

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

Complaint no.	:	683 of 2023
Date of complaint	:	15.02.2023
Date of order	:	15.12.2023

Anil Dhawan R/o: - House no. 604A, Sushant Lok-1, Gurugram Haryana-122009	Complainant
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Versus

DLF Limited. Regd. Office at: DLF Gateway Tower, DLF-III, Gurugram, Haryana-122002	Respondent
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CORAM:

Sanjeev Kumar Arora	Member
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APPEARANCE:

Shri Ramphal Sheoran (Advocate)	Complainant
Shri J.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 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 provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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 of the project	"Sky Court , DLF Garden City", Sector-8, Gurugram Haryana
2.	Nature of the project	Commercial project
3.	DTCP License no.	31 of 2010 dated 01.04.2010 valid up to 21.04.2025 44 of 2012 dated 05.05.2012 valid up to 04.05.2023
4.	Registered/not registered	Not Registered
5.	Date of Application	21.12.2012 (Page 18 of the complaint)
6.	Unit no.	SCF 121 block F (Page 12 of the complaint)
7.	Area	1856 sq. ft. (Page 22 of the complaint)
8.	Date of builder buyer agreement	16.10.2013 (Page 16 of the complaint)
9.	Possession clause	POSSESSION OF THE PREMISES / UNIT: 11(a) - <i>Schedule for possession of the Said Apartment</i>



		<p>The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Apartment within a period of forty eight (48) months from the date of the Application unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.</p> <p>(Emphasis Supplied)</p>
10.	Due date of possession	<p>21.12.2016 (Calculated from date of application i.e., 21.12.2012)</p>
11.	Sale consideration	<p>Rs. 1,49,38,016/- [As per page 111 of reply]</p>
12.	Amount paid	<p>Rs. 1,42,27,468/- [As stated by the complainant in the facts on page 7 and confirmed by respondent at bar vide proceeding dated 15.12.2023]</p>
13.	Occupation certificate	<p>17.07.2017 (Page 31 of reply) 06.02.2020 (As per page 5 of written synopsis)</p>
14.	Offer of possession	<p>16.03.2018 (Page 193 of reply)</p>
15.	Letter by complainant w.r.t. seeking refund	<p>24.09.2022 (Page 106 of the complaint)</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

4. The complainant preferred this complaint against respondent i.e. DLF Limited, the promoter, hereinafter referred to as "respondent" for their gross failure in timely delivery of flat and grossly failed to refund money. That the respondent was responsible to deliver the flat duly completed in all respect within time as per clause 11(a) of apartment buyers' agreement "hereinafter referred as ABA" within 48 months from the application date 21-Dec-2012 that comes to 20-Dec-2016.
5. He visited to enquire time to time from respondent about the completion of site but nothing was heard from their side. The respondent has vicariously sent a notice of possession and consequently called him for captivating refund offers during 1st half of Sep2022 and then a lengthy/ unscrupulous demand letter. Upon high frustration and puzzled-off by from the respondent's behaviour, he asks for refund letter dated 24.09-2022 sent via speed post dt. 26Sep2022. The respondent grossly failed to respond to the refund request dated 24-09-2022.
6. That on 21st Dec, 2012, he made booking for a flat in promoter's newly launched project namely "the Skycourt" at Garden City, Sector-86, Gurugram, HARYANA for a total consideration of Rs. 1,49,38,016/- and made upfront payment of Rs. 11,00,000/-. That he made other payments as and when demanded. That the total

- payments made to respondent by him is Rs. 1,42,27,468/- as detailed hereinabove under "b. statement of payments".
7. It is also pertinent to mention here that no force majeure situation was reported/ aroused to. It is also pertinent to mention here that date of possession comes as 20-Dec-2016. That the promoter failed to get the project registered with RERA Haryana authority for the reason best known to them.
 8. That since Dec 2016 (the date of delivery as per agreement between the parties) he has been regularly approaching the respondent but the project is not yet able to obtain completion certificate from competent authority. So far, no steps have been taken by respondent for refund of amount deposited with them against the price of unit booked by him. That the promoter failed to deliver the project in time and in grave default on their part. That, while respondent is on default, he is not liable for any forfeiture, deduction rather respondent is liable to pay compensation, interest, damages to him. Besides it, it is also evident that the respondent could not offer valid possession (after obtaining completion certificate) within stipulated period i.e. by 20-Dec-2016 and there is no point to make further payment or to wait for possession without being compensated.
 9. That the respondent was requested through letter dt 24-09-2022 (sent on 26-09-2022) rejecting offer of possession and demand, if any and requesting to refund whole deposited amount along with

interest @ 15% if refunded within 90 days else with 18% interest from each date of payment till actual refund. The respondent not turned back and grossly failed on their part and the cause of action reborn and continue. That the present complaint is within time. However, it is of immense to describe here that completion certificate is not obtained by the respondent. That occupation certificate obtained by the respondent are dual, vague, invalid and liable to reject ab-initio. That respondent builder failed to obtain Fire NOC and failed to comply with the objection raised by department of Fire.

10. The builder respondent failed to provide the facilities and development per project and promises. He further submits that they have filled the present complaint without prejudice to other legal recourses available with them in law including civil/criminal case/ complaint to protect his legal rights against respondent for which he reserves their rights against respondent or any other responsible(s) one. That the cause of action is against respondent and in favour of complainant. Hence this complaint before the Hon'ble HRERA Gurugram Authority

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire amount deposited alongwith prescribed rate of interest.

12. 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/builder.

13. The respondent contested the complaint by filing reply dated 26.06.2023 on the following grounds: -
14. That the complainant has filed the present complaint claimed that he had submitted an application for allotment of apartment measuring 1865 square feet in Residential Group Housing Project known as "The Skycourt" in Garden City, Sector 86, Gurugram. It is the submission of the complainant is that a pre drafted Apartment Buyers Agreement was sent to the complainant and the same was executed by the complainant. The complainant has claimed that completion certificate was not obtained by the respondent and that the respondent had failed to obtain No Objection Certificate from Fire Department. The complainant has stated that on 12.09.2022 it submitted a request for refund and that it had paid a sum of Rs. 1,42,27,468/- towards cost of the apartment.
15. That application for booking/provisional allotment had been submitted by the complainant with the respondent on 21st of December 2012. An apartment bearing number SCF 121 having tentative super area admeasuring 1856 square feet, in The Sky Court, DLF Garden City, Sector 86, Gurugram, was allotted in favour of him. An allotment letter dated 07.01.2013 was issued by the respondent along with receipt dated 21.12.2012 and the schedule of payments were also issued by the respondent.

16. That eventually apartment buyer's agreement dated 16th of October 2013 was executed by the complainant in respect of the said apartment. Needless to say, that the said contract had been executed by the complainant voluntarily and consciously after deliberating over its contents and fully understanding the implications thereof. The total sale consideration in respect of the said apartment had been settled at Rs 1,49,38,016/-. The complainant's copy of the buyer's agreement was returned to him under cover of letter dated 16.10.2013. That it is pertinent to mention herein that the draft buyer's agreement had been uploaded on the website of the respondent even before the application form of the complainant was accepted. The complainant duly went through the draft buyer's agreement and also acknowledged this fact in the application form duly executed by him.
17. That it is pertinent to mention that clause 56 (i) of agreement specifically provided that in case there occurred any failure on the part of the allottee in making payments within time stipulated in the schedule of payments and even failure to pay the stamp duty, legal, registration and incidental charges, any increase in security including but not limited to interest-bearing maintenance security as demanded by the respondent or any other charges, in that event the same would be construed as commission of default on the part of the allottee in complying with conditions of the aforesaid agreement.
18. That status updates regarding the project were provided by the respondent vide letters dated 10.07.2014 and 20.08.2014. That the respondent continued to provide regular updates to the complainant and other allottees. Vide letter dated 26.03.2015, the respondent invited objections/suggestions for revision of building plans of the



project. By letter dated 02.09.2015, the complainant was informed that the terrace floor slab had been cast in the block in which the unit in question is situated.

19. That clause 11 (a) of the apartment buyers agreement dated 16th of October 2013 provided that the respondent subject to all just exceptions would endeavour to complete the construction of the said apartment within a period of 48 months from the date of submission of application for allotment by the allottee unless there occurred any delay or failure due to force majeure conditions, That thus, the stipulated date for delivery of possession (48 months) from the date of application for booking dated 21.12.2012 was 21.12.2016. The respondent had submitted application for grant of occupation certificate to Directorate of Town & Country Planning, Haryana, Chandigarh on 17th of February 2017. The concerned statutory authority had issued the Fire NOC on 28th of June 2017. The occupation certificate in respect of the said project had been issued by Directorate of Town & Country Planning, Haryana, Chandigarh on 17th of July 2017.
20. That That vide letter dated 24th of August 2017, the respondent had conveyed to the complainant that occupation certificate in respect of the said project had been granted by Directorate of Town & Country Planning, Haryana, Chandigarh.
21. That subsequently, vide letter dated 16th of March 2018 the complainant was called upon to obtain physical possession of the said apartment subject to payment of outstanding amount of Rs. 23,54,147.74.
22. That even thereafter various letters had been sent by the respondent to the complainant calling upon him to make payment of the outstanding

amount and to obtain physical possession of the unit in question .The complainant was also reminded vide letter dated 22.10.2019. However, the complainant still did not come forward to take possession and make payment of balance amounts payable under the buyer's agreement. Consequently, the respondent was constrained to issue reminders for possession. That all the reminders for possession issued by the respondent were duly ignored by him. Consequently, the respondent was left with no option but to issue final notice for cancellation dated 12.05.2022 informing him that if the complainant did not come forward to take possession of the unit upon payment of outstanding dues, the respondent would be constrained to cancel /terminate the buyer's agreement with consequential forfeiture of earnest money, interest on delayed payments and other amounts of non-refundable nature as per the buyer's agreement dated 16th of October 2013. Final notice dated 12.05.2022 which was dispatched to the complainant via registered post, speed post as well as by courier, was duly received by the complainant at the address provided by the complainant to the respondent.

23. That it was only in the month of September 2022 that the complainant finally approached the respondent and expressed his inability to make payment of balance amount and enquired about refund. It was explained by the respondent that in terms of clause 4 read with clause 56 of the buyer's agreement, upon cancellation of allotment, the Respondent is entitled to forfeit earnest money amounting to 10 % of the sale price, brokerage, interest on delayed payments and that the balance amount shall be paid to the complainant .

24. That the complainant was advised in his own interest to expeditiously clear his outstanding dues and take possession of the unit. The complainant agreed to the same but surprisingly, addressed a letter dated 24.09.2022 'rejecting' the offer of possession made by the respondent and sought refund of the entire amount paid by him along with interest. That thus, the request for refund was made by the complainant for the first time much after issuance of occupation certificate. As highlighted above, numerous reminders had been sent by the respondent to the complainant to make payment of outstanding amount and to obtain physical possession. The seeking of refund after issuance of occupation certificate has never found favour with this honourable authority. In fact, a large number of cases have been decided by this honourable authority wherein uniformly and without exception the view has been adopted that where the demand for refund is made by the complainant after grant of occupation certificate, the refund is not to be granted.
25. That from a large number of demand letters/reminders mentioned hereinabove, it is comprehensively established that the complainant was not willing to obtain physical possession though it became liable to make payment of holding charges/maintenance charges in terms of clauses mentioned hereinabove forming an integral part of apartment buyers agreement dated 16.10.2013.
26. That the counsel for complainant has claimed that the occupation certificate issued by Directorate of Town and Country Planning, Haryana, Chandigarh in respect of the project in question had been revoked. However, upon being questioned specifically by this honourable authority as to whether the counsel for the complainant



could supply any document to establish the revocation of occupation certificate or issuance of a fresh occupation certificate in respect of the project wherein the apartment is allocated, the counsel for the complainant conveyed his inability to do so. However, it is pertinent to mention that an application had been submitted on 20.12.2018 to the Director Town & Country Planning Chandigarh, for grant of revised occupation certificate in respect of addition alteration in club building, stilts and basement in respect of the project and thereafter occupation certificate had been again granted vide memo no ZP-619/AD(RA)/2020/3574 dated 06.02.2020. At the Outset, it is extremely important to note that the occupation certificate dated 06.02.2020, in no way affected the validity of the occupation certificate dated 17.07.2017 or the offer of possession issued on 16.03.2018. All essential amenities and facilities, as well as the promised amenities were always present and operative at the time of the offer of possession. It may be noted that after receipt of occupation certificate dated 17.07.2017 in relation to all buildings in the complex, the respondent realised that there remained duly sanctioned utilised FAR in the project which could be used/utilised to construct various additional/enhanced amenities. That, moreover, the submission of the complainant that without obtaining completion certificate, physical possession of the apartment could not have been offered by the respondent is also invalid.

27. That, moreover, even as per documents appended by the complainant and the accepted version of the complainant, the complainant made the first request for refund only on 24.09.2022 that is five years after issuance of occupation certificate.



28. 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

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

E.I Territorial jurisdiction

30. 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.

E.II Subject-matter jurisdiction

31. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

32. 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.
33. 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. 2021-2022 (1) RCR (Civil), 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."*
34. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 relief sought by the complainant.

F.I. Direct the respondent to refund the entire amount deposited along with prescribed rate of interest.

35. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(Emphasis supplied)

36. As per 11(a) of the agreement dated 16.10.2013 provides for handing over of possession and is reproduced below:

11(a) - Schedule for possession of the Said Apartment

The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Apartment within a period of forty eight (48) months from the date of the Application unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement

37. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds

of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

38. **Due date of handing over possession and admissibility of grace period:** As per clause 11(a) of the agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of application i.e., 21.12.2012. Therefore, the due date for handing over of possession comes out to be 21.12.2016.
39. The Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and

on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

40. Before going into the merits of the case there are few issues which needs to be taken on record, firstly, as per averments made by the complainant, that being aggrieved by the status of the respondent's project and gross failure in timely delivery of flat he sought refund of the paid amount. Therefore, vide letter dated 24.09.2022, he rejected the offer of possession and demanded the respondent to refund the amount paid by him as per agreement. On the contrary, as contended by respondent various letters had been sent by the respondent to the complainant calling upon him to make payment of the outstanding amount and to obtain physical possession of the unit in question. Further, final notice dated 12.05.2022 for clearing the outstanding dues and taking over the possession was sent to him and which was properly served to him as well. That it was only in the month of September 2022 that the complainant finally approached the respondent and expressed his inability to make payment of balance amount and enquired about refund.
41. Secondly, the respondent contended that occupancy certificate was granted to respondent on 17.07.2017 as was attached with the reply on page 31 of reply, but complainant states that the said OC was dual, vague, invalid and liable to be rejected ab-initio as the same was obtained without necessary infrastructure and amenities and the occupation certificate was originally obtained by the respondent on 06.02.2020. To which respondent replied that, it is extremely important

to note that the occupation certificate dated 06.02.2020, in no way affect the validity of the occupation certificate dated 17.07.2017. Further, it is pertinent to mention that an application had been submitted on 20.12.2018 to the Director Town & Country Planning Chandigarh, for grant of revised occupation certificate in respect of addition alteration in club building, stilts and basement in respect of the project and thereafter occupation certificate had been again granted dated 06.02.2020.

42. After considering the documents available on record as well as submissions made by the parties, it is concluded that the OC of the Tower in which the unit of complainant is situated has been obtained by it. The due date of possession as per buyer's agreement was 21.12.2016 and the complainant has surrendered the unit on 24.09.2022 after occupation certificate has been received by the promoter. The OC was received and offer of possession was also made. As stated by respondent OC has been received on 17.07.2017 although if we consider that OC has been received on 06.02.2020 (copy of which has also been placed on record), then also respondent has sent various reminders to complainant on 22.10.2019, 27.01.2020, 08.07.2020, 24.11.2020, 18.02.2021 and five others to pay the outstanding dues and take the possession. But he doesn't come to take the possession and clearing the dues. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made and demand for due payment was raised, then only, he has filed a complaint before the authority.
43. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in

accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it impliedly means that the allottee tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money he has paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** 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; that: -

25. The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

44. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and

regulations made thereunder or to the allottee as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the complainant-allottee failed to exercise his right although it is unqualified one rather tacitly wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.

45. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale.
46. In the instant case, the unit was booked on 21.12.2012 and the due date for handing over for possession was 21.12.2016. The OC was received on 17.07.2017 whereas, offer of possession was made on 08.07.2020 and on various other occasions. However, it is observed that the

complainant vide letter dated 24.09.2022 surrendered the unit even before filing of the complaint. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides 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"

47. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 1,42,27,468/-after deducting 10% of the sale consideration of Rs. 1,49,38,016/-being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) (inadvertently vide proceeding dated 15.12.2023, the rate is mentioned as 10.75%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 24.09.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

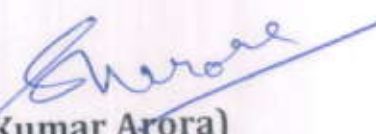
48. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/builder is directed to refund the paid-up amount of Rs. 1,42,27,468/- after deducting 10% of the sale consideration of Rs.1,49,38,016/-being earnest money along with an interest @ 10.85% p.a. on the refundable amount, from the date of surrender i.e., 24.09.2022 till its realization.
- 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.

49. Complaint stands disposed of.

50. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.12.2023

HARERA
GURUGRAM