25.05.2016. Thereafter, a buyer's agreement dated 08.07.2015 was executed between the parties regarding the said allotment for a total sale consideration of Rs.1,15,42,511/- and the complainants have paid a sum of Rs.54,31,215/- against the same in all.
64. The respondent company completed the construction and development of the project and got the OC on 03.01.2023. However, the complainants defaulted in making payments and the respondent was to issue the cancellation letter dated 18.10.2022. The complainants in the present complaint has pleaded that the respondent is hereby charging unjustified amount of GST of 12% upon the demands and failed to provide any input credit benefit to the complainants. The Ministry of Finance vide letter dated 01.04.2019 has directed that the rates of GST as applicable on construction of residential apartment by the promoters in real estate project would be 5%. Hence the complainants stop making payments.
65. The plea of the respondent builder is otherwise and stated that the complainants stopped making payments from 13.07.2017 and the complainants are taking plea of non-payment due to GST which came into existence in 2019. Further stated that since 13.07.2017 till 18.10.2022 complainants did not make any payments. The respondent issued 13 reminders to make payment and thereafter the pre cancellation notice were issued on 02.05.2022 requesting the complainants to comply with their obligation. However, despite



repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainants failed to act further and comply with their contractual obligations and therefore the allotment of the complainants was finally terminated vide letter dated 18.10.2022. Now the question before the authority is whether the cancellation issued vide letter dated 18.10.2022 is valid or not.

66. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the complainants have paid Rs.54,31,215/- against the total sale consideration of Rs.1,15,42,511/-. The respondent/builder sent a demand letter dated 06.10.2017 and thereafter 13 reminders were sent to the complainants for making payment (page no. 111 to 151 of reply), before issuing a pre-cancellation letter dated 02.05.2022 asking the allottees to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 18.10.2022. Further, section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 08.07.2015 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. 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 1969(2) SCC 554*** and where in it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract



Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."

67. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.54,31,215/- after deducting 10% of the sale consideration being earnest money along with an interest @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 on the refundable amount, from the date of cancellation i.e., 18.10.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

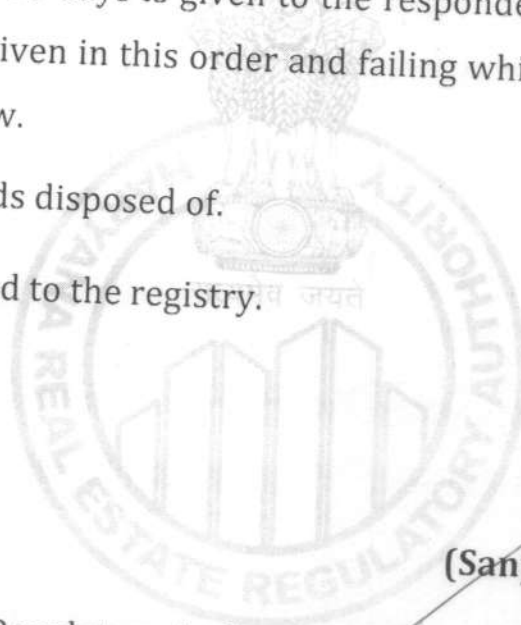
G. Directions of the Authority:

68. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of



obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/builder is directed to refund the deposited amount of Rs.54,31,215/- after deducting 10% of the sale consideration being earnest money along with an interest @10.75% on the refundable amount, from the date of cancellation i.e., 18.10.2022 till the date of realization of payment.
 - 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.
69. Complaint stands disposed of.
70. File be consigned to the registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2023

HARERA
GURUGRAM