

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

Complaint no.: 3888 of 2023
Date of filing of complaint: 18.08.2023
Date of decision: 25.01.2024

1. Simran Jeet Kaur
2. Manan Preet Singh
3. Jashan Preet Singh

All R/o:- 200/13, Extension Urban Estate, Behind
Mughal Canal, Sector- 13, Karnal - 132001

Complainants

Versus

M/s Chirag Builtech Private Limited

Registered Office at: - Building No. 80, 1st Floor,
Sector- 44, Gurugram - 122003

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Abhay Jain (Advocate)

Complainants

Shri Garvit Gupta (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"ROF Galleria @95" , Sector 95, Gurugram Haryana
2.	Project Area	5.04375 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	17 of 2016 dated 25.10.2016 valid up to 28.02.2022
5.	Name of licensee	Naryan Singh S/o Jhuthar Singh, Rajesh S/o Jhuthar Singh, Smt. Bimla Wd/o Satbir, Kavita, Babita, Pooja Ds/o Satbir and 4 others
6.	RERA registration details	Registered vide no. 184 of 2017 dated 24.08.2017 valid up to 13.09.2021
7.	Shop No.	G-20, Ground Floor, (Page no. 39 of complaint)
8.	Shop admeasuring	235 sq. ft. (Page no. 39 of complaint)
9.	Date of execution of buyer's agreement	24.09.2019 (Page no. 39 of complaint)
10.	Possession clause	7. Possession of the unit 7.1 Schedule for possession of the said unit: - The Promoter agrees and understands that timely delivery of possession of the said unit to the allottee and the Common areas to the Association of Allottee sot the competent authority, as the case may be, as provided under Rule 2(1)(f) of

		the Rules, is the essence of the agreement. (Page no. 50 of the complaint)
11.	Due date of delivery of possession	13.03.2022 (As per RERA certificate + 6 months extended, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020.
12.	Total sale consideration	Rs.23,50,000/- (As per payment plan at page no. 65 of complaint)
13.	Total amount paid by the complainant	Rs.10,83,000/- (As per demand letter dated 22.02.2022 at page no. 70 of reply)
14.	Date of death certificate of the allottee no. i.e., Mr. Sher Singh	23.04.2021 (Page no. 70 of complaint)
15.	Occupation certificate	22.02.2022 (Page no. 66 of reply)
16.	Offer of possession	23.02.2022 (Page no. 68 of reply)
17.	Surrender by complainant	08.12.2021 (Page no. 73 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.

- I. That the respondent published very attractive colourful brochure, highlighting the commercial complex named '*ROF Galleria @95*' in the affordable group housing colony situated in village Dhorka, Sector 95, Gurugram, and Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real

estate developers of the country, in order to lure prospective customers to buy shop in the project.

- II. That the allottee namely, Late Shri Sher Singh was approached by the sale representatives of the respondent, who made tall claims about the commercial complex 'ROF Galleria @95' in the affordable group housing colony at Sector 95, Gurugram, Haryana describing it as the world class commercial project. The complainant was invited to the sale office and was lavishly entertained and promises were made to him that the project would be finished in time, complete with parking and other common area facilities. The allottee was impressed by their statements, oral representations and promises and ultimately lured to book a shop in the commercial complex 'ROF Galleria @95' on 30.10.2018 via application no. 185. The allottee, Late Shri Sher Singh paid a sum of Rs.2,35,000/- through RTGS on 29.10.2018 as booking amount and the receipt no. ROF-AANANDA /RE/0006 dated 30.10.2018 was issued by the respondent.
- III. That the agreement for sale was executed between the respondent and the allottee, Sher Singh on 24.09.2019 for the sale of the commercial shop bearing no. G-20 at ground floor having a super area of 235 square feet at the rate of Rs.152/- per sq. ft. Thus, the basic sale price of the shop was Rs.23,50,000/-. Till that time, the respondent had already received a sum of Rs.2,63,202/- for the above mentioned shop.

- IV. That the allottee, Late Shri Sher Singh paid his hard earned money to the respondent for the shop and paid around 45% of the cost i.e., a total sum of Rs.10,53,000/- to the respondent.
- V. That in March, 2020, the whole nation started facing life and death situation due to the deadly spread of novel coronavirus (Covid-19) and the Government imposed complete lockdown in the entire nation starting from 22.03.2020. People were locked in their homes, protecting their lives but still many people got infected and had lost their lives due to this deadly disease, leaving behind their families. The jobs and businesses of the people were also at standstill which caused mental and financial breakdown. The whole crisis started in November, 2019, when China reported its 1st case of novel coronavirus on 17.11.2019 as per its reports and alerted World Health Organisation (WHO) on 31.12.2019 about several cases of unusual pneumonia in its Wuhan city. The WHO named new coronavirus disease as COVID-19 on 11.02.2020. In India, 1st case of Covid-19 was reported in Kerala on 30.01.2020.
- VI. Thus, during this critical situation of Covid-19 in the whole country, the allottee (Late Shri Sher Singh), being the sole earning member of his family took all necessary precautions and still got infected with Covid-19. The allottee lost his life due to this deadly disease on 23.04.2021, leaving behind his aged mother, his wife and two sons. His family was financially effected as the allottee was the sole

earning member of the family and now, after his death, there was no earning source in the family.

- VII. Since, the allotted shop of Sh. Sher Singh died on 23.04.2021, due to Covid-19 disease, his aged mother, Smt. Rampyari, his wife, Smt. Simran Jeet Kaur and his two sons, Mr. Manan Preet Singh and Mr. Jashan Preet Singh became the legal heirs of the allottee, Late Shri Sher Singh. Later, the mother of the allottee, Smt. Rampyari died on 13.12.2022. Therefore, the three complainants of this complaint i.e., Smt. Simran Jeet Kaur, Mr. Manan Preet Singh and Mr. Jashan Preet Singh are the present legal heirs of the allottee, Late Shri Sher Singh.
- VIII. That the family of the Allottee also suffered huge financial difficulty and mental breakdown, and to fulfil the basic necessities of the family in those hard times, the complainant No. 1, Smt. Simran Jeet Kaur (wife of the allottee, Sher Singh) decided to withdraw from the project and requested the respondent vide letter dated 08.12.2021, to cancel the booked shop no. G-020 in the project ROF Galleria @95 and refund the entire deposited amount of Rs.10,53,000/- to the complainant no. 1 without any deductions. Since no other source of income was available, the complainant no. 1 could use this money to meet the needs of her family and for the education of her two sons i.e. complainant no. 2 & 3.
- IX. That the respondent promised the allottee at the time of booking in 2018 that the possession of the shop will be delivered on time but, till date, the respondent has failed to complete the construction and

offer the possession of the shop to the complainants (legal heirs of the allottee). Even after a delay of more than ten (10) months from the due date of possession, the respondent has failed to fulfil his obligation for the delivery of possession of the shop to the complainants till date. Due to these lapses and failures of the respondent, the complainants sought refund of their deposited amount along with interest.

- X. That the respondent did not bother and took no action on the request for refund made by the complainant no. 1 and failed to refund the paid amount of Rs.10,53,000/- to the complainants even after repeated requests. That the respondent had harassed the complainants by retaining their hard earned money in the tough times. The complainants are tired of waiting for the refund of their money and are aggrieved by the lapses and failures of the respondent.
- XI. That the complainants intend to withdraw from the project. As per the obligations on the respondent/promoter under section 18 of the Act, 2016 read with rules 15 and 16 of the Rules, 2017, on the failure of the respondent to handover the possession of the shop on time, the complainants seek return/refund of the deposited amount along with prescribed rate of interest from the date of payment till the entire amount is realised. The respondent has neglected his part of obligations by failing to offer a legitimate and rightful possession of the shop in time. The complainants reserve their right to seek

compensation from the promoter for which the complainants may make a separate application to the adjudicating officer.

C. Relief sought by the complainants:

4. The complainants have filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to refund the entire deposited amount along with interest from the various dates of deposit till the entire amount is refunded to the complainants.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention 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 respondent:

6. The respondent has contested the present complaint on the following grounds:
 - i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed as the complaint is not filed by the allottee. That the complainant is not covered under section 2 of the Act of 2016, is not applicable. The complainant is estopped from filing the present complaint on account of their own acts, omissions, admissions, delays, laches and acquiescence.
 - ii. That the complaint is not maintainable for the reason that the agreement contains a dispute resolution clause which refers to the mechanism to be adopted by the parties in the event of any dispute i.e., clause 38 of the buyer's agreement.
 - iii. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the



material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered prestigious projects and in most of these projects large numbers of families have already shifted after having taken possession.
- That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants now want to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainants cannot be allowed to succeed.
- That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda' from the Director Town and Country Planning, Haryana, Chandigarh vide approval bearing license no. 17 of 2016 dated 25.10.2016 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as amended from time to time.
- That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no. ZP-1133/SD(BS)/2016/26738 dated 07.12.2016 and the environment clearance bearing no. SEIAA/HR/2017/659 dated 09.10.2017 from the State Environment Assessment Authority,



Haryana for the project in question. Moreover, the respondent in compliance of all laws including the Act, 2016 has registered the project in question with this authority and this authority after scrutiny of all the relevant documents and completing its own due diligence has issued a registration certificate bearing no. 184 of 2017.

- That Mr. Sher Singh (Deceased) had approached the sale representative as prospective buyer of commercial unit in project ROF Galleria@95 in sector-95. Mr. Sher Singh after conducting independent research and inspection of all document related to the project and satisfying himself with the details and specification of the unit agreed to purchase a commercial unit.
- That Mr. Sher Singh then submitted the application form bearing no. 185 dated 30.10.2018, along with a payment of Rs.2,35,000/- through NEFT having UTR No. SBIN518302952763 the receipt of which was acknowledged by the respondent by generating a receipt of said payment bearing receipt no. ROF-AANANDA /RE/0006 dated 30.10.2018.
- That the respondent on the receipt of 10% amount of basic sale price as per the payment plan annexed in the said application form, allotted unit no. G-20 situated at ground floor, in project ROF Galleria@95 in sector-95 having carpet area 152 sq. feet in favour of Mr. Sher Singh.
- Thereafter the complainant has paid an amount of Rs.8,18,000/- on 10.06.2019 against the demand which was due on 30.11.2018, receipt of the said payment is acknowledged by the respondent vide receipt bearing no. ROFG95/RE/0083 dated 10.06.2019.
- That on 24.09.2019, a builder buyer agreement was executed between the respondent and Mr. Sher Singh and the same was registered on 29.11.2019. On 20.09.2019 Mr. Sher Singh had only paid an amount of Rs.10,53,000/- against the total sale consideration of Rs.26,32,006/-.
- The payment plan was construction link the respondent as per the progress of the said project raised another demand of Rs.7,89,406/- (30% of the Basic sale price) vide demand letter dated 27.07.2021 which was due on 27.08.2021. However, Mr.

- Sher Singh failed to make payment of the due amount despite of being aware that timely payment was the essence of the allotment.
- That the respondent after completing project as per the norms and had obtained the occupancy certificate dated 22.02.2022 and the same was conveyed to the Mr. Sher Singh vide letter dated 23.02.2022, along with demand on intimation of the possession.
 - That the respondent even after making legitimate and valid offer of possession reminded Mr. Sher Singh to make the payments against the total sale consideration as per the agreed payment plan and the terms of agreement. And time and again sent demand letter and reminder letters to allottee.
 - That the allottee has failed to make payments and never responded to such reminder/demands. The respondent was never informed about the sad and unfortunate death of Mr. Sher Singh nor any legal heir certificate/succession certificate was submitted to the respondent. That there is no fault on part of respondent and the complaint is deserved to be dismissed.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority:**
8. 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

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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants 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 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."

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 complainant is in breach of agreement for non-invocation of arbitration.

12. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be

clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

F.II Objection regarding maintainability of complaint on account of complainant being investor.

14. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainant is buyer's, and they have paid total price of Rs.10,83,000/- to the promoter towards purchase of unit in its project. 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;"

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) 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". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

- G.I. Direct the respondent to refund the entire deposited amount along with interest from the various dates of deposit till the entire amount is refunded to the complainants.**
16. In the present case, the allotment of unit was made in favour of the allottee i.e., husband of the complainant no. 1 and father of the complainants no. 2 & 3. i.e., Sher Singh. As per facts of complaint, husband of the complainant no. 1 and father of the complainant's no. 2 & 3 of the complainants i.e., allottee was expired on 23.04.2021 and the complainants being the legal heirs filed the complaint for legal remedy against allotted unit.
17. During proceeding dated 19.10.2023, the counsel for the respondent has raised an objection that the date mentioned in the legal heirs certificate which has been placed on record is not legible. Therefore, the Authority directed the complainants to clarify the same to proceed further in the matter. In compliance of the said order, the complainants have filed the legal heirs certificate on 20.11.2023.

18. The allotted unit bearing no. G-20, on ground floor, an area admeasuring 235 sq. ft. in the project of respondent "**ROF Ananda**", in Sector 95, Gurugram vide allotment letter dated 30.11.2019 in favour of Sher Singh for the sale consideration of Rs.23,50,000/-. Thereafter, a buyer's agreement was executed between the Sher Singh and the respondent/promoter on 24.09.2019. As per clause 7.1 of the buyer's agreement, *The promoter agrees and understands that timely delivery of possession of the said unit to the allottee and the Common areas to the Association of Allottee sot the competent authority, as the case may be, as provided under Rule 2(1)(f) of the Rules, is the essence of the agreement.* The possession of the allotted unit under the Act and Rules of 2(1)(f) of the rules 2017, is the essence of the agreement. As per registration certificate no. 184 of 2017 dated 24.08.2017 which was valid up to 13.09.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. Therefore, the due date of possession comes out to be 13.03.2022. The respondent has obtained the occupation certificate from the competent Authority in respect of the said project on 22.02.2022. The complainants paid a sum of Rs.10,83,000 /- out of the sale consideration of Rs.23,50,000/-. Further, the complainants have placed on record a surrender request letter dated 08.12.2021 at page no. 73 of the complaint stating that *"..... I am house wife and have 2 sons and one grandmother. I am not able to continue this project as I am not in position due to lack of money. So, I request to you cancel this contract and refund the deposit amount....."*

19. Moreover, as per Clause 7.7 of the agreement to sell dated 24.09.2019, talks about cancellation by allottee. The relevant part of the clause is reproduced as under: -

***7.7 Cancellation by Allottee** - The Allottee shall have the right to cancel/ withdraw his allotment in the Project as provided in the Act: Provided that where the Allottee proposes to cancel/ withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the Booking Amount paid **for the allotment (i.e. earnest money being 10% of the Total Price)** and interest component on delayed payment (payable by the Allottee for breach of agreement and non-payment of any due payable to the Promoter in terms of Clause 1.14 herein before) and brokerage. The rate of interest payable by the Allottee to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money, if any, paid by the Allottee shall be returned by the Promoter to the Allottee, without interest or compensation within 90 days of such cancellation. In case of such cancellation, if the Booking Amount is lesser than the amount which is due from the Allottee to the Promoter, then the Promoter shall have the right to recover the shortfall from the Allottee under applicable laws.*

20. That the above mentioned clause provides that the promoter is entitled to forfeit the booking amount/earnest money paid for the allotment and interest component on delayed payment (payable by the Allottee for breach of this agreement and non-payment). The Authority is of the view that the drafting of the aforesaid 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. As per the aforesaid clause the builder is entitled to forfeit 10% of the total price and empowers to promoter to recover interest on delayed payments along with brokerage. It is unjust condition and it exploits the allottees and can be termed as one sided. The clause on the face of it does not give equal bargaining power to the allottee. 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.

21. On proceeding dated 25.01.2024, the respondent was directed to refund the amount deposited by the complainant as per AGHP, 2013, along with prescribed rate of interest i.e., 10.85% till its realization. However, in the instant case, the allotted unit to the complainant was a commercial shop and not a flat. Further, the policy, 2013 is applicable to the flats allotted under AGHP and is not applicable to the commercial shops of the project. Therefore, in this case, the terms agreed between the parties vide buyer's agreement dated 24.09.2019, shall be applicable with respect to cancellation/surrender.
22. 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."

23. 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 complainants after deducting 10% of the basic 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 surrender i.e., 08.12.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017
ibid.

G. Directions of the Authority:

24. 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) of the Act.

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.10,83,000/-, after deducting 10% of the sale consideration of Rs.23,50,000/- being earnest money along with interest on such balance amount at the rate of 10.85% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 08.12.2021 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.
25. Complaint stands disposed of.
26. File be consigned to the registry.

Dated: 25.01.2024

HARERA

V.I. - 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram