

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

Complaint no.	:	1074 of 2022
First date of hearing:		26.04.2022
Order Reserve On	:	14.07.2023
Order Pronounce On:		22.09.2023

Devika Garg R/o: C 301, Stellar Greens, Sector-44, Noida-201303, Uttar Pradesh	Complainant
Versus	
M/s Ireo Grace Realtech Private Limited Office at : - C-4, 1 st Floor, Malviya Nagar, New Delhi, South Delhi-110017	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Deepak Kumar	Advocate for the complainant
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint dated 11.03.2022 has been filed by the complainant/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 thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others.
5.	RERA registered/not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	303, 3rd floor, tower A5 (annexure- 3 on page no. 32 of the complaint)
7.	Unit measuring	1932.07 sq. ft. (annexure- 3 on page no. 32 of the complaint)



8.	Date of approval of building plan	23.07.2013 (as per project details)
9.	Date of allotment	07.08.2013 (annexure- 2 on page no. 25 of the complaint)
10.	Date of environment clearance	12.12.2013 [as per project details]
11.	Date of execution of builder buyer's agreement	03.06.2014 (annexure- 3 on page no. 29 of the complaint)
12.	Date of fire scheme approval	27.11.2014 [as per project details]
13.	Reminders for payment	For Fourth Instalment: 16.03.2015, 15.04.2015 For Fifth Instalment: 13.06.2016, 06.07.2016 Final Notice: 28.07.2016
14.	Date of cancellation letter	01.09.2016 [annexure R-13 on page no. 63 of reply]
15.	Total consideration	Rs. 1,93,34,813/- (as per payment plan on page no. 28 of complaint)
16.	Total amount paid by the complainant	Rs. 59,78,984/- (as per payment request letter dated 16.08.2016, annexure R-12 on page no. 62 of reply)
17.	Due date of delivery of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
18.	Possession clause	13. Possession and Holding Charges Subject to force majeure, as



		<p>defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p>(Emphasis supplied)</p>
19.	Occupation certificate	27.01.2022 [annexure R-16 on page no. 67 of



		reply]
20.	Offer of possession	Not offered but cancelled

B. Facts of the complaint

The complainant has submitted as under:

3. That at the time of execution of application form @ Rs.8750/- per sq. ft. (inclusive of car parking), respondent collected the initial earnest money/amount of Rs.16,00,000/- from the complainant.
4. That the complainant thereafter as per the 2nd demand raised by the respondent, paid another sum of Rs. 21,44,549/- against which acknowledgment was issued by the respondent.
5. That complainant when received the apartment buyer's agreement and enquired in regard to increase of Rs. 650/- per sq. ft. in the basic sale price; then it was assured by the respondent that increased price of Rs.650/- shall be taken-back and persuaded the complainant to pay the next/third installment to avoid any late payment charges and/or forfeiture of money and promised that the adjustment shall be made before issuance of next/fourth instalment's due date and vide communication dtd. 18.12.2014 recalled the buyer's agreement directing the complainant to return the same for necessary corrections and further assured that they are in a process of being finalizing the new apartment buyer agreement and necessary reductions in the basic sale price shall be done at their end.
6. That when complainant received another/new apartment buyer agreement along with payment plan for getting it signed by the complainant; several other issues which were contrary, one sided & unethical adversely affecting the interest and charges as falsely claimed

were neither being resolved in the said apartment buyer agreement, nor the original basic sale price was reduced to its original amount of Rs. 8,750/- per sq. ft. rather respondent kept intact the illegal and unjustifiable demands inspite of repeated resistance by the complainant, who was further threatened that the unit allotted to the complainant shall be cancelled also by forfeiting the whole money paid by the complainant.

7. That to the notice and knowledge of complainant, during the course of investigation in case FIR No. 561/2014 lodged at P.S.: Sushant Lok, Gurgaon, Haryana, it had been mentioned by respondent admitting that the original booking of unit/flat had been done @ Rs.8,750/- per sq. ft., but later-on it had been increased to Rs.450/- per sq. ft. as charges for two car parking's; whereas in case of complainant Rs.650/- had been increased for two car parking's.
8. That complainant at the instigation of respondent who promised to resolve the issue of complainant wrote a letter to the respondent on dated 13.04.2015 asking them either to convert the current construction linked payment plan (CLP) to possession linked plan (PLP) or to refund the money to the complainant. The complainant again vide mails/letters dated 13.02.2017, 27.03.2017, 18.05.2017, 13.06.2018 and also on numerous occasions requested the respondent to accede the request of complainant but, not at one point of time positive response was extended by the respondent. The complainant also requested to one of the Director of respondent (Mr. Jai Bharat Aggarwal) during the period October to 03.12.2018 in order to resolve the issue of complainant but, of no avail.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

(i) Direct the respondent to refund the paid up amount.

10. 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.

The respondent has contested the complaint on the following grounds: -

11. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
12. That there is no cause of action to file the present complaint.
13. That the complainant has no locus standi to file the present complaint.
14. That the present complaint is barred by res-judicata.
15. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
16. The present complaint is barred by limitation.
17. That the complainant is estopped from filing the present complaint by his own acts, conducts, omissions, admissions, acquiescence and laches.
18. That the complaint is not maintainable for the reason that the buyers agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyers agreement.
19. That the complainant has not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the complaint. The present complaint has been filed by them maliciously

with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

20. That complainant after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of an apartment vide their booking application form dated 22.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form.
21. That based on the application for booking, the respondent vide its allotment offer letter dated 07.08.2013 allotted to complainant apartment no. CD-A5-03-303 having tentative super area of 1932.07 sq. ft. for a total sale consideration of Rs. 1,93,34,813. The apartment buyer agreement was executed between the parties on 03.06.2014. The complainant agreed to be bound by the terms contained in the apartment buyer's agreement.
22. That the respondent raised payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan. Vide payment request letter dated 28.01.2015, respondent had raised payment demand towards the fourth instalment for Rs. 22,12,007/-. However, the complainant failed to make payment despite reminders dated 16.03.2015 and 15.04.2015.
23. That the respondent vide its letter dated 14.03.2016 informed the complainant about the outstanding dues in respect of the instalments as well as delayed interest on account of non-payment of installments on time in the sum of Rs. 26,57,527/-. Despite receiving the said letter complainant failed to pay any amount to the respondent in respect of its dues.
24. That the respondent vide its payment request dated 16.05.2016, raised the fifth installment along with previous arrears in the sum of Rs.



- 41,07,155/-. However, complainant failed to make payment despite reminders dated 13.06.2016 and 06.07.2016 by the respondent.
25. That the respondent vide its payment request dated 27.06.2016, raised the sixth installment along with previous arrears in the sum of Rs. 60,05,027/-. However, the said amount has till date not been paid by the complainant. The respondent was constrained to issue final notice dated 28.07.2016 calling upon the complainant to clear her outstanding dues within a period of 30 days from the date of said letter failing which the allotment shall stand cancelled and the amounts paid by the complainant to the extent of earnest money, interest on delayed payments, brokerage charges, service tax shall be forfeited in accordance with the terms of the apartment buyer agreement.
26. That the respondent vide its payment request dated 16.08.2016 raised the seventh installment along with previous arrears in the sum of Rs. 80,46,649/-.
27. That on account of non-fulfilment of the contractual obligations by complainant despite several opportunities extended by the respondent, the allotment of complainant was cancelled, and the earnest money deposited by the complainant along with other charges were forfeited vide cancellation letter dated 01.09.2016 in accordance with clause 21 read with clause 21.3 of the apartment buyers agreement and the complainant is now left with no right, claim lien or interest whatsoever in respect of the said booking/allotment.
28. That according to agreed clauses of the booking application form and the apartment buyer's agreement, timely payment of installments within the agreed time schedule was the essence of allotment. The complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, her calculations went wrong



on account of slump in the real estate market and the complainant did not possess sufficient funds to honour her commitments. The complainant was never ready and willing to abide by her contractual obligations and she also did not have the requisite funds to honour her commitments.

29. That even though the complainant has nothing to do with the construction yet it is pertinent to mention here that the respondent has already completed the construction of the tower in which the cancelled unit of the complainant was located. The respondent applied for the grant of the occupation certificate vide application dated 10.09.2019. The concerned authorities granted the occupation certificate for the tower in question on 27.01.2022.
30. That it is pertinent to mention herein that the implementation of the said project was hampered due to several force majeure factors like inability to undertake construction for approximately 7-8 months due to Central Government's notification regarding demonetization, orders passed by the National Green Tribunal, non-payment of instalments by allottees such as the complainant, heavy rainfall in Gurgaon in the year 2016 and unfavourable weather conditions, filing of several false and frivolous complaints by the defaulting allottees before the DICP, Haryana, Chandigarh and outbreak of Covid-19 and its subsequent waves. The said events and conditions were beyond the control of the respondent and materially affected and construction and progress of the project.
31. 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 submission made by the parties.

E. Jurisdiction of the authority

32. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

33. 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

34. 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.

35. 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.
36. 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."

F. Findings on the objections raised by the respondent.

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

37. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of

the Act and the provision of the said Act cannot be applied retrospectively.

38. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 and which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and

discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

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

40. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainant is in breach of buyers agreement for non-invocation of arbitration.

41. The respondent submitted that the complaint is not maintainable for the reason that the buyers agreement contains an arbitration clause which



refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"35. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

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



Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

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

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

44. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause



in the application form, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

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

45. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings regarding relief sought by the complainant.



(i) Direct the respondent to refund the paid up amount.

46. The complainant-allottee booked a residential apartment in the project of the respondent named as "Corridors" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. 1,93,34,813/-/-. The allotment of the unit was made on 07.08.2013. Thereafter on 03.06.2014 the apartment buyer agreement was executed between the parties.
47. As per the payment plan the respondent started raising payments from the complainant but they defaulted to make the payments. The complainant-allottee in total has made a payment of Rs. 59,78,984/-. The respondent vide letter dated 28.01.2015 raised the demand towards fourth instalment and due to non-payment from the complainant it sent reminders on 16.03.2015 and 15.04.2015 and thereafter various instalments for payments were raised but the complainant failed to pay the same. Further the respondent sent final notice dated 28.07.2016 to clear the outstanding dues within 30 days. Thereafter the respondent cancelled the allotment the unit vide letter dated 01.09.2016. The occupation certificate of the tower where the allotted unit is situated has been received on 27.01.2022.
48. The respondent-builder took a plea that after the cancellation of allotted unit on 01.09.2016, the complainant filed the present complaint on 11.03.2022 i.e., after more than 5 years and thus, is barred by the limitation. The authority observes that the case of the complainant is not against the cancellation letter issued way back as on 01.09.2016 as the same cannot be agitated as complaint was filed after more than 5 years well beyond the limitation period. But the promoter was required to refund the balance amount as per applicable cancellation clause of the buyers agreement. The balance amount has not been refunded which is a

subsisting obligation of the promoter as per the builder buyer agreement executed between them. The respondent-builder must have refunded the balance amount after making reduction of the charges. On failure of the promoter to refund the amount the authority is of considered opinion that the promoter should have refund the balance amount after deducting 10% of the sale consideration.

49. The Hon'ble Apex Court of land in cases *of Maula Bux Vs. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, 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 provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
50. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-

"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"

51. In view of aforesaid circumstances, the respondent is directed to refund the paid-up amount after deducting 10% of the basic sale price of the unit being earnest money within 90 days along with an interest @ 10.75% p.a.



on the refundable amount, from the date of cancellation i.e., 01.09.2016 till the date of its payment.

H. Directions of the authority: -

52. 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 sec 34(f) of the Act:-

- i. The respondent/promoter is directed to refund the paid-up amount after deducting 10% of the basic sale price of the unit being earnest money within 90 days along with an interest @ 10.75% p.a. on the refundable amount, from the date of cancellation i.e., 01.09.2016 till the date of its 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.

53. Complaint stands disposed of.

54. File be consigned to the registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.09.2023