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was disposed of. The operative part of the order reads as under:-

“3. The Authority observes that aforesaid correspondence made by the respondent clearly shows that it is the complainant who is defaulter in present complaint by neither signing the agreement nor paying balance amount demanded from him. Authority, however, observes that when the plot was cancelled the respondent company should have returned the amount paid by complainant after deducting earnest money. The respondent did not return any money to the complainant. The Authority observes that interest of equity and justice, the respondent was justified in cancelling allotment of the unit due to default made by the complainant but for having not returned balance amount to the complainant till date it is fair to direct the respondent to return the entire amount paid by complainant without any deduction.

4. With these directions the case is disposed of. Files be consigned to record room.”

2. As per averments in the complaint, the appellant/allottee had booked a residential unit with the respondent/promoter on 17.08.2016 by paying Rs.11,000/- as earnest money. On 16.10.2017, an allotment letter was

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issued by the promoter in favour of the allottee, whereby Unit No.REP/B-131 having area of 84.5 sq. mtr. (101.06 sq. yard) in the project of the promoter namely “Omaxe Rohtak City Extn. Phase-1” Sector 22-D, Rohtak was allotted to the appellant/allottee, for a total price of Rs.11,31,660/-.

3. It is further pleaded that it was mentioned in the allotment letter that two sets of agreement for sale containing terms and conditions for allotment of the unit are being sent and the allottee was asked to sign at the appropriate place on both sets of the agreements and return the same to the respondent/promoter. It was also mentioned in the said allotment letter that in the event, the allottee withdrew or cancelled the unit or the allottee failed to submit the signed copy of both the agreement within 15 days from the date of issuance of the allotment letter, in that eventuality, the allotment would be treated as cancelled as per the discretion of the promoter and also the amount paid by the allottee at the time of issuance of the allotment letter or 10% of the total price of the said unit, whichever is higher, shall stand forfeited. It is further pleaded that the allottee did not receive any builder buyer's agreement (hereinafter called 'the agreement') with the allotment letter.

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4. It is pleaded that besides the booking amount of Rs.11,000/-, the allottee also paid Rs.89,000/- on 22.10.2016, Rs.1,20,000/- on 16.11.2016 and Rs.1,10,000/- on 29.05.2017. The promoter through letter dated 08.03.2018, gave a last and final chance for payment of outstanding dues to avoid cancellation of property and forfeiture of the earnest money. It was stated in the said letter that in case of any delayed payments, an interest @ 18% and 24% per annum shall be charged from the allottee from the due date till the actual date of payment.

5. It is also pleaded as per information on Authority's website, the project of the promoter was registered with the Authority on 18.09.2017 bearing registration No.217 of 2017. Para (viii) of the registration certificate dated 18.09.2017, reads as under:-

"The Promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

6. It was pleaded that the allottee is entitled to invoke Section 13 of the Act, which states that no promoter shall

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accept a sum of more than 10% of the cost of plot as an advance payment before entering into agreement for sale. In the case in hand, the agreement for sale has not been signed between the parties and an amount of around 30% of the total sale consideration has been received by the promoter till the date of filing of the complaint.

7. It was pleaded that the cancellation of the plot took place because of promoter's default as the promoter did not send NOC on time despite various reminders. The allottee was always ready and willing to pay installments and dues on time and wanted to enter into agreement for sale. It was pleaded that the allottee was willing to pay the remaining installments and dues to the promoter.

8. The respondent/allottee filed the complaint before the Authority claiming the following reliefs:-

- “1. To direct the respondent to withdraw the cancellation notice issued on 03.05.2018.*
- 2. To direct the respondent to issue offer of possession of the plot in favour of the complainant and enter into a builder buyer agreement as soon as possible.*

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3. *Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case."*

9. The complaint was resisted by the appellant/promoter on the grounds of the jurisdiction of the learned Authority and on some other technical grounds. It was pleaded that the total payment made by the allottee was Rs.3,30,000/- and the last payment was made on 29.05.2017.

10. It was pleaded that vide tax invoice dated 14.10.2017, the promoter informed the allottee to pay the outstanding amount of Rs.3498/- pending towards the second installment. Further, vide allotment letter dated 16.10.2017, the promoter allotted unit no.REP/B131, measuring 84.5 sq. mtrs. to the allottee for a total price of Rs.11,31,660/-. Alongwith the above said allotment letter, the promoter had sent two sets of agreement for sale, containing terms and conditions for allotment of the unit in question, which were to be signed by the allottee and thereafter, were to be returned to the promoter. However, though the allottee acknowledged the above said allotment letter but has very conveniently, after a gap of almost three years, dispute the very fact that the said allotment letter was not accompanied with the agreement for sale. During this period of three years i.e. from 16.10.2017 till

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the filing of the complaint, the allottee never raised objection that the allotment letter was not accompanied with the agreement for sale.

11. It was pleaded that vide tax invoice dated 16.12.2017, the promoter informed the allottee to pay third installment of Rs.1,11,166/- on or before 30.12.2017. Also, vide reminder dated 16.12.2017, the promoter again requested the allottee to pay a total amount of Rs.1,14,664/- i.e. Rs.1,11,166/- due towards the afore-mentioned third installment and Rs.3498/- outstanding towards the second installment. Since, the allottee did not pay the due amount, so, the promoter vide letter dated 08.03.2018 called upon the allottee for one last and final time for making payment of the outstanding dues in order to avoid cancellation of property and forfeiture of earnest money and other amount. The allottee did not pay the said outstanding amount and, as such the respondent/promoter issued another letter dated 02.04.2018 requesting the allottee to pay the outstanding amount but the allottee did not pay the same. Under these circumstances, the respondent/promoter had no option but to cancel the allotment of the unit in question vide letter dated 03.05.2018.

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12. Denying all other averments made in the complaint, it was prayed that the complaint be dismissed being without any merits.

13. After hearing the learned counsel for the parties and appreciating the material on the record, the learned Authority passed the impugned order dated 06.04.2021, the operative part of which has been reproduced in the opening para of this order.

14. We have heard learned counsel for the parties and have carefully examined the record of the case.

15. While reiterating the pleadings in the complaint, learned counsel for the appellant/allottee contended that despite the allotment letter dated 16.10.2017 stating that two sets of agreements were to be sent for signature, the respondent/promoter, in reality, never sent those agreements to the appellant/allottee to sign. The demand of more amount by the appellant before the execution of the agreement is against Section 13 of the Act, which states that no promoter shall accept a sum more than 10 per cent of the sale price without first entering into a written agreement for sale. In this case, the demand raised by the respondent/promoter is more than 30 per cent of the sale consideration, therefore, the

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cancellation letter dated 03.05.2018 is illegal. He asserted that since the cancellation is bad in law, the appeal be allowed, and the allottee may be given possession of the allotted plot.

16. On the other hand, learned counsel for the respondent/promoter contended that the appellant/allottee, during the period from 16.10.2017 till the filing of the complaint, never raised any issue with the respondent/promoter that the allotment letter was not accompanied with the agreement. He asserted that the cancellation of the unit is in terms of the allotment letter and is on account of non-payment of the dues by the appellant/allottee and therefore, the order of the Authority is correct and the appeal deserves to be dismissed.

17. We have duly considered the aforesaid contentions of the parties.

18. Undisputedly, the appellant/allottee booked a residential unit with the respondent/promoter on 17.08.2016 by paying a sum of Rs.11,000/-. The allotment letter dated 16.10.2017 was issued by the respondent/promoter, whereby a plot bearing No.REP/B-131 having area of 84.5 sq. mtr. (101.06 sq. yard) in the project of the respondent/promoter namely "Omaxe Rohtak City Extn. Phase-1" Sector 22-D,

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Rohtak, was allotted to the appellant/allottee, for a total price of Rs.11,31,660/-. The appellant/allottee paid a sum of Rs.3,30,000/- to the respondent/promoter against total sale consideration of Rs.11,31,660/- up to 29.05.2017. Thereafter, the respondent/promoter raised a demand of Rs.1,11,166/- to be paid on or before 30.12.2017. The respondent/promoter sent a reminder letter dated 16.12.2017 for payment of the above said amount. The respondent/promoter vide letters dated 08.03.2018 and 02.04.2018, gave another opportunity to the appellant/allottee to make the above said payment. Since, the appellant/allottee did not pay the said outstanding amount, the respondent/promoter cancelled the allotment of the unit vide its letter dated 03.05.2018.

19. In this appeal, the appellant raises the issue that the respondent/promoter demanded payment exceeding 10% of the sale consideration before the agreement was signed, which allegedly violates Section 13 of the Act. According to the appellant, the cancellation letter issued by the respondent/promoter on 03.05.2018 is illegal. The allotment letter sent on 16.10.2017 by the respondent/ promoter stated that two sets of agreements were provided for the appellant/allottee's signature, and there was no complaint about non-receipt until the filing of the complaint on

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06.10.2020. The appellant's assertion of non-receipt of the agreements appears to be a belated effort to challenge the validity of the cancellation letter. This claim lacks merit and cannot be considered valid.

20. During the proceedings on 18.08.2023, the appellant's counsel initially indicated willingness to withdraw the appeal if the amount as directed by the Authority is paid by the respondent/promoter. However, later on, the appellant insisted on possession of the plot. The respondent/promoter attempted to demonstrate readiness to pay the specified amount by bringing a cheque during the hearing on 31.10.2023, but it did not materialize.

21. Considering the arguments and the available records, it is evident that the appellant/allottee defaulted by not signing the agreement and failing to pay the demanded amount. Hence, the cancellation letter dated 03.05.2018 issued by the respondent/promoter is valid. Therefore, the prayer of the appellant for possession of the plot can't be accepted.

22. No other point was argued before us.

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23. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant/promoter has no merit and the same is hereby dismissed.

24. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

25. File be consigned to the record.

Announced:
November 14, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

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