



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

Complaint no. : 6681 of 2019
Date of complaint : 23.12.2019
Date of decision : 05.09.2023

1. Sh. Paramveer Singh 2. Smt. Shashi Raghav Both R/O: H No 552 Sector 10 Ground Floor Gurugram	Complainants
Versus	
1. M/S Bright Buildtech Private Limited Regd. Office: D107 Panchsheel Enclave New Delhi 2. Dheeraj Kumar R/O D107 Panchsheel Enclave, New Delhi 3. Ravi Jain R/O D107 Panchsheel Enclave, New Delhi 4. Prabal Pratap R/O D107 Panchsheel Enclave, New Delhi	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. S.D Kaushik (Advocate)	Complainants
Sh. Ashraya Jain (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 28 of the Haryana Real Estate

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(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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name and location of the project	"Woodview Residencies", sector-89, Gurgaon
2.	Nature of the project	Residential Plotted Colony
3.	RERA Registered/ not registered	34 of 2020 dated 16.10.2020
4.	DTCP license no.	59 of 2013 dated 16.07.2013 valid upto 15.07.2021
5.	Name of Licensee	Orris Land & Housing Pvt. Ltd. and 42 ors.
6.	Licensed area	100.081 acres
7.	Unit no.	C-87, UGF (As per BBA on page 19 of complaint)
8.	Unit admeasuring area	14155 sq. ft. (super area) (As per bba on page 19 of of complaint)
9.	Date of Allotment	23.01.2017 (Page 14 of ocmplaint)
10.	Date of Apartment Buyer's Agreement	un-executed
12.	Possession clause	5. Possession of Dwelling Unit 5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months, with a grace period of 6 (six months from the date of issuance of



		Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of terms & conditions of this Agreement. (Taken from the model buyer agreement)
13.	Due date of possession	23.07.2020 (Grace period is allowed being unqualified)
14.	Total Sale Consideration	Rs. 1,40,17,572.93/- (As per applicant ledger on page 116 of reply)
15.	Total amount paid by the complainants	Rs. 25,40,996/-/- (As per applicant ledger on page 116 of reply)
16.	Occupation certificate	Not Obtained
17.	Offer of possession	Not offered
18.	Reminder Letter / Demand Letter	06.03.2017, 24.04.2017 (page 48-49 of reply)

B. Facts of the complaints

3. That after going through the advertisement published by the respondents in the newspapers and as per the broacher/prospectus provided by them, the complainants had booked a residential apartment bearing unit No. C87-UGF, on Ground Floor, having an approximate super area admeasuring 131.45 Sq. Mtrs. (1415.00 Sq. Ft.) along with the Basement/Terrace Area of 100.61 Sq. Mtrs. (1083.00 Sq. ft.) on Plot No. C87, admeasuring 239.20 Sq. Yds. (200.00 Sq. Mts.) in the project "Woodview Residences" of the respondents situated at Sector-89 & 90, Gurugram, Haryana for a basis sale price of Rs. 1,40,17,572.93/- vide Booking ID No. 210250, Ref. No. WR0306 and paid an amount of Rs. 8,00,000/- vide cheque bearing No. 896138 dated 16.12.2016 drawn on



Deutsche Bank, Gurugram and the same was acknowledged by the respondents vide receipt No. 2100001225 dated 23.01.2017. A letter of allotment on dated 23.01.2017 was issued vide Ref. No. WR0306 in respect of above said property.

4. That the complainants again paid an amount of Rs. 5,74,764/- vide cheque bearing No. 433809 dated 03.03.2017 drawn on Deutsche Bank, Gurugram to the respondents and the same was acknowledged by the respondents vide receipt bearing No; 2100001236 dated 07.03.2017 in respect of the above said unit and Rs. 11,66,232/- vide cheque bearing No. 433820 dated 24.07.2017 drawn on Deutsche Bank, Gurugram to the respondents the same was acknowledged by the respondents vide receipt bearing No; 2100001271 dated 27.04.2017 in respect of the above said Flat, meaning to say that till date, the complainants paid a total sum of Rs. 25,40,966/- to the respondents in respect of the above said unit.
5. That the respondents issued the letter bearing Ref. No. WR0306 dated 19.04.2017 for executing a buyer's agreement with complainants in respect of above said property. The respondents also sent two unsigned copies of buyer agreement dated 11.04.2017 to sign on the above said agreement for executing the same and after seeing the terms and conditions of the buyer's agreement, in Column No. 3.2 (c) demanded Rs. 4,47,862/- towards EDI & IDC and Rs. 20,000/- as PBC payment and Rs. 1,50,000/- membership fee of the club and infrastructure augmentation charges found increased and the builder added the cost of additional devices equipment which shall be borne and paid by the buyer in proportion of super area of dwelling units as and when demanded by the company and also levied charges of BSP which was not include the EDC charges, Labour Cess, Service Tax, WCT, VAT, the electric substation

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charges, operation of generator sets, fire-fighting equipment's which shall be additionally payable by the buyer on demand at the time of possession and in para no. 3.6 has levied another extra taxes and other things and also mentioned that the buyer shall have ownership right of the dwelling unit only and no other rights shall occur to the buyer in any part of project, school, park, lawn etc. and by the definition of Haryana Apartments Ownership Act, he has right to enjoy all the things like shops, clubs, parks etc. without paying extra to developer and para no. 3.3 & 3.4 is disputed and in para no. 3.4 mentioned that the builder has charges electric sub-station, power backup etc. charges even at the time of allotment, he has not mentioned or tell the buyer to pay extra at the time of builder buyer agreement and as per the conditions of 4.6 is wrong term and condition mentioned that the respondents forfeit 10% of the basic sale price of the dwelling unit as the respondents cancel or resume the above said flat which was not conveyed to the complainants at the time of allotment which is above said condition is abide by the builder at the time of allotment. And in para no. 5.2 is a totally concealment from the buyer at the time of allotment that in delay in possession, the company/respondents shall be entitled to reasonable extension of time for handing over the possession of dwelling unit and the conditions of Para no. 5.5 was not disclosed at the time of allotment of above said dwelling unit and condition of Para no. 5.7 and 5.9 was also not disclosed at the time of allotment of above said dwelling unit and the builders/respondents has promised with the complainants that they will not take any taxes or any additional charge of power house, maintenance etc. And when the builder get 100% amount in the 1st year of the booking and not start the construction of the project till the execution of builder buyer agreement and not start the construction within the stipulated

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time, this shows the intention of the builder only to grab the hard earned money of the complainants. And the buyer has come to know the above said facts and terms and conditions when they offer to sign, the builder buyer agreement. And also asked with the builders that they have not comply with the terms and conditions as letter allotment was issued, then the builder has totally refused to change the terms and conditions of the builder buyer agreement and threatened to the buyer that they will not paid further instalments then they will forfeit all the amount paid by the buyer/complainants and builder buyer agreement is only the illegally term and conditions levied on the buyer/complainants in a illegal manner and against the law.

6. That due to that the buyers has requested to the builder/respondents to change the terms and conditions which was not disclosed at the time of allotment then they totally refused to change the terms and condition of the builder buyer agreement and also pressurise to the complainant to sign the builder buyer agreement after threatening if they do not sign the builder buyer agreement then they will forfeit the amount not pay a single penny as a refund to the complainants. And the complainants approach to the office of the respondents that they have change the terms and conditions of the builder buyer agreement as and when the allotment letter was issued and they have promised the terms and conditions which was not mentioned and now the builder have modified the builder buyer agreement. And if the builder has not change the terms and conditions of the builder buyer agreement then the complainants wants to withdraw the said amount from their project then the official of the respondents threatened to the complainants that they will not pay a single penny and forced to the complainants to sign the builder buyer agreement.

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7. That all the negotiations before the booking of the unit and at the time of making payment to the respondents in the shape of cheques/bank transfer, the complainant were lured by respondents to invest in the project on the pretext that delivery of the apartment will be done within 36 months. As per clause of the flat buyer's agreement, the possession of the unit will be handed over to the complainant within 36 months from the signing of agreement.
8. That as per clause of the agreement, if the developer is not able to handover the possession within 36 month + 180 days, in that case, the allottee/complainant shall be entitled to receive compensation for delay at the rate of Rs. 5/- per sq. ft. per month of the super area from the developer.
9. That the complainants visited the site where the project to be developed by the respondents and shocked to see that the construction work was not going on in progress by the respondents and from physical verification at the project site, the complainant was/is sure that the respondents will not be able to deliver the possession of apartment/unit in near future.
10. That the complainants visited the office of the respondents several times, but the respondents had not given any satisfactory reply to the complainant, even the respondents have not been given any information regarding completion of the project and handed over the possession of apartment/unit or delayed interest.
11. That the respondents have ignored the request of the complainants to compensate them. It is pertinent to mention here that the terms of the agreement are completely one sided and favoured only the company and the same has been formulated in a way that they can take undue advantage of their dominant position at the site where the project is being

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developed and harass the complainants into making payments as and when demanding.

12. Thus, the complainants having no other option approached this authority for refund of their paid-up amount.

C. Relief sought by the complainants:

13. The complainant has sought following relief(s).

- I. Direct the respondent to refund the amount received by the respondents from the complainants along with interest.
- II. Direct the respondents to compensate the complainants for litigation charges of Rs. 1,00,000/-

14. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 no. 1

15. That the respondent takes this liberty to submit that the complaint is not maintainable against the respondent no. 2 to 4, as they are not a necessary and proper party to the present proceedings. Moreover, the respondent no. 2 to 4 who happens to be the officials of the respondent have no contractual relationship, obligations, or liability towards the complainants in their personal capacity or otherwise, as such their names may be dropped from array of parties.
16. That the complainants out of their own free will and volition showed their willingness to book a unit in the residential project being developed by the respondent in the name and style of Woodview Residencies, situated at Sector 89 & 90, Gurugram, Haryana (now known as "ACE Palm Floors"). The complainants approached the respondents and expressed their desire to purchase a unit in the project and after reading every



clause of the application form and after understanding their obligations, liabilities, and limitations, they voluntarily signed and submitted the application form dated 18.01.2017. Thereafter, in terms of the aforesaid application form, the respondent provisionally allotted to the complainants a unit bearing No. C 87-UGF on ground floor of the said project having an approximate super area of 2498 Sq. Ft. .

17. The total sale consideration of the unit was Rs. 1,40,17,572.80/- and the complainants had opted for 'Special payment Plan/ Schemes' i.e. 'PLP-30:10:60' payment plan for payment of the agreed consideration towards the sauni. In fact, the detailed payment plan in respect of the said unit was also sent to the complainants along with the provisional allotment letter dated 23.01.2017. At the time of booking the complainants had advanced the booking amount of Rs. 8,00,000/- and accordingly, the respondent issued a receipt dated 23.01.2017, in respect of the receipt of the booking amount. The complainants had to pay the instalments in respect of the said dwelling unit, as per the payment schedule opted by the complainants in the application form dated 23.01.2017, in which they clearly failed, therefore, the respondent issued various notices, the details of which are as under:

(i.) Invoice/ demand note dated 06.03.2017 issued as a reminder to make the due payments as per the payments schedule. The total amounts) due and payable as on 06.03.2017 was Rs. 19,45,778.82/-, however, the complainants choose to pay an amount of Rs. 5,74,764/-

(ii.) The respondent issued 1st reminder letter dated 04.04.2017. in respect of the overdue instalment to be paid 'within 60 days of the allotment' along with other dues including previous dues and delayed payment interest ie., an amount Rs. 13,78,707.50/- which remained overdue, despite giving several reminders

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(ii.) The respondent issued another letter dated 19.04.2017, calling upon the complainants for the execution of the 'buyers' agreement' in respect of the allotted Dwelling Unit no. C-87, UGF in the said Project, however, the complainants failed to come forward to execute the 'buyer's agreement' despite getting several reminders.

(iii.) Since no response was received from the complainants, nor any payment, therefore the respondent issued a reminder letter i.e., reminder-II dated 24.04.2017, in respect of the overdue instalments totalling to Rs. 13,92,182.66/

(iv.) The respondent issued another demand note dated 24.04.2017 in respect of the overdue instalment totalling to Rs. 32,31,603.47/-. However, the complainants only paid the part consideration amounting to Rs. 11,66,232/-.

18. That since, the complainants failed to make the aforesaid payments and was in continuous default of the instalments, therefore the respondent no. 1 issued several reminders to the complainants, however, all went in vain. It is pertinent to mention that it is the complainants who are at fault in making timely payment of due instalments because of which the construction of the said project became delayed. Non-payment of the instalments by the allottees is a 'force majeure' circumstance.
19. That as per Clause-25, the unit was to be handed over within 36 months + 6 months grace period, subject to Clause 26 of the application form dated 18.01.2017. However, the said obligation of the respondent for handing over the said unit by 23.07.2020, comes into play, subject to timely payment of instalments by the complainants. However, in the present case, the complainants have only paid an amount of Rs. 25,40,966/-, as against the total value of the unit, i.e., Rs. 1,40,17,572.80/- . It is respectfully submitted that the complainants have not paid the due

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instalments despite issuance of several demand letters and reminder notices.

20. That moreover, there is no unreasonable delay at all on the part of the respondent, since the developer is eligible for extension of time, on account of various 'force' circumstances, as per the below calculations:

1) National Green Tribunal in case of Vardhman Kaushik vs Union of India for which the duration was 08.11.2016 to 16.11.2016

2) National Green Tribunal in case of Vardhman Kaushik vs Union of India for which the duration was band was lifted for 10 days

3) Press Note by EPCA-Environment Pollution Control Prevention and Control Authority Press Note - 31.10.2018 for which the duration was 01.11.2018 to 10.11.2018

4) Supreme Court for which there was a three day ban on industrial activities in pollution hotspots and construction work for which the duration was 23.12.2018 to 26.12.2018

5) EPCA/Bhurelal Committee Order for which there was a complete ban, and the duration was 01.11.2019 to 05.11.2019

6) Hon'ble Supreme Court in case of M.C Mehta vs Union Of India of India Writ Petition (c) no. 13209/1985 for which the duration was 04.11.2019 to 04.02.2020

7) Government Of India due to lockdown because of the covid period and the duration was from 24.03.2020 to 03.05.2020

21. That in view of the above facts and circumstances the demands of the complainants for refund of the amount paid is baseless and the same cannot be granted under any situation. However, in the present scenario the respondent could not achieve the said desired targets due to several reasons including stay on construction activities, and most importantly

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due to implementation of nationwide 'lockdown' to contain the spread of Covid-19'. All these factors conjointly lead to a 'Force Majeure' situation which is beyond the control of the developer, as such, any delay in completion of the project on account of such 'Force Majeure' situations or any other situations, the developer cannot be held liable and/ or accountable for the delay. It is further submitted that the project of the respondent is in a progressive stage and the project is completed up to 85%.

22. That the respondent is at the advanced stage of construction and is completed to the extent of 85%. It is submitted that this fact is evident in the light of the photographs of the project site therefore in view of the same, the complainants may not be permitted to raise unreasonable demands which can materially affect the entire project of the respondent.
23. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

24. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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E.II Subject-matter jurisdiction

26. 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) 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.

27. 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 complainant at a later stage.

28. 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. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment

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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."

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding delay due to force majeure

30. The respondent-promoter raised the contention that the respondent is eligible for extension of time on account of various force majeure circumstance construction National Green Tribunal in case of Vardhman Kaushik vs Union of India for which the duration was 08.11.2016 to 16.11.2016 , ban was lifted for 10 days , EPCA-Environment Pollution Control Prevention and Control Authority Press Note - 31.10.2018 for which the duration was 01.11.2018 to 10.11.2018 , Supreme Court order for which there was a three day ban on industrial activities in pollution hotspots and construction work for which the duration was 23.12.2018 to 26.12.2018 , EPCA/Bhurelal Committee Order for which there was a complete ban, and the duration was 01.11.2019 to 05.11.2019 , Hon'ble Supreme Court in case of M.C Mehta vs Union Of India of India Writ Petition (c) no. 13209/1985 for which the duration was 04.11.2019 to 04.02.2020 and for lockdown due to covid but all the pleas advanced in



this regard are devoid of merit. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

31. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure *circumstances*, but the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 5.1 of the buyer's agreement. Though there have been various orders issued but these were for a short duration and are annual features. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project and the plea raised in this regard is devoid of merit.
32. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 23.07.2020 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders.

G. Entitlement of the complainants for refund:

G.I Direct the respondent to refund the amount received by the respondents from the complainants along with interest.

33. The present complaint was disposed off by the Adjudicating Officer vide order dated 22.09.2021. An appeal was filed by the respondent bearing no. 203 of 2022 on the ground of jurisdiction and the same was allowed vide order dated 17.04.2023 and the case was remanded back to the Authority for fresh decision in view of the law laid down by the Hon'ble



Apex Court in **Newtech Promoters and Developers Private Limited**
Vs State of U.P and Ors. 2021-2022(1) RCR(C) , 357.

34. In the present complaint, the complainants are admittedly the allottees of respondent – builder of a residential plotted colony on the basis of letter of allotment dated 23.01.2017 for the unit no. C-87 UGF in the project of the respondent known as “Woodview Residencies”. No buyer’s agreement was executed between the parties in this regard. The due date is calculated from the possession clause of 5.1 of the model buyer agreement in Cr. No. 619 of 2019 as the possession clause says 36 months with a grace period of six months from the date of issuance of allotment letter. The grace period of six months is allowed being unqualified therefore the due date comes out to be 23.07.2020.
35. The complainants had paid total amount of Rs.25,40,996 /- against the total sale consideration of Rs. 1,40,17,572.93/- for the allotted unit. No occupation certificate was obtained, and no possession was offered to the complainants.
36. However, the present complaint is premature as the due date of delivery of possession is 23.07.2020 and the complainants have filed the present complaint seeking refund of the paid-up amount on 23.12.2019 that is before the due date itself.
37. 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. But no allotment or agreement was signed between the parties. 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"

38. In view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.75% p.a. on the refundable amount, from the date of surrender 23.12.2019 till the actual date of refund of the

amount within the timelines provided in rule 16 of the Haryana Rules 2017.

G.II Direct the respondents to compensate the complainants for litigation charges of Rs. 1,00,000/-

39. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

40. 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 promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent-promoter is directed to refund the paid-up amount of Rs. 25,40,996/- after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.75% p.a. on the refundable amount, from the date of surrender i.e 23.12.2019 till the actual date of refund of the amount.

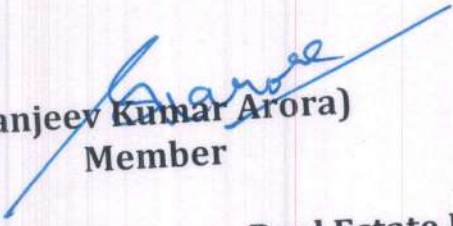


HARERA
GURUGRAM

Complaint No. 6681 of 2019

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.

41. Complaint stands disposed of.
42. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated 05.09.2023

HARERA
GURUGRAM