

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

Date of decision: 29.02.2024

NAME OF THE BUILDER		JMD LIMITED	
PROJECT NAME		JMD SUBURBIO	
S. No.	Case No.	Case title	Appearance
1.	CR/192/2023	Sanjeev Kapoor V/S JMD Limited	Shri Garv Malhotra (Advocate for complainant)
2.	CR/194/2023	Harinder Kapoor V/S JMD Limited	Shri Venkat Rao (Advocate for respondent)

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of all the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, JMD SUBURBIO (commercial complex) being developed by the same

respondent/promoter i.e., JMD LIMITED. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest.

3. The details of the complaints, reply, status, unit numbers, date of agreements, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	JMD SUBURBIO, Sector 67, Gurugram
Nature of Project	Commercial complex
Project area	4.237 acres
DTCP License No. and validity	291 of 2007 dated 31.12.2007 valid up to 31.12.2019
HRERA Registered	Registered Vide 30 of 2022 dated 25.04.2022 valid up to 30.12.2024.
Name of Licensee	Ananddha Realtors Pvt. Ltd.
Occupation certificate	18.10.2018
Surrender request made by the complainant vide email	19.10.2022

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Basic Sale Consideration / Total Amount paid by the complainant	Offer of possession
1.	CR/192/2023 Sanjeev Kapoor V/S JMD Limited DOF: 20.01.2023 Reply: 12.10.2023	CW-136A, 1 st floor admeasuring 334 sq. ft. (super area)	14.12.2010	BSP- Rs.22,71,200/- AP- Rs.13,98,309/-	03.12.2018

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2.	CR/194/2022 Harinder Kapoor V/S JMD Limited. DOF: 20.01.2023 Reply: 12.10.2023	CW-136, 1 st floor admeasuring 333.9 sq. ft. (super area)	14.12.2010	BSP- Rs.25,20,686/- AP- Rs.15,39,224/-	03.12.2018
The complainant has sought following relief(s):					
1. Direct the respondent to refund the paid-up amount along with interest. 2. Direct the respondent to pay litigation cost.					
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:					
Abbreviation		Full form			
DOF		Date of filing of complaint			
DPC		Delayed possession charges			
TSC		Total sale consideration			
AP		Amount paid by the allottee/s			
CD		Conveyance deed			

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 192/2023 titled as Sanjeev Kapoor V/S JMD Limited* is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details.

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

192/2023 titled as Sanjeev Kapoor V/S JMD Limited

S. No.	Particulars	Details
1.	Name and location of the project	JMD SUBURBIO, Sector 67, Gurugram
2.	Project area	4.237 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	291 of 2007 dated 31.12.2007 valid up to 31.12.2019
5.	Name of the Licensee	Ananddham Realtors Pvt. Lt
6.	RERA registered/ not registered and validity status	Registered Vide 30 of 2022 dated 25.04.2022 valid up to 30.12.2024
7.	Unit no.	CW-136A, 1st floor (page 18 of complaint)
8.	Unit area admeasuring	334 sq. sq. ft. super area (page 18 of complaint)
9.	Date of execution of buyer's agreement	14.12.2010 (page 16 of complaint)
10.	Possession clause	15. <i>That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within three years from the date of execution of this agreement or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time</i>



		<p><i>aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s)</i></p> <p style="text-align: right;"><i>(Emphasis Supplied)</i></p> <p><i>(as per the buyer's agreement submitted by complainant)</i></p>
		<p>15.</p> <p><i>That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within three years from the date of sanction of revised building plan or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s)</i></p> <p style="text-align: right;"><i>(Emphasis Supplied)</i></p> <p><i>(as per the buyer's agreement submitted by respondent)</i></p>
11.	Date of revised building plan	<p>13.11.2013</p> <p><i>(as per written submission submitted by respondent page 4A)</i></p>
12.	Due date of possession	<p>14.07.2014 (from the date of execution of</p>

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		agreement including grace period of 6 months)
		13.05.2017(from the date of revised building plan including grace period of 6 months)
13.	Basic sale price	Rs.22,71,200/- (Page 18 of complaint)
14.	Amount paid by the complainant	Rs. 13,98,309/- (Page 41 of complaint)
15.	Occupation certificate	18.10.2018 (page 59 of reply)
16.	Offer of possession	03.12.2018 (page 61 of reply)
17.	Cancellation request by complainant	19.10.2022 vide email (page 127 of reply)

B. Facts of the complaint.

8. The complainant has made the following submissions in the complaint: -

- i. That the respondent, through its authorized representative, approached the complainant to invest in their commercial project "JMD SUBURBIO". The complainant applied for a unit in the respondent's commercial complex, and the application was accepted. Subsequently, the complainant booked a commercial unit in the project by executing a builder buyer agreement dated 14.12.2010 and paid Rs.3,40,579/- to the respondent for unit No. CW-136A 1st floor, admeasuring 334 sq. ft. super area at a basic sale price of Rs. 6800/- per sq. ft for a total consideration of Rs.25,65,665/- inclusive of all charges and taxes. As per the buyer's agreement, the covered area of the unit would be approximately 60-65% of the super area.
- ii. As per the clause 15 of the buyer's agreement dated 14.12.2010, the scheduled date for offering possession of the subject unit was 36 months





from the date of execution of said agreement, with a provision for a 6-month grace period extension. Further, the complainant asked, the respondent to countersign and return a copy of the agreement, keeping one for them. However, when the respondent returned the countersigned agreement, they deceitfully and unlawfully manipulated and falsified the buyer's agreement by changing the possession due date under clause 15 to "three years from the date of approval of revised building plans."

- iii. That during the period the complainant has made various payments in favor of the respondent, which have also been duly acknowledged by the respondent through the receipts issued for such payments. The complainant in total has paid Rs.13,98,309/- to the respondent against the allotted unit.
- iv. That the complainant since 2013 has been diligently pursuing the respondent company and its authorized representatives for updates on the project's completion and to offer possession. Despite repeated efforts, there has been no response from the respondent. In 2018, the complainant sent emails seeking information on the possession of the complex, but received no clear response. Disappointed by the lack of communication, the complainant requested a refund of the amount paid to the respondent, along with interest for the period the respondent held the funds, if they are unable to deliver possession of the unit.
- v. Thereafter, in the year 2020, during the Covid pandemic, the complainant requested the respondent to offer the possession of the subject unit, as the complainant was facing health and financial crises due to Covid, and wanted to start his own business venture on the subject unit. Additionally, the complainant asked the respondent to incorporate the interest accrued due to the delayed possession into the remaining balance for the unit and

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proposed to settle the balance in equal installments. However, the respondent declined the request.

- vi. That in October 2022, the complainant met with Mr. Nishesh Kumar, staff member of the JMD Group, who advised the complainant to settle the outstanding balance with interest and then sent an email to Mr. Sunil Bedi requesting a refund as per RERA guidelines. Following Mr. Nishesh Kumar's guidance, the complainant emailed Mr. Sunil Bedi on 19.10.2022. After persistent efforts to reach Mr. Sunil Bedi, a meeting was finally arranged with his son, Mr. Karan Bedi, who assured the complainant of a full refund with interest as per RERA regulations. However, a warning was issued against involving the Haryana Police or filing a complaint under RERA, as such actions could result in the refund being revoked.
- vii. Subsequently, on 25.11.2022, a meeting took place at the JMD office in Gurugram with Mr. Sunil Bedi. The complainant reiterated the request to either waive the remaining balance and provide possession of the unit or refund the entire amount paid, including interest from the booking date. Despite Mr. Sunil Bedi's refusal to waive the balance, he agreed to refund the entire amount with interest. However, a week later, the complainant received a letter dated 03.12.2022, informing them of the cancellation of their booked units without their knowledge. This sudden cancellation was perceived as an attempt by the respondents to unlawfully seize the complainant's booked unit following their complaints about delayed possession and claims for interest on the delay caused by the respondent. The cancellation letter was arbitrary and illegal and seeks to prevent the respondent from acting on its contents.
- viii. Following, the cancellation of the booked units, the complainant filed a FIR dated 12.12.2022 with the Haryana Police against the respondent and their

authorized representatives for criminal breach of trust, forgery, cheating, criminal misappropriation, criminal conspiracy, criminal intimidation.

- ix. That the respondent has refunded a portion of the principal amount to the complainant without any interest for the delayed possession. Additionally, the complainant's wife, Harinder Kapoor, had booked another unit for a total sale consideration of Rs 28,24,484/- out of which Rs.15,39,224/- has been paid to the respondent. Together, a total of Rs.29,37,533/- has been paid for both units. A separate case is been filed by the wife of the complainant, as both parties have fulfilled all terms and conditions of the agreements, while the respondents have failed to fulfill their contractual obligations. The complainant is seeking a refund with interest for every month of delay at the prevailing rate from the due payment date until the realization of the amount. However, only a total of Rs.22,44,476/- has been refunded to date, with Rs.10,69,869/- refunded for the unit allotted to the complainant after an unauthorized deduction of 15% from the total sale consideration. The complainant is entitled for full refund of the entire amount deposited along with interest, as the respondent has held their funds for over ten years.
- x. Furthermore, despite repeated attempts by the complainant to obtain information on the project status and the date of possession, the respondent has continuously assured them of an imminent handover. However, no such offer of possession has materialized thus far.
- xi. That the respondent has charged the complainant on super built up area whereas as per the Act of 2016 the basic sale price is liable to be paid on the carpet area. Additionally, the respondent has not registered its project, with the concerned authority within the stipulated time period prescribed under the Central Act. Therefore, under Section 59 of the Act, 2016, for non-

compliance with the said Act and for such violation, penalty must be imposed on respondent.

- xii. That the complainant has faced significant losses, including loss of rental income and missed opportunities in Gurugram due to their hard-earned money being tied up in the project. The respondent must compensate for causing these losses, which have led to mental and physical distress, harassment, and legal expenses for the complainant.

C. Relief sought by the complainant: -

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

- I. Direct the respondent to refund the paid-up amount along with interest.
- II. Restrain the respondent from cancelling the said booking and further assigning the unit raising any fresh demand with respect to the project.
- III. Direct the respondent to charge on the carpet area and to provide a detailed break-up of Super Area and common area applicable and allotted to the complainant and whether it includes the area designated under car parking or not.
- IV. Direct the respondent to pay litigation cost.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.

- i. That the complainant, intending to invest in a real estate project, approached the respondent for project specifics. After being content with the information provided, the complainant decided to invest in the commercial project "JMD SUBURBIO" in Gurugram by applying through an

application form dated 04.12.2010. Subsequently, the respondent provisionally allotted unit no. CW-136A under a construction link plan, with the complainant making a payment of Rs. 3,40,680/- at the time of booking.

- ii. Thereafter, on 14.12.2010, a "commercial premises buyer's agreement" was executed between the parties for the unit no. CW-136A, 1st floor, admeasuring 334 sq. ft super area at the rate of Rs.6800/- sq. ft for a basic sale price of Rs. 22,71,200/-. The complainant till the execution of the above said agreement made a payment of Rs.3,40,579/- to the respondent.
- iii. That the respondent after obtaining the necessary approvals pertaining to the project and occupation certificate dated 18.08.2018, issued an offer of possession to the complainant vide letter dated 03.12.2018. The offer of possession was subject to clearing all dues outstanding. However, the complainant failed to approach the respondent to take the possession despite various reminder letters dated 12.03.2019, 15.04.2019, 22.06.2019, 29.07.2019, 27.08.2019, 27.09.2019, 30.10.2019, 06.12.2019, 11.01.2020, 21.02.2020, 25.11.2020, 24.12.2020, 28.01.2021, 18.03.2021, 27.05.2021, 05.07.2021, 21.09.2021, 22.10.2021, 22.11.2021, 29.12.2021, 09.02.2022, 28.03.2022, 27.04.2022, etc. issued to the complainant for taking the possession of the unit and to remit the outstanding due.
- iv. That the complainant under clause 16 of the agreement was under obligation to clear the due amount and take the possession of the unit within 30 days of dispatching of the final letter to the complainant by the respondent. Therefore, the complainant having completely failed to abide its obligations under the said agreement as he neither paid the due

installments nor has come forward to take the possession of the allotted unit.

- v. That the complainant consistently failed to adhere to the payment schedule, prompting the respondent to repeatedly request and remind the complainant to settle outstanding dues for the unit. Despite being fully informed of the agreement's terms and conditions, the complainant intentionally defaulted on timely payments, crucial for receiving possession of the unit. The respondent diligently pursued the complainant for installment payments, in line with the agreed payment plan, but the complainant neglected these obligations. Despite ample time given for payment, the complainant chose not to fulfill their financial responsibilities, breaching the buyer's agreement terms and failing to meet agreed timelines. Consequently, the complainant's failure to clear even the basic sale price of the unit, let alone other charges like taxes and interest as stipulated in the agreement, reflects their non-compliance and renders them unable to raise allegations against the respondent.
- vi. That the complainant vide email dated 19.10.2022, requested the respondent to cancel the subject unit and further requested to refund the amount paid to respondent due to incapacity of the complainant to clear the outstanding dues as per the terms and conditions of the agreement so signed and acknowledge and as well as per the payment schedule. As per clause 9 of the agreement, where an allotment of the unit is cancelled by the complainant himself due to various reasons, it is the obligation of the respondent to forfeit the entire amount of the earnest money and further upon the cancellation of the unit allotted, the entire documents executed

between the parties shall stand cancelled and the complainant shall have no lien/charge upon the said unit.

vii. That the said agreement was executed prior to Act, 2016 coming into picture, the complainant voluntarily without any force and duress agreed that 15% of the total sale price of the unit would collectively will constitute earnest money and non-compliance of any of the terms and conditions of the agreement by the complainant would render the complainant to forfeiture of the above said earnest money.

12. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

14. 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

15. As per notification no. *1/92/2017-1TCP dated 14.12.2017* issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction.

16. 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:

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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.

17. 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.
18. 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) R.C.R. (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

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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."

19. 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 relief sought by the complainant.

F.I Direct the respondent to refund the paid-up amount along with interest.

20. That the complainant entered into a builder-buyer agreement with respondent on 14.12.2010 for unit no. CW-136A 1st floor, admeasuring 334 sq. ft. super area, for total sale consideration of Rs.25,65,665/-. The complainant paid an amount of Rs.13,98,309/- towards the unit. The respondent offered the possession of the unit on 03.12.2018 after the issuance of an occupation certificate dated 18.10.2018. Further, the complainant requested a refund and cancellation of the unit vide email 19.10.2022 to respondent. In response, the respondent issued a cancellation letter dated 03.12.2022.

21. During proceedings dated 18.01.2024, the complainant counsel highlighted that the buyer's agreement initially stipulated handing over possession of the unit within three years from the date of execution of agreement, with an additional grace period of six months. However, when the respondent returned the agreement to the complainant, possession clause no. 15 was imposed with new condition, requiring possession to be handed over within three years from the date of approval of the revised building plan.

22. Upon reviewing the documents submitted by both the parties, it was noted that there are two versions of the buyer's agreement with differing clauses regarding possession handover. Despite this difference, the Authority acknowledges that the complainant had requested a refund of the paid amount to the respondent vide email dated 19.10.2022 before filing the present complaint, following the offer of possession dated 03.12.2018 issued by the respondent. Consequently, the disagreement over possession handover as per the buyer's agreement will not impact the present complaint in any manner. The rationale behind this determination lies in the fact that the complainant's request for refund was made after the offer of possession and occupation certificate. The significance of the due date would be relevant if the complainant was seeking delay possession charges under Section 18 of the Act, 2016. However, since the complainant is specifically pursuing a refund post the offer of possession and occupation certificate, the due date for possession will not impact the current complaint.
23. On considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainant has paid only 50% of the sale consideration. Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties and the complainant has failed to fulfil the obligations conferred upon him vide section 19(6) & (7) of the Act of 2016, wherein the allottee was under obligation to make payment towards consideration of allotted unit. Also, the respondent after giving various reminders dated 24.06.2013, 13.08.2013, 11.11.2013, 27.12.2013, 15.03.2014 etc. for making payment for outstanding dues as per payment plan sent offer of possession dated 03.12.2018 to the complainant. However, the complainant failed to take possession and clear the outstanding dues. Subsequently, after

prolonged delay of over three year from the date of offer of possession, the complainant vide email dated 19.10.2022 requested the respondent to cancel the allotment and refund the amount paid, citing inability to pay the outstanding dues. In response, the respondent issued a cancellation letter dated 03.12.2022 and refunded the amount after deducting 15% from the earnest money.

24. Further, as per clause 9 of the agreement to sell, the respondent /promoter have right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled by the Complainant himself due to various reasons. Clause 9 of the buyer's agreement is reproduced as under for ready reference:

9.

"THAT in case, the allotment is got cancelled by the Unit Allottee(s) himself/herself/themselves, he/she/they shall forfeit to the Company the entire amount of earnest money and this commercial premises buyers agreement/or any other documents executed between the parties shall stand cancelled and the Unit Allottee(s) shall be left with no lien/charge whatsoever on the said premises. The company shall, thereafter, be free to deal with said premises in any manner, whatsoever, at its sole discretion. The amount, if any, paid over and above the earnest money shall, however, be refunded to the Unit Allotte(s) by the Company without any interest after sale of the said premises.

25. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr.***

Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) **and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

26. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining 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 request for cancellation made by the complainant i.e. 19.10.2022 till

03.12.2022 and further, after deducting already refunded amount, with interest from 03.12.2022 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Restrain the respondent from cancelling the said booking and further assigning the unit raising any fresh demand with respect to the project.

F.III Direct the respondents to charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under car parking or not.

27. The complainant is seeking relief of refund and thus, the aforesaid relief sought becomes redundant.

F.IV Direct the respondent to pay litigation cost.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.


G. Directions of the authority.

29. 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):

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- a) The respondent is directed to refund the paid-up amount to each complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.85% on such balance amount from the date of request for cancellation i.e. 19.10.2022 till 03.12.2022 when a part of refundable amount had been paid back. Thereafter, refund balance amount with interest from 03.12.2022 till its realization.
- b) 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.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to registry.

Dated: 29.02.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority, Gurugram