BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**4757 of 2020**
Date of filing of complaint	**18.12.2020**
Date of decision	**21.11.2023**

1. 2.	Satinder Singh Sondhi Sunita Sondhi **R/O**: 221, Deed Plaza Complex, Opp. Civil Court, Gurugram	**Complainants**
	Versus	
	Haamid Real Estates Private Limited **Regd. Office**: The Masterpiece, Sector 54, Golf Course Road, Gurugram	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Sanjeev Sharma (Advocate)	**Complainants**
Sh. M.K Dang (Advocate)	**Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"The Peaceful Homes", Sector 70A, Gurgaon
2.	Project area	8.38 acres
3.	Nature of project	Group Housing Colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA registration valid up to	31.12.2019
8.	Allotment Letter	11.12.2013 (Page 48 of the reply)
9.	Unit no.	A083, 8th floor, Tower A (Page 48 of the Reply)
10.	Unit area admeasuring	2475 sq. ft. (super area)

		(Page 48 of the Reply)
11.	Date of execution of Flat Buyer's Agreement	Executed in 2013 (Complainant has alleged on page 3 of CRA)
12.	Possession clause (Taken from bba annexed on another file of same project)	**11 (a) Schedule for Possession of the Unit** "The company endeavours to hand over the possession of the Unit to the Allottee within a period of **36 (Thirty-Six) 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 ("commitment period"). The Allottee further agrees and understands that the Company shall **additionally be entitled to a period of 6 (six) months after the expiry of the said commitment period** to allow for any contingencies or delays in construction including for obtaining occupation certificate of the Project from the Government Authorities.
13.	Date of commencement of excavation	21.04.2014
14.	Due date of possession	21.04.2017 (Calculated from the date of excavation)
15.	Total sale consideration	Rs. 2,16,27,319/-
16.	Amount paid by the complainants	Rs. **1,44,76,467/- (total amount paid by the complainants)**

		(Rs. 94,87,406/- paid by the complainant in CR No. 4757-2020) (Rs. 50,27,532/- paid by the complainant in CR No. 50,27,532/-)
17.	Occupation certificate /Completion certificate	Obtained for Tower AS-1,2,3 on 29.10.2019
18.	Offer of Possession	06.02.2020 (Page 110 of reply)
19.	Surrender by the complainant	27.11.2019 (Page 24 of complaint)
20.	Reminder and Pre-Termination Letter	04.05.2020 and 11.05.2020
21.	Termination Letter	15.07.2020 (Page 39 of complaint)
22.	Merger Acceptance	14.08.2020 (Page 27 of the complaint)

B. Facts of the complaint:

3. That a project by the name of The Peaceful Homes situated in sector-70 A, Gurugram Haryana, was being developed by the respondent. The complainants coming to know about the same booked two units for a total sale consideration of Rs. 2,16,27,319/- The complainants had paid an amount of Rs. 81,46,704 and as per the payment plan scheme wherein 30% amount had to be paid initially and remaining 70% was to be paid at the time of possession. The complainants received the allotment letter for unit no. A-083, Tower-A, 8th Floor on 11.12.2013.

4. That another unit no. C-032 booked by the complainants Tower-C, 3rd floor admeasured 1565 sq. ft. was booked on 28.10.2013. That the buyer's agreement was executed in the year 2013, the possession was to be handed over by 2016 and if the grace period of 6 months is added, then the possession was to be handed over by June 2017 as per clause 11 (a). The complainants were never given a signed copy of the buyer's agreement. That the complainants along his friend who booked a unit in the same project of the respondent, visited the site to check on the construction progress but they always returned back in vain seeing the ongoing construction which was miserably halted by the respondent.

5. That when the complainants did not got the possession of the unit bearing nos. A-083 and C-032, the complainants sent a cancellation letter to the respondent seeking refund of the 30% amount which was paid by the complainants in lieu of both the units booked with the respondent on 27.11.2019 for unit no. A-083. The complainants sent the letter because firstly, there was no construction taking place on the project land despite payment of the requisite amount paid by the complainants on time and secondly, the complainants had lost all the faith in the respondent and therefore, the complainants wanted to secure their hard-earned monies which was illegally extorted by the respondent.

6. That, the respondent vide email dated 13.04.2020 sent an email offering possession of the unit wherein the documents enclosed in the said email were dated 06.02.2020. That the respondent sent the offer of possession along with a demand letter demanding an amount of Rs. 1,44,57,626/-.

7. That the respondents had raised the issue of termination of the allotment of the unit no. A-083 by forfeiting the amount which was paid by the complainants amounting to 30% of the 30% in May 2020 and the

complainants had requested for some time to settle the said dispute and securing the hard-earned money of the complainants and sought that the said matter be fixed for August 2020 so that the decision can attain finality.

8. That the complainants came to know that the unit no. B-071 which was allotted to Harsh Joneja & Khyati Joneja friends of the complainants, were also facing the same harassment from the respondent and therefore, the complainants and Mr. Arun Joneja decided to meet the CRM team of the respondent company to settle the matter without the loss of the money which was paid by the complainants to the respondent.

9. That meanwhile when the negotiations were taking place between the complainants and the CRM team of the respondent, the complainants received a letter dated 15.07.2020 from the respondent containing termination of unit no. A-083 which was allotted to the complainants on the ground of non-payment.

10. That after the termination , the complainants along with Mr. Arun Joneja, visited the CRM team of the respondent requesting to find a solution so that the unit retains with the complainants and therefore, the CRM team suggested a merger option by retaining one bigger unit ie A083 rest of the two unit will merge into this unit ,wherein the complainants along with Harsh Joneja &Khyati Joneja would be the joint owner of the this unit which will be retained and there will lie no claim , interest, title over the merged two units which were allotted earlier, to which the complainants and Mr. ArunJoneja immediately agreed in order not to lose their hard earned money and to get out of the trap of the respondent.

11. That a fresh payment plan was executed to the complainants and Mr. Arun Joneja wherein unit No. A-083 was allotted/ retained to them and the complainants and Mr. ArunJoneja were directed to amount of Rs.

43,55,000/- and Rs. 21,45,000/- respectively towards the freshly allotted/ retained unit. Also, the respondent emailed on 14.08.2020 to the complainants that the unit nos. C-032 and B-071 have been cancelled and there shall lie no claim, interest, title, benefit on the said two units thereupon. That the freshly allotted unit admeasured 2475 sq. ft. with a basic sale price of Rs. 7300 per sq. ft., which was much higher from the market value but the complainants had no option but to agree along with further payment of Rs. 65,00,000/- over and above the earlier paid amount of Rs. 94,87,406/- by the complainants and Mr. ArunJoneja had paid Rs. 50,27,532/-.

12. That when the said deal got finalized and after accepting the balance payment by CRM team by cheque and sharing the payment plan, 15 days thereafter, the complainant enquired about the encashment of the given cheques of balance payment, to which the CRM team came to know that the above said unit was already sold by the company malafidely to get the full payment from the market and therefore the allotted unit in 2013, a new proposal had to be worked out upon for the complainants for the third time.

13. That as no flat is given by the builder to complainants therefore the complainant requested to refund the deposited amount without any deduction. That the complainants also issued a cheque of Rs. 43,55,000/- based on the fresh demand raised by the respondent, though the same was not en-cashed by the respondent due to the termination of the aforesaid unit as being illegally sold to third party by the respondent and also due to the aforesaid reasons mentioned leading to filing this complaint seeking refund of the deposited amount.

C. Relief sought by the complainant:

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

i.Direct the respondent to refund the amount paid by the complainants amounting to Rs. 94,87,406/-

D. Reply by respondent:

15. That the complainants, after checking the veracity of the project namely, 'The Peaceful Homes', Sector 70A, Gurugram had applied for allotment of an apartment vide their booking application form with respondent. That based on it, the respondent allotted to the complainants unit no. A083 having tentative super area of 2475 sq. Ft for a sale consideration of Rs.2,16,27,319/-. Three copies of the buyer's agreement were sent to the complainants by the respondent vide letter dated 18.12.2014. However, it is pertinent to mention herein that the complainants failed to execute the buyer's agreement despite reminders dated 07.01.2015, 09.01.2015, 18.08.2017 and 15.03.2018.

16. That the possession of the unit was to be offered to the complainants within a period of 36 months from the date of commencement of construction of the project, which shall mean the date of commencement of the excavation work for which the due date comes out to be 21.04.2017.

17. That the complaint is not maintainable as the matter is referable to arbitration as per arbitration and conciliation act, 1996 in view of the fact that booking application form contains arbitration clause which refers to the dispute resolution mechanism to be adopted by parties in the event of any dispute i.e clause 49 of schedule 1 of the booking application form.

18. That there have been several unforeseeable events which were beyond the reasonable control of the respondent which have materially and adversely affected the timely completion of the project. That more than 60% of the allottees to the instant project have defaulted in their payments, leading

to unrealized amount of more than Rs. 150 Crores as on date in the project. Due to defaults on part of the allottees, including the complainant, the respondent was constrained to approach Financial Institutions to raise funds to complete the construction of the Project. The said financial institutions have their own internal compliances before such funds are disbursed to entities like the the respondent which lead to further delay in procurement of funds. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the Civil Contractors of the respondent viz. Shri Balaji Buildmate Private Limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time (around 6 months). During the said period, Shri Balaji Buildmate Private Limited did not allow any other contractor to carry on with the construction as was contemplated in the Builder Buyer's Agreement, and the project was put to a complete standstill. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and deploy its personnel and carry forward the work from the previous contractor.

19. That there was a major accident at the project site which resulted in the untimely death of two laborers and three laborers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, since the labour union had started raising various demands etc. after the unfortunate incident. The respondent was accordingly constrained to make payments to the said labourers as compensation towards the aforesaid incidents and arrive at an amicable settlement, all of which further took considerable time and resulted in delay in completion of the project. It is pertinent to mention herein that

the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016 further affected the pace of the development of the project. Due to the said policy change by the Central Government, the pace of construction of the Project was severely affected for a period of approximately six months from November 2016 to April 2017 as the withdrawal of money was restricted by Reserve Bank of India as the availability of new currency was limited and unavailable with the banks. It is well known that the Real Estate Sector deploys maximum number of construction workers who are paid in cash which wasn't readily available with the respondent. The effect of such demonetization was that the labourers were (on some occasions) not paid within the stipulated time which consequently which consequently resulted in a huge labour crisis in Delhi and NCR region. Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the impact of demonetization on real estate industry and construction labour. The Reserve Bank of India has published reports on impact of Demonetization. In the report- Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

20. That beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which further affected the timely completion of the said project. It is pertinent to mention herein that various approach roads to the said project which are to be constructed by the relevant civic authorities have not been

completely developed which are seriously affecting the timely completion of the project. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities.

21. That due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

22. That the aforesaid circumstances falls within the ambit of the definition of the 'force majeure' conditions as stated in Clause 34 of Schedule 1 of the booking application form. The respondent completed the construction of the tower in which the unit allotted to the complainants is located. It is submitted that respondent had applied for the grant of occupation certificate vide application dated 18.03.2019 and the same was granted by the concerned authorities on 29.10.2019.

23. That the respondent offered the possession of the unit to the complainants on 06.02.2020 and as per the statement of account, Rs. 1,59,84,069/- was payable by the complainants to the respondent. That despite final reminder dated 04.05.2020 and pre-termination letter dated 11.05.2020, the complainants failed to do so.

24. That on account of non-fulfilment of the contractual obligations by the complainants despite several opportunities extended by the respondent, the allotment of the complainants was cancelled and the earnest money deposited by the complainants along with other charges were forfeited vide termination Letter dated 15.07.2020 in accordance with Clause 33 of Schedule 1 of the Booking Application Form and the complainants are now

left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.

25. All other averments were denied in total.

26. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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

29. 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

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

30. 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.

31. 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. 2020-2021 (1) RCR (c) 357 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 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."

32. 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 complainants is in breach of agreement for non-invocation of arbitration.

33. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per booking application form which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the booking application form:

> *49. All or any disputes arising out or touching upon or in relation to the terms and conditions of the Application/ Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in DLF City, Gurgaon, Haryana by a sole arbitrator, who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Allottee(s) hereby confirms that the Allottee(s) shall have no objection to this appointment by the Company even if the person so appointed as the arbitrator is an employee or advocate of the Company or otherwise is connected to the Company and the Allottee(s) confirms that notwithstanding such relationship/connection, the Allottee(s) shall have no doubts as to the independence or impartiality of the sole arbitrator, appointed by the Company. It is understood that no other person or authority shall have the power to appoint the arbitrator. The Courts at Gurgaon alone and the Punjab & Haryana High Court at Chandigarh alone shall have the jurisdiction*

34. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically

agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement 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*** and followed in case of ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, 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. A similar view was taken by the Hon'ble apex court of the land 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** and has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, that 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.

35. 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 the 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.

F.II Objections regarding force majeure circumstances and the respondent was forced to stop construction due to various reasons beyond its control.

36. The respondent is claiming that the Director of Tower and Country Planning, Haryana has issued directions to stop work of some towers of the project, as a result the promoter was not able to complete the project within the stipulated time. The authority is of the considered view that if there is any restriction by any competent authority concerned and that the respondent was not at fault in then the respondent should approach the competent authority for getting this time period i.e., 28.07.2015 till 29.04.2016 be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

37. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Hon'ble Supreme Court has banned the construction activity on the recommendations of Central Pollution Control Board in Delhi NCR Region which was partially lifted. But the plea taken in this regard is not tenable. The due date for completion of

project is calculated as per clause 11(a) of the booking application form. Though there have been various orders issued but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

38. The respondent-promoter alleged that grace period on account of force majeure conditions. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram, but all the pleas advanced in this regard are devoid of merit. The agreement to sale was executed between the parties in the year of 2013 and as per terms and conditions of the said agreement for sale the due date of handing over of possession was 21.04.2017. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous whereas there is a delay of more than three years. Even after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances no grace period can be allowed to the respondent- builder. Though some allottees 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 on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

F. Entitlement of the complainant for refund:

F.I To direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest.

39. On 11.12.2013, the complainants were allotted two units bearing no. A083 and C-032 for a total consideration of Rs. 1,58,59,471/-. Thereafter a buyer agreement was executed between the parties in the year 2013 and the possession was to be handed over by 2017. The complainants being aggrieved by delayed possession sent a cancellation letter dated 27.11.2019 for both the units but instead of addressing the issue sought by the complainant seeking refund, the respondent offered possession of unit no. A083 on 06.02.2020 along with a demand letter of Rs.1,44,57, 626/-.Thereafter, the termination letter for the unit was issued on 15.07.2020. After the termination, the complainant and his friend who had a unit bearing no. B-071 in the same project requested for merger of their units. The respondent vide email dated 14.08.2020 accepted the said merger, they were allotted unit no. A-083 and the unit nos. C-032 and B-071 were cancelled mentioning that there shall lie no claim, rights, interest, title, benefit on the said two units thereupon.

40. The complainant further states that the unit was purchased under the subvention scheme under which 30% amount was to be paid at the time of booking and remaining amount was to be paid at the time of possession of the unit for which cheques were submitted but were not encashed and the unit has been illegally sold to the third party. Till date the complainants paid an amount of Rs. 1,44,76,467/- but as per statement of account dated 06.02.2020 the total amount being reflected as Rs. 81,46,704/- only.

41. The authority is of view that the complainant offered the possession of the allotted unit i.e. on 06.02.2020 even after the request for surrender of unit made by the complainant on 27.11.2019. Thereafter, the respondent

builder had sent various reminder letter to the complainant to clear the outstanding dues and cancelled unit vide cancellation letter dated 15.07.2020 due to non-payment. It is pertinent to mention here that the complainant and his friend who had a unit bearing no. B-071 in the same project requested for merger of their units after the cancellation made by the respondent to the complainant and the respondent builder vide email dated 14.08.2020 accepted the said merger. After the cancellation, when respondent merged the unit, the termination letter issued by him becomes invalid. On 07.11.2023, the respondent builder states at bar that the third party rights have already been created on the 19.08.2020 and no cancelation letter was issued.

42. It is pertinent to mention here that the counsel for the complainant states at bar that there were two complaints viz CR No.3170/2021 and CR No.4757/2020 were filed by them and an application for merger of the above complaints was filed as the issues involved are inter-connected and involved change of the unit. Thereafter both the complaints were clubbed together vide orders dated 29.7.2022 and complainant was heard by taking CR No.4757/2020 as the lead case during the proceedings dated 27.4.2023 and 16.5.2023. Order in respect of Cr No. 3170/2021 is uploaded wherein the respondent has been directed to refund the paid-up amount of Rs. 50,30,000/- after deduction of 10% sale consideration with interest from date of surrender i.e., 26.11.2019 till date of realization of amount.

43. The authority is of view that after merger acceptance of the subject unit bearing no. A083 on 14.08.2020, the respondent-builder created third party rights on 19.08.2020 without sending any intimation and cancellation letters to the complainant. Even cheques for demanded amount of unit no.A083 were given to the respondent by the complainant,

the same were accepted by the CRM of the respondent but were not encashed. It is pertinent to mention here that in the present complaint, the respondent-builder has created third party rights over the allotted to the complainant without giving any opportunity or sending even a single reminder for payment of outstanding dues and thus has acted in a very arbitrary manner by creating third party rights. The third party rights created by the respondent in respect of subject unit are not valid for the reason that it has been created without first cancelling the unit and refund of the deposited amount of the subject merged unit to the complainant. Hence, the action of the respondent is not justified and sustainable in the eyes of law. After consideration of all the facts and circumstances, the complainant is entitled for full refund of the amount paid by him without any deductions along with interest at prescribed rate i.e. 10.75% from the date of surrender/filling of complaint i.e. 18.12.2020 till its realization.

44. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

45. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of

interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

46. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.11.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

47. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date filling of complaint till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

H. Directions of the Authority:

48. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent/promoter is directed to refund the entire paid-up amount of Rs. 1,44,76,467/- received by it from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017

from the date of filing of the complaint i.e. 18.12.2020 till the actual realization of the amount.

ii. If in pursuance to order in Cr. No. 3170/2021, the respondent builder has already refunded any amount to the complainant then the respondent builder is directed to adjust/deduct such refunded amount from the paid up amount of Rs. 1,44,76,467/- and to pay the balance amount with interest as directed above. However, if no amount is refunded till date then the respondent builder is directed to pay the entire clubbed amount i.e. Rs. 1,44,76,467/- to the complainants.

iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

49. Complaint stands disposed of.

50. File be consigned to the registry.

(Sanjeev Kumar Arora)
Member

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2023