

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

Date of Decision: **03.01.2024**

1. Pankaj Chawla
2. Akanksha Maheshwari

Both R/O:- 8/11 Lantona Street Vatika City
Sector- 49 Gurgaon

Complainants

Versus

AMB Infra Ventures Pvt Ltd
Address:- Plot no 15, ground floor, sector 44,
Gurugram 122002

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Shri Dharmender Sehrawat
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 12.04.2022 has been filed by the complainants 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"AMB Selfie Street", Sector 92, Gurgaon
2.	Nature of the project	Commercial colony
3.	DTCP License	10 of 2015 dated 18.09.2015
		Valid up to- 17.09.2020
	Project area	3.175 acres
	Name of the licensee	Sunil Janki Das Goyal
4.	HRERA registered/ not registered	Registered, Vide registration no. 80 of 2017 dated 23.08.2017
		Valid up to- 21.08.2022
5.	Shop no.	0059 on ground floor (As per page no. 25 of complaint)
6.	Super area admeasuring	552 sq. ft. (As per page no. 25 of complaint)
7.	Allotment letter dated	16.02.2019 (As per annexure R5 of reply)
8.	Date of builder buyer agreement	22.08.2019 (As per page no. 23 of complaint)



9.	Possession clause	Clause 16.1 <i>The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within <u>thirty six (36) months computed from the date of execution of the Buyers Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reason beyond the control of the company (commitment period).</u></i>
10.	Due date of possession	22.02.2023 (Calculated from the date of the agreement i.e.; 22.08.2019 + grace period of 6 months) Note:- The respondent has sought the grace period of 12 months subject to force majeure circumstances and reason beyond the control of the company. However as per HARERA notification no/ 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 the Authority allowed the grace period of 6 months only being unqualified.
11.	Total sale consideration	Rs. 57,25,544/- (As per page no. 31 of complaint)

12.	Amount paid	Rs. 13,93,748/- (As per demand letter dated 09.04.2021 vide annexure R14 of reply)
13.	Demand and reminder letters dated	09.04.2021, 05.05.2021, 15.05.2021, 01.06.2021
14.	Pre- cancellation letter dated	11.06.2021 (As per page no. 107 vide annexure R22 of reply)
15.	Cancellation letter dated	07.07.2021 (As per page no. 109 vide annexure R24 of reply)
16.	Legal notice dated	21.12.2021 (As per page no. 73 of complaint)

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:
- That the representative of the Respondent approached the Complainants and represented that a Commercial project in sector-92, Gurgaon is being developed and constructed by the Respondent under the name of "AMB SELFIE STREET". Thereafter, the Respondent convinced the Complainants with their marketing tactics to book a shop/unit. Respondent with their aggressive sale strategies and advertisement of their project compelled the Complainants to book commercial unit in the project. Respondent company with their project compelled the Complainants to book a shop in the project with a Basic Sale Price of Rs. 57,25,544/-.

- ii. The Respondent planned to develop an Office and Commercial Complex on the said land by constructing thereon Multi-storied Buildings. The project was comprised of Premium offices cum Retail Shops with the basic amenities like car parking space and other utilities. The representatives of Respondent informed and assured the Complainants that the construction of the project will commence within a period of 2 Months i.e. maximum by the end of March. Thus, believing upon the representations and assurances of the Respondent, the Complainants to book the shop/unit and to make initial payments for the said shop/unit. Thus, the initial pre-booking payment was made by the Complainants in the modes of Cheques of Rs. 6,49,152/- and through the letter, unit no. Shop 0059, having a super area of 552 Sq. ft located at AMB SELFIE STREET, Sector -92, Gurgaon was allotted in the name of the Complainants.
- iii. The Complainants signed Buyer's Agreement of the above-mentioned Unit for a total sale consideration of Rs. 57,25,544/-. That as per the said Buyer's Agreement, the Complainants were to pay a total sale consideration amount of Rs 57,25,544/- in four instalments accordingly the Complainants made two instalment of Rs.6,49,152/- (On Booking) and Rs. 7,44,596/-(Within 60 days of Booking) on dated 29.03.2018 and 28.05.2018 respectively thereby totalling 13,93,748/- and the Respondent had also admitted the said instalment paid by Complainants.
- iv. That after making the payment the Complainants visited the site of proposed project many times, but no such project was carried over by the Respondent there and upon asking the Complainants the

Respondent avoided the same on one pretext or the other and Respondent always requested for extension of time to complete the project and believing the assurance of Respondent, the Complainants extended time again and again.

- v. That unfortunately, Lockdown was imposed in the entire nation and due to COVID-19 pandemic in March 2020 and thereafter due to Second wave of COVID-19 in April 2021, again Lockdown was imposed in Delhi NCR but in the meantime, the Respondent sent a Letter dated 12.02.2021 thereby giving an update on the completion of the Super Structure in the above said project and by way of said letter the Respondent informed Complainants that due to date for the remittance of the payment towards the super structure stage shall fall due before 31 March 2021.
- vi. That it is worthwhile to mention here that in the above said letter dated 12.02.2021, the Respondent did not mention any particular or specific date regarding completion of Super Structure in the above said project and the Complainants asked several times regarding any particular date for completion of Super structure, but the Respondent never provided any particular date of completion of Super structure. That thereafter the mother of Complainant's Pankaj Chawla suffered from various old age ailments and Complainants got busy in taking care of her in the entire month of March and April 2021 and unfortunately, she got expired on dated 30.04.2021 and due to the said reason, the Complainants could not be able to reply the communications or letters given by the Respondent. That thereafter, the Respondent stated issuing Reminder letter as well as Pre Cancellation dated

05.05.2021 and 11.06.2021 respectively to the Complainants to make payment and Respondent further threatened the Complainants to cancel the allotment of the above mentioned shop in the event of nonpayment of the remaining balance amount. It will not be out of place to mention here that in the month of May and June 2021, there was peak of Second wave of COVID-19 pandemic and all the trades/commerce/activities were closed as per the Government guidelines.

- vii. That thereafter, the intention of the Respondent became malafide towards the Complainants and in order to give colour to their malafide intentions, the Respondent issued final Termination Letter dated 07.07.2021 to the Complainants thereby cancelling the above-mentioned shop in the proposed project and further the Respondent also forfeited the amount given by Complainants which is totally illegal and unjust in the eye of Law.
- viii. That after receiving the above said letter dated 07.07.2021, the Complainants visited the site of the above said project but till date no such super structure is built upon the site and Complaints also visited the office of the Respondent but the official of the Respondent assured the Complainants that the above noted letter was issued in a routine manner and there is no need to worry. It was also informed by the official of the Respondent that Complainants can still make the payment towards the said project and then the above said letter will be revoked and the agreement will revive.
- ix. That believing the assurance of the Respondent, the Complainant Akanksha Maheshwari also issued a cheque bearing NO. - 000115

drawn on ICICI Bank, Golf Course Road Sector-66 Gurugram Haryana amounting of Rs.2,00,000/- in favour of the Respondent in the month of November 2021 but the Respondent intentionally, deliberately and malafidely did not present the said cheque which makes it crystal clear that the Respondent wants to grab the hard earned money of the Complainants.

- x. That the Complainants contacted many times to the Respondent but all in vain. That the Complainants bonafidely for his needs and better future purchased the shop/unit on question, further the Respondent handover the possession of the unit of the shop/unit in question on time. From the act and conduct of the Respondent the Complainants has constrained to send a legal notice dated 21.12.2021 through their counsel for restore of the above mentioned unit in which it is clearly mentioned that Complainants is ready to pay the remaining balance consideration amount. The Respondent/ Promoter is bound to complete the project as per the agreement executed by it with the complainants.

C. The complainants are seeking the following relief:

4. The complainants have sought the relief(s):
- Direct the respondent to give the possession along with interest.
 - That the Respondent Company has illegal cancelled the booking of the unit of the Complainants i.e., Shop No.- Shop 0059, having a super area of 552 Sq. ft.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:

- i. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Authority. The Authority does not have the jurisdiction to grant the relief sought by the complainants. The present complaint is liable to be dismissed on this ground alone.
- ii. That the complainants have got no locus standi or cause of action to file the present complaint. That the Complainants are not an "aggrieved party" or "allottees" as defined under the Act. The complainants are investors who had purchased the unit in question as an investment. In fact, complainant no.2 i.e. Mrs. Akanksha Maheshwari is actually a broker/channel partner of the respondent who had facilitated the transaction between herself, complainant no.1 and the respondent in respect of the unit in question.
- iii. That the complainants approached the respondent and evinced an interest to purchase a unit in the commercial colony being developed under the name and style of "AMB Selfie Street" situated in Sector 92, Gurugram (hereinafter referred to as "said project"). It is pertinent to mention that only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, did the complainants take an independent and informed decision to purchase a unit in the said project.
- iv. That application form dated 29.03.2018 had been filled by the complainants. Thereafter, allotment letter dated 16.02.2019 had been issued to the complainants by the respondent with respect to



- unit bearing no. 0059 admeasuring 552 square feet (super area) and 249 square feet (carpet area) located in the said project (hereinafter referred to as "said unit"). The complainants had opted for a time bound payment plan.
- v. That buyer's agreement dated 22nd of August, 2019 had been executed between the complainants and the respondent with respect to the said unit. The complainants had voluntarily executed the aforesaid buyer's agreement after carefully going through the terms and conditions incorporated therein.
- vi. That as per Clause 16.1 of the aforesaid Buyer's Agreement, the respondent was liable to hand over possession of the said unit to the complainants within a period of 48 months from the date of execution of the Buyer's Agreement inclusive of grace period. The same was subject to force majeure conditions and timely payment of the instalments by the complainants.
- vii. That it is submitted that notwithstanding the cancellation of allotment of the complainants, the due date for handing over of possession of the said unit is on or before 22.08.2023, subject to force majeure conditions and timely payment of the instalments by the complainants. Thus, even if the valid and legal termination of the allotment of the complainants is not taken into account, the institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.
- viii. That furthermore, the Respondent has got registered the said project under the provisions of the Act and the period of registration has been granted up till 21.08.2022. In other words,



the Respondent is committed to completion of the project and delivering the unit in question to the Complainants by the stipulated time, subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the application form and Buyer's Agreement by the Complainants. Therefore, even on this ground, the institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.

- ix. That the total sale consideration of the said unit was Rs.57,25,544/- as per the payment plan chosen by the complainants. It would not be out of place to mention that the aforesaid sale consideration amount did not include GST and other taxes/cess, legal documentation charges, administrative charges, stamp duty and registration charges etc. The complainants were repeatedly called upon to make payment of the instalments in consonance with the payment plan chosen by them. However, the complainants miserably failed to do so.
- x. That the complainant number 2 had instructed the respondent to issue all emails on her email address and had provided the same to the respondent. Consequently, all the emails issued by the respondent had been addressed to the email address provided by complainant number 2. That initially, email dated 28th of October, 2020 had been issued by the respondent to the complainants informing that the super structure of the said project would be completed shortly. Moreover, the respondent had also provided the updated bank account details in the aforesaid email. That thereafter, email dated 18th of November, 2020 had been issued by



- the respondent to the complainants informing the complainants about the progress of the said project.
- xi. That thereafter, demand letter dated 9th of April, 2021 had been issued by the respondent to the complainants wherein the respondent had called upon the complainants to make payment of Rs.15,40,354/- on or before 30th of April, 2021. It would not be out of place to mention that the aforesaid demand letter had also been sent vide email dated 9th of April, 2021 to the complainants. That reminder letter dated 5th of May, 2021 had also been issued by the respondent to the complainants calling upon the complainants to make payment of the outstanding amount of Rs.15,40,354/- not later than 10 days from the date of the reminder letter. The aforesaid reminder letter had also been sent by the respondent to the complainants vide email dated 5th of May, 2021.
- xii. That thereafter, a second reminder letter dated 15th of May, 2021 had also been issued by the respondent to the complainants calling upon the complainants to make payment of the outstanding amount of Rs.15,40,354/- not later than 10 days from the date of the aforesaid reminder letter. The aforesaid reminder letter had also been sent by the respondent to the complainants vide email dated 15th of May, 2021.
- xiii. That a third reminder letter dated 1st of June, 2021 had also been issued by the respondent to the complainants calling upon the complainants to make payment of the outstanding amount of Rs.15,40,354/- (Rupees Fifteen Lacs Forty Thousand Three Hundred and Fifty Four Only) not later than 10 days from the date of the aforesaid reminder letter.

- xiv. That subsequently, pre-cancellation letter dated 11th of June, 2021 had been issued by the respondent to the complainants calling upon the complainants to make payment of the outstanding amount of Rs.15,40,354/-. It had further been mentioned in the aforesaid pre-cancellation letter that in case the complainants did not proceed to make payment of the outstanding amount at the earliest, in that event the respondent would be at liberty to forfeit the allotment of the complainants. The aforesaid pre-cancellation letter had also been sent by the respondent to the complainants vide email dated 11th of June, 2021.
- xv. That ultimately, the respondent was constrained to issue termination letter dated 7th of July, 2021 to the complainants vide which the allotment of the complainants in respect of the said unit was cancelled. It had further been mentioned that the earnest money component along with brokerage and interest and outstanding payment had been forfeited by the respondent. Accordingly, an amount of Rs.2,99,237/- was to be refunded to the complainants and the same had been duly mentioned in the aforesaid termination letter. The complainants were also called upon to contact the respondent in order to collect the refundable amount. That the aforesaid termination letter dated 7th of July, 2021 had also been sent vide email dated 9th of July, 2021 to the complainants by the respondent.
- xvi. That the complainants even after receiving the aforesaid communications did not take any action and chose to ignore the letters and emails. Finally, the respondent was constrained to issue Memorandum of Forfeiture dated 7th of August, 2021 to the



complainants wherein the contents of termination letter dated 7th of July, 2021 had been reiterated. It would not be out of place to mention that the date of termination letter has been incorrectly mentioned as 08.07.2021 on account of a typographical error in the aforesaid Memorandum of Forfeiture. Furthermore, the complainants had yet again been called upon to collect the refundable amount of Rs.2,99,237/- and to contact the customer care department of the respondent. That the aforesaid Memorandum of Forfeiture had also been emailed to the complainants vide email dated 9th of August, 2021.

- xvii. That despite receiving the aforesaid communications, the complainants chose to ignore the same. It would not be out of place to mention that the complainants have also acknowledged receiving the letters/emails from the respondent in the complaint filed by them. The respondent had afforded several opportunities to the complainants to clear their outstanding dues but the complainants failed to do so. Consequently, the respondent was compelled to terminate the allotment of the complainants and forfeit the earnest money component along with other amounts in accordance with buyer's agreement.
- xviii. That it is evident that the complainants wilfully refrained from fulfilling their contractual and financial obligations towards the respondent. In fact, the complainants had issued a frivolous and misconceived notice dated 27.12.2021 (mentioned as legal notice dated 21.12.2021 by the complainants in the complaint) to the respondent in order to blackmail the respondent. The aforesaid notice had been duly replied to by the respondent vide reply dated

14.01.2022. That even after repeated reminders had been issued to the complainants to remit their outstanding dues after the expiry of time period to make the payments, the complainants wilfully refrained from fulfilling their contractual obligations. The complainants have always been conscious and aware that timely payment of installments was the essence of the contract between the respondent and the complainants. The consequences of continued default were also fully within the knowledge of the complainants.

- xix. That the terms and conditions of the Buyer's Agreement had been duly accepted by the complainants and the complainants had undertaken to be bound by the same. The same are binding upon the complainants with full force and effect. The respondent was/is fully within its rights to terminate the allotment of the complainants for failure to make timely payment in accordance with the payment plan. Even the allegations levelled by the complainants in the frivolous and misconceived notice dated 27.12.2021/21.12.2021 are false and fabricated and nothing but an afterthought.
- xx. Therefore, it is obvious from the entire sequence of events that no illegality can be attributed to the respondent. Thus, the allegations levelled by the complainants qua the respondent are totally baseless and do not merit any consideration by this Authority. The present complaint is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

6. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

8. Section 11(4)(a) of the Act 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.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. 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 Pvt. Ltd. and other Vs. Union of India and other 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."*
11. 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 being investors.

12. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottee/buyer and they have paid total price of Rs. 13,93,748/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected:

G. Findings on the relief sought by the complainants/allottees.

G. I Direct the respondent to give the possession along with interest.

G. II That the Respondent Company has illegal cancelled the booking of the unit of the Complainants i.e., Shop No.- Shop 0059, having a super area of 552 Sq. ft.

15. The complainants were allotted unit no. 0059 on ground floor in the project "AMB Selfie Street", Sector 92" by the respondent builder for a sale consideration of Rs. 57,25,544/- and they paid a sum of Rs. 13,93,748 /- which is approx. 24% of the sale consideration. A buyer's agreement dated 22.08.2019 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 22.02.2023. The complainants failed to pay amount due against the allotment unit. Therefore, the respondent cancelled the unit of the complainants due to non-payment.
16. Now the proposition before the authority is whether the cancellation made by the respondent vide letter dated 07.07.2021 is valid or not.
17. As per 8.1 and 8.2 the terms of the builder buyer agreement the complainants were liable to make the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

8.1 The obligation to make timely payment of every installment of the Total Sale Consideration in accordance with the Payment Plan along with payment of other charges such as applicable stamp duty, registration fee, IFMS, Sinking Fund and Other Charges, any deposits, as stipulated under this Agreement or that may otherwise be payable on or before the due date or as and when demanded by the Company, as the case may be, and also to discharge all other obligations under this Agreement shall be the essence of this Agreement. The Company is under no obligation to send demand letters/ reminders whatsoever for payments. Although the company is under no obligation to send demand letters/reminders for payments under the payment plan, in the event that any such demand letter/reminder etc. are sent by the company to the allottee, as a gesture of courtesy, shall not, under any circumstances, be construed or deemed to be a waiver of the

obligation and responsibility of the Allottee to itself make timely payments in accordance with the payment plan.

8.2 In the event of failure of the Allottee to perform the obligations or to fulfill the terms and conditions as set out in the Allotment Letter and this Agreement, including but not limited to the occurrence of any Event of Default as described herein, the Company may as its absolute discretion cancel this Agreement and forfeit the Earnest Money, interest on unpaid installments and any other amount including any commission/brokerage/margin paid or payable by the Company to a Channel Partner in case the booking is made by the Allottee through a Channel Partner (unless a credit note / no objection certificate (NOC) from such Channel Partner foregoing its right to claim such brokerage/ commission/margin/incentives is submitted) and thereafter, refund the balance amount, if any, without interest in the manner described hereunder:- I. In case any breach is committed by the Allottee, the Company shall serve a notice calling upon the Allottee to rectify such breach within the time mentioned in such notice provided that the time mentioned shall not be less than fifteen (15) days. II. In case such breach is not rectified within the time period stipulated or is continuing or is otherwise repeated, then this Agreement may be cancelled by the Company at its sole option by serving a written notice ("Notice of Termination") to the Allottee of the same.

18. The respondent issued many reminders letter for clear the outstanding dues i.e., 09.04.2021, 05.05.2021, 15.05.2021, 01.06.2021 and pre-cancellation letter on 11.06.2021 thereafter, issued cancellation letter to the complainants on 07.07.2021. The complainants have failed to adhere to the terms and conditions of the builder buyer agreement .The respondent cancelled the unit of the complainants with adequate notices. Thus, the cancellation of unit is valid.

19. The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

20. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.85% (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 of cancellation i.e., 07.07.2021 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

21. 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 cancellation of the unit is held to be valid. The respondent is directed to refund the paid-up amount of Rs. 13,93,748/- after deducting 10% of the sale consideration of Rs. 57,25,544/-with interest at the prescribed rate i.e., 10.85% on such balance amount



from the date of cancellation i.e., 07.07.2021 till the actual date of refund.

- 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.

22. Complaint stands disposed of.

23. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.01.2024

HARERA
GURUGRAM