

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

Complaint no.:	5478 of 2022
First date of hearing:	30.11.2022
Date of decision:	03.11.2023

1. Harish Dewan
2. Kamal Dewan
3. Anju Dewan

Complainants

R/o: - K-15, 1st floor, Kirti Nagar, West Delhi, Delhi-110015

Versus

M/s Haamid Real Estates Private Limited

Having Regd. office at:- The Masterpiece, Sector 54,
Golf Course Road, Gurugram

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sumit Sharma (Advocate)

Sh. Dhruv Rohtagi (Advocate)

Complainants
Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 18.08.2022 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 as provided 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 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:

Sno.	Heads	Information
1.	Project name and location	"Peaceful Homes", Sector 70A, Gurugram
2.	Project area	27.7163 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2019 renewed up to 28.05.2024
5.	Name of licensee	Haamid Real Estate Pvt. Ltd.
6.	RERA registration details	
	S no. Registration No.	Registration date
	Valid up to	Area
i.	63 of 2019	22.10.2019
		31.12.2019
		8.38 acres
7.	Unit no.	C-231, 23 rd floor
8.	Unit measuring	1565 sq. ft.
9.	Allotment letter	23.05.2013 [pg. 33 of complaint]
10.	Date of execution of flat buyer agreement with original allottee	04.05.2015 [pg. 38 of complaint]
11.	Confirmation of transfer in name of complainant	06.05.2015 [pg. 91 of complaint]



12.	Payment plan	Construction link
13.	Basic Sale price	₹ 95,55,890/- (as per SOA dated 21.02.2023 at page 241 of reply)
14.	Total consideration	₹ 1,14,37,147/- (As per payment plan annexed with BBA at pg. 74 of complaint)
15.	Total amount paid by the complainant	₹ 47,15,734/- (As per termination letter dated 30.05.2019 at pg. 92 of complaint)
16.	Possession clause	<i>clause 11(a)</i> 36 months from the date of commencement of construction of the project, which shall mean the date of commencement of the excavation work at the project land and this date shall be duly communicated to the allottee. Further the company shall be entitled to a period of 6 months after expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining the occupation certificate of the project. [Page 51 of complaint]
17.	Date of commencement of excavation as per SOA dated 21.02.2023 at pg. 241 of reply	10.05.2014
18.	Due date of delivery	10.05.2017 (36 months from date of commencement of excavation work i.e. 10.05.2014) (Note: Grace period not allowed)



19.	Occupation certificate	29.10.2019 (pg. 246 of reply)
20.	Offer of possession	Not offered
21.	Termination letter	30.05.2019 [pg. 92 of complaint]

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:

- a. That it is humbly submitted that upon the representation by the respondent and advertisement done on their behalf, the original buyer namely Ms. Nupur Dewan made up their mind and went ahead for the purchasing of residential flat bearing no. C-231, admeasuring approx.-1565 sq. ft. area located on 23rd floor, tower-C in the project i.e., "THE PEACEFUL HOMES" along with an exclusive use of 1 car parking, located at sector-70, Gurugram, Haryana floated by respondent and on their inducements. That the possession of the said unit booked flat shall be handed over to the buyer within 3 years from the date of advance deposition and with all amenities as promised by the respondent herein. It is submitted that the complainants herein are the subsequent buyers of the said booked and allotted flat. it is Submitted that originally Ms. Nupur Dewan had booked the said flat in the year of 2012 and thereafter that said booked flat was transferred in the name of Mr. Harish Dewan, Anju Dewan and Kamal Dewan through endorsement slip dated 06.05.2015, which was duly approved by the respondent. That the said endorsement towards the transfer was again acknowledged by the respondent vide letter dated 06.05.2015. That the respondent, its officials and its authorized

channel partners assured the original buyer i.e. Ms. Nupur Dewan at the time of booking (25.07.2012) that the possession of the booked flat would definitely be delivered to them within 3 years from the date of booking and same promises were conveyed to the complainants herein at the time of endorsement/transfer on dated 06.05.2015. But the respondent did not honored its own terms and promises to deliver the possession of booked flat on time and reason being the complainants herein stopped the further payments to respondent in the year of July'2015. And thereafter when the respondent was failed to deliver the possession of said booked flat on promised time, the complainant asked for the refund of their deposited money along with interest, then the respondent arbitrary cancelled the booking and forfeited all the money deposited by the complainants.

- b. That Ms. Nupur Dewan had applied for booking against the residential flat in the project launched by the respondent in the year of 2012 and deposited ₹ 9,00,000/- in two installments. That the respondent also issued deposition receipts against the deposited payment on dated 25.07.2012 and 28.07.2012. That at the time is of booking it was screened to the original buyer that the said project is one of the most prestigious projects launched by the respondent and the possession of the said residential flat would definitely be delivered within 3 year to the buyers.
- c. That thereafter the original buyer as well as complainants herein had deposited the payments as per the periodically demands rose by the respondent time to time till 2015. That the total payment of



₹ 47,15,734/- deposited against the booked flat by the complainants herein to the respondent company.

- d. That the respondent in year of 2013 issued a letter bearing no. GTPH-0184 for allotment against the booked flat in the residential group housing colony "The Peaceful Homes" at sector 70A, Gurgaon, Haryana to the then original buyer Ms. Nupur Dewan on dated 23.05.2013. That the respondent also confirmed the allotment in the name of the then buyer and allotted the flat bearing no. C231, 23rd Floor, Tower-C (2 BHK) admeasuring about 1565 sq.ft.
- e. That the original buyer i.e. Ms. Nupur Dewan and respondent went ahead and signed a flat buyer agreement on dated 14.08.2014 in which all terms and conditions were mentioned with regard to the total consideration of the flat, area specification, and other terms with regard to the allotted residential flat bearing no. C231, 23rd Floor, Tower-C (2 BHK) admeasuring about 1565 sq.ft.
- f. That it is pertinent to mention here that the Respondent took the customer copy of earlier signed agreement at the time of transfer/endorsement on dated 06.05.2015. That the respondent and the original buyer i.e., Ms. Nupur Dewan again signed a 2nd flat buyer agreement on dated 04.05.2015 with regard to the allotted residential flat bearing no. C231, 23rd Floor, Tower-C (2 BHK) admeasuring about 1565 sq.ft.
- g. That the original buyer i.e. Ms. Nupur Dewan has transferred the booking rights in the name of presents complainants i.e. Harish Dewan, Kamal Dewan and Anju Dewan vide endorsement slip dated 06.05.2015 which was duly approved and accepted by the



respondent. That the said transfer was again confirmed and approved by the respondent through confirmation of transfer letter dated 06.05.2015.

- h. That the respondent through its officials lured the complainants herein that the said allotted flat would be delivered to them within a short span of time latest by 1st quarter of 2016 i.e. 3 years + 6 months from the date of original booking. That the complainants also raised objections to the contents of flat buyer agreement dated 04.05.2015 whereby it was mentioned that the possession of the allotted flat would be delivered within 3 years + 6 months from the start date of construction work and to which officials of the respondent replied that the agreement is pre-printed and remains same for all the earlier buyers as well as later buyers and also assured the complainants that the construction work is in full swing and the possession of the booked flat would definitely be delivered by 1st quarter of 2016.
- i. That thereafter complainants herein also obeyed the Respective payment demands towards installments as raised by the respondent till Aug'2015. It is pertinent to mention here that the complainants again raised their apprehensions with regards to the on time completion of the said project to the respondent and its officials, but no positive reply has been received to the complainant and reason being complainants visited the site place and it came as a utter surprise to the complainants that the excavation work was started on the site and complainants had paid the installment against the 2nd slab of construction. That the



original buyer had opted the construction linked plan at the time of booking.

- j. That the complainants raised their concerns with regard to the construction at site, but the officials of the respondent adopted dilly dally/wavering approach towards the queries/concerns rose by the complainants and never provide any concrete solutions to the complainants herein. That to see the behavior of the officials of the respondent the complainants were in great mental pressure with regard to the allotment and due handover of the possession of the said booked flat.
- k. That thereafter the complainants visits various times to the respondent office for further clarifications and request to their officials for the refund of deposited money, but the respondent never turned on the requests of the complainant and kept sending demand letters to the complainants till May'2019, despite knowing the fact that the complainants want exit from the said project and demanded refund from the respondent of their deposited money due to the said project got delay. That the officials of the respondent also blew monetary threats to the complainants that if the complainant would not pay as per the demand raised by the respondent then the whole deposited money would be forfeited.
- l. That, it came as an utter shock and dismay to the complainant as and when the complainant received a letter dated 30.05.2019 for the intimation of termination vide reference no. GTPH0352 subjected to "termination of unit C-231 in "The Peaceful Homes" at sector-70A, Gurgaon, Haryana". Whereby the reason for termination cited as non-payment of outstanding of

₹ 48,79,260.70/- and forfeit the whole deposited money by the complainants, despite in the knowledge of the fact that the complainants raised their concerns with regard to the refund in 2016 only and in addition to that the respondent did not show/shared any calculations or proof against the forfeited the whole deposited amount of ₹ 47,15,734/-.

- m. It is submitted that the Complainants herein had paid a huge amount of ₹ 34,43,836/- prior to the execution of the flat buyer agreement dated 04.05.2015 which would be calculated as approx. 31% of total cost of allotted flat and against the section 13 of the real estate (Regulation & Development) Act,2013.
- n. That after complainants also sent an e-mail on 02.11.2020 for refund of deposited money and also about the scenario happened with complainants, to which respondent replied on 07.12.2020 with a plea that the allotment has been terminated vide termination letter dated 30.05.2019.

C. Relief sought by the complainants:

4. The complainants have sought the following reliefs:
- a. Refund the entire amount of ₹ 47,15,734/- being paid by the complainants along with interest as per RERA.
5. On the date of hearing, the authority explained to the respondents/promoters 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.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:



- a. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 14.08.2014, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Hon'ble Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants.
- b. That the present complaint is barred by the law of limitation. It has been held by this Hon'ble Authority, in complaint no 242/2016 decided on 05.09.2018 that a complaint filed after 3 years from the date of cancellation of allotment to be barred by limitation and has dismissed the complaint. In the present case, the allotment of the complainant was terminated vide letter dated 30.05.2019. the present complaint, as per the proforma B has been filed on 30.07.2022, which is clearly beyond the prescribed period of limitation. The present complaint deserves to be dismissed on this ground alone.
- c. That it is submitted that the respondent is a wholly owned subsidiary of the Advance India Projects Limited. That the development of the residential group housing colony under the name of "The Peaceful Homes" situated at Sector-70A, Gurgaon, Haryana has been undertaken the respondent. That the said project is registered with the Hon'ble Authority vide registration

number 63 of 2019 dated 22.10.2019 declaring the respondent as the promoter/license holder of the project.

- d. That Ms. Nupur Dewan had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number C-231, 23rd Floor, Tower-C admeasuring 1565 sq. ft. situated in the project developed by the respondent, known as "The Peaceful Homes" in revenue estate of Village Palra, Sector 70A, Sub-Tehsil Badshahpur, Gurugram, Haryana. That thereafter the original allottee vide application form dated 21.07.2012 applied to the respondent for provisional allotment of a unit bearing number C-231 in the said project.
- e. It is submitted that the original allottee prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondent. The original allottee consciously and willfully opted for the construction linked payment plan as per her choice for remittance of the sale consideration for the unit in question and further represented to the respondent that she shall remit every installment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the original allottee.



- f. That pursuant to the execution of the application form, the respondent had no reason to suspect the bonafide of the original allottee and the allotment letter dated 23.05.2013 was issued to the original allottee. That thereafter, buyer's agreement dated 14.08.2014 was executed between the original allottee and the respondent. That the original allottee had approached the respondent with a request for execution of a fresh buyer's agreement as she had misplaced the earlier agreement. Accordingly, a fresh buyer's agreement was executed between the parties on 04.05.2015.
- g. It is pertinent to mention that the complainants executed an affidavit dated 25.02.2015 and an indemnity cum undertaking dated 25.02.2015 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainants that having been substituted in the place of the original allottee, they are not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.
- h. That thereafter, the original allottee made an endorsement dated 06.05.2015 in favour of the complainants for transferring and conveying rights, entitlement and title of the original allottee in the unit in question to the complainants. It is pertinent to note that as per clause 21 of schedule I of the application form, the applicant shall get possession of the unit only after the applicant has fully



discharged all his obligations and there is no breach on the part of the applicant and complete payment of sale consideration against the unit has been made and all other applicable charges/dues/taxes of the applicant have been paid. Conveyance / sale deed/necessary transfer documents in favour of the applicant shall be executed and/or registered upon payment of the entire sale consideration and other dues, taxes, charges etc. In respect of the unit by the applicant. After taking the possession of the unit, it shall be deemed that the applicant has satisfied himself/herself/itself with regard to the construction or quality of workmanship. That in the present case, the complainants failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely installments.

- i. That as per clause 33(a) of the application form, in the event the applicant fails, neglects and/or delays the payment of installments and other charges then. Notwithstanding the right of the company to cancel such allotment at its sole discretion at any time after such default in such payment occurs, the company at its sole option and discretion may waive such failures, neglects and/or delays in such payment but on the condition that the applicant shall over and above pending payment, shall also pay simple interest on the payment due from the due date of outstanding payment charged at the rate of interest of 18% per annum till the date of actual payment made by the applicant to the company. Statement of account correctly maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainants.



- j. It is submitted that the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 8 of the buyer's agreement provides that the allottee agrees that time is essence with respect to due performance by the allottee of all the obligations under this agreement and more specifically timely payment of sale consideration and other charges, deposits and amounts payable by the allottee as per this agreement and/or as demanded by the company from time to time. The company is not under any obligation send any reminders for the payments to be made by the allottee as per the schedule of payment plan and for the payments to be made as per demand by the company or performance of other obligations by the allottee. That as per clause 56 of the buyer's agreement, it is mutually agreed between the parties that in the event of the breach, failure, neglect, omission or ignorance of the allottee to perform its obligations or fulfill any of the terms and conditions set out in this agreement, it shall be deemed to be an event of default and the allottee shall be liable for consequences stipulated herein. Further, in case of any such event of default, the allottee is incapable of rectification or in the opinion of the company is unlikely to be rectified by the allottee or where the breach is repeated or is continuing despite the allottee being given an opportunity to rectify the same, then this agreement may be terminated by the company at its sole discretion by written notice ("notice of termination") to the allottee intimating to it the decision of the



company to terminate the agreement and the ground on which such action have been taken. In all cases of an event of default, the company shall give to the allottee a notice calling upon it to rectify the breach set out in the said notice within the time given therein.

- k. That it is submitted that the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 13.06.2014. It is submitted that the complainants neither paid any heed to the requests of the respondent nor came forward with objections, if any. That the complainants chose to be mute spectator by not even replying to the said letter.
- l. That the complainants were obligated to make payments against the said unit. As is evident from the payment plan annexure v of the agreement, the total cost of the unit (exclusive of the stamp duty and other charges) was ₹ 1,14,37,147/-. That the timely remittance of the installments was required to be made as per the stages of payment agreed to in the payment plan. That moreover, it was the obligation of the complainants to make the payments against the said unit. That as per clause 5 of the agreement, the allottee agrees to pay the remaining total price of the unit as prescribed in payment plan attached as annexure - V with this agreement as may be demanded by the company within the time and in manner specified therein. Moreover, it needs to be categorically noted that time is of essence with respect to the performance by the allottees of all the obligations and more specifically timely payment of sale



consideration and other charges, deposits and amounts payable by the allottee, as per clause 8 of the agreement.

- m. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 18.03.2019. It is submitted that the respondent was constrained to issue a pre-termination letter dated 23.04.2019 thereby requesting the complainants to clear their outstanding amount to the tune of ₹ 48,79,260.70/- and complete all necessary formalities as per the terms and conditions of the buyer's agreement but on the contrary, the complainants evidently ignored all the requests of the respondent.
- n. That the termination letter dated 30.05.2019 cancelling the said unit in question was issued to the complainants informing them about the termination of the buyer's agreement and forfeiture of the earnest money in accordance with the agreement. It is pertinent to note that the complainants were duly informed about the refund of their balance amount after deducting all the charges as per the agreement.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
- E. Jurisdiction of the authority**
8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

9. 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

10. 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.

11. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the



judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer 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."

13. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017."

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottees along with interest at the prescribed rate

F. Findings on the relief sought by the complainant

F.I. Direct the respondent to refund the entire amount paid by the complainant.

15. In the present complaint, the complainants intends to continue with the project and is seeking refund of amount paid as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a)

(b)

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

16. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of commencement of construction which means the date of start of excavation work of the project i.e., 10.05.2014. The period of 36 months expired on 10.05.2017. Since in the present matter the BBA incorporates qualified reason for grace period/extended period of 6 months in the possession clause for obtaining occupation certificate. Whereas the promoter has applied for occupation certificate on 18.03.2019 for the tower of the unit in question and has received the O.C on 29.10.2019 which is not within the time. Accordingly, this grace period of 6 months shall not be allowed to the promoter at this stage.
17. Before going into the facts of the case the authority throws light upon the objection raised by the respondent of complaint being barred by limitation as the termination letter was issued on 30.05.2019 and the present complaint is filed on 18.08.2022 i.e., beyond three years. The original allottee was allotted unit bearing no. C-231, admeasuring 1565 sq. ft. vide buyer's agreement dated 04.05.2015 for a basic sale consideration of ₹ 1,14,37,147/- and the same was endorsed in name of complainant on 06.05.2015. The complainant has paid an amount of ₹ 47,15,734/-. Despite raising demand in respect of the subject unit, the complainant did not comply with the demands which resulted in cancelling the said allotment on 30.05.2019. The complainant

thereafter filed a present complaint on 18.08.2022 for refund of amount paid along with interest before the authority. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 30.05.2019. The present complaint seeking refund of miscellaneous charges under different heads was filed on 18.08.2022 i.e., beyond three years w.e.f. 30.05.2019. But in view of authoritative pronouncement of the hon'ble apex court in suo moto proceedings bearing no. **3 of 2020** vide order dated 10.01.2022, the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation. Therefore, the present complaint is well within the limitation period and is maintainable.

18. The complainant 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. The reluctant behavior of the complainant led to issuance of notice of cancellation by the respondent on 30.05.2019. Now, the question before the authority is as to whether the cancellation is valid or not?
19. The complainant has opted construction link payment plan as annexed with BBA dated 04.05.2015 wherein the complainant was liable to pay booking amount at booking then 25% on allotment further 10% on commencement of excavation furthermore 5% in 13 equal instalment till offer of possession. The original allottee till the time of allotment letter has paid a sum of ₹ 24,46,000/- which was more than the 25% since as per payment plan an amount of ₹ 23,88,973/- was to be paid by the complainant.
20. The authority draws its attention towards the SOA dated 21.02.2023 wherein it is clearly mentioned that the complainant paid an amount of



₹ 47,15,734/- till the instalment payable “on casting of 2nd floor slab”. Thereafter the complainant did not paid a single penny even after issuance of numerous reminder letters dated 01.10.2015, 16.03.2016, 22.04.2016, 19.07.2016, 25.08.2016, 15.10.2016, 01.02.2017, 13.11.2017, 26.06.2017 and lastly lead to issuance of pre-termination letter dated 23.04.2019. The complainant in its complaint states that they visited the site and was shocked to see that the excavation work was started and they already paid the instalment due upon casting of 2nd floor slab. Thereafter the complainants demanded refund of the amount paid by them way back in 2016 although there is no document placed on record for its reliance nor there is any proof of construction being delayed by the respondent. Furthermore, the respondent issued various demand letters followed by reminder letters and at last when the complainant became reluctant in clearing the outstanding amount the respondent issued a cancellation letter dated 30.05.2019 and the complainants deny its delivery in their mail dated 24.10.2020. The respondent has issued the termination letter on account of non-payment on part of complainant on the same address to which the other letter being received by the complainant were sent. Also, the authority considers the postal receipt which is also being sent on the same address and pincode. According to section 27 of the General Clauses Act, 1897 the service of notice is deemed to be effected if it is properly addressed, pre paid and is being posted by registered post. Section 27 of the general clauses Act, 1897 is reproduced below for ready reference:

Section 27- Meaning of service

Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document



to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

21. At the outset, it is relevant to comment on the fact that it is the complainant who has defaulted in payment as per the payment plan opted by him moreover, he did not pay any penny after 2015 and waited for 5 long years and did not communicate in between except for the mail dated 24.10.2020 wherein they write that while their visit to the office they came to know about the termination letter which is not corroborated by any document. Accordingly the respondent's act of cancelling the said cancellation is justified and therefore, the authority hereby upheld the said termination letter dated 30.05.2019 to be valid.
22. However, the fact that the respondents have not refunded any amount after certain deduction to the complainant even after cancellation of subject unit; the complainant's rights to file a suit for refund remains intact.
23. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. Though vide letter dated 30.05.2019, the details of amount to be returned after deductions have been given but the complainants did not receive any amount after cancellation of the unit. The issue with regard to deduction of earnest money on cancellation of a contract arose 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 framed 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."

24. Keeping in view the aforesaid facts and legal position, the cancellation of the allotted unit is held to be valid and forfeiture of the 10% of the earnest money of basic sale price cannot be said to be wrong or illegal in any manner.

25. The respondent is directed to refund the paid-up amount of ₹ 47,15,734/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 95,55,890/- to the complainants. The refund should have been made on the date of cancellation i.e., 30.05.2019. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

G. Directions of the authority

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the paid-up amount of ₹ 47,15,734/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 95,55,890/- to the complainants. The refund should have been made on the date of cancellation i.e., 30.05.2019. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount



from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

- 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.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2023



HARERA
GURUGRAM