



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

**Complaint no.** : 3571 of 2020  
**Date of filing** : 23.10.2020  
**Date of decision** : 27.02.2024

M/s Silverglades Infrastructure Pvt. Ltd.

**Address:** C-8/1A, Vasant Vihar,  
New Delhi-110057.

**Complainant**

Versus

1. Vivek Madan
2. Ritu Madan

**Address:** G-228, Sarita Vihar,  
New Delhi-110076.

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE**

Shri Harshit Batra (Advocate) On behalf of complainant  
Shri Siddharth Karnawat (Advocate) On behalf of respondents

**ORDER**

1. The present complaint has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the



occupancy certificate issued for the said unit and under sections 19(6) and (7) of the Act whereby the allottee is obligated to make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments.

**A. Project and unit related details**

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

S. No.	Heads	Information
1.	Name and location of the project	The Merchant Plaza, Sector 88, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	DTCP license no.	1 of 2013 dated 07.01.2013
	Valid up to	06.01.2023
4.	Building plan approval date (As per information received from Planning Branch of the authority)	30.05.2013
5.	RERA registered/ not registered	<b>Registered 340 of 2017 dated 27.10.2017 for 2.75625 acres</b>
	RERA registration valid up to	<b>20.12.2020</b>
6.	Allotment letter issued in favour of the respondents by the complainant on	16.07.2013 [Page 44 of complainant]



7.	Date of execution of apartment buyer's agreement between the complainant and the respondents	03.06.2015 [Page 47 of complaint]
8.	Unit no. as per buyer's agreement at page 52 of complaint	GF- 93, ground floor
9.	Unit measuring	494.17 sq. ft.
10.	<b>Increase in super area</b> of the unit as per page 88 of complaint	493.42 sq. ft.
11.	Payment plan	Construction linked payment plan [Page 77 of complaint]
12.	Total consideration as per payment plan on page 77 of the complaint	Rs. 51,71,616/-
13.	Total amount paid by respondents-allottees as admitted by the complainant-promoter at page 92 of complaint	Rs. 13,77,798/-
14.	Possession clause	<i>11.1 Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over possession of the Unit within a period of <b>4 (four) years from the date of approval of the Building Plans</b> or other such approvals required, whichever is later to commence construction of the project or, within such other time lines as may be directed by any Competent Authority ("Commitment Period"). The Buyer further agrees that even after expiry of the</i>



		<i>Commitment Period, the Company shall be further entitled to a grace period of a maximum of 180 days for issuing the Possession Notice ("Grace Period")."</i> [Page 60 of complaint]
15.	Due date of delivery of possession	30.11.2017 <b>Note:</b> Grace period is included.
16.	Email sent by the respondents to the complainant seeking cancellation and refund of the amount paid by them	21.06.2016 [Page 63 of reply]
17.	Cancellation notice dated	30.06.2017 [Page 70 of reply]
18.	Date of offer of possession to the respondent-allottees at page 86 of complaint	17.02.2020
19.	Occupation certificate, page 84 of complaint	11.02.2020
20.	Remarks	The respondent-allottees have not paid any instalments after 06.07.2013. (As per details on page 92 of complaint)

**B. Facts of the complaint**

3. The complainant/promoter has made following submissions in the complaint:
- i. That the complainant has developed a commercial project over approximately 2.75625 acres of land situated in Village-Hayatpur, Sector-88, Gurugram, Haryana, named as "Merchant Plaza" ("Project"). The project comprises of 422 units, parking spaces and



other utilities in accordance with the sanctioned plans and approvals. The complainant has obtained license from Director General, Town and Country Planning Department, Government of Haryana ("DTCP") for development of the project vide license no. 01 of 2013 dated 07.01.2013. The entire project has already been registered as one project under the Act vide registration certificate no. 340 of 2017 dated 10.10.2017 and the same is valid up to 20.12.2020.

- ii. That the respondents had booked a unit admeasuring 494 sq. ft. in the said project through application form dated 30.04.2013 for basic sale consideration of Rs. 9000/- per sq. ft. for the total consideration of Rs. 51,71,542/-. The complainant allotted unit no. GF-93 on the ground floor of the project vide allotment letter dated 16.07.2013 to the respondents. The respondents also executed apartment buyers agreement with the complainant on 03.06.2016. The buyer's agreement was executed by the respondents with free will without any coercion or undue influence, therefore the same is binding on the parties thereto. Pertinent to state that, as per section 19(6) of the Act, the respondents was under obligation and responsible to make necessary payments in the manner and within the time as specified in the said buyer's agreement, at the proper time and place. In event of the default thereof, the respondents are liable to pay interest, at the rate of 15% as prescribed in the buyer's agreement, for any delay in payment towards any amount or charges to be paid under sub-section



- (6). Pertinent to say that buyer's agreement was executed before the Act, 2016 come into force and therefore, the provision of pre-RERA buyer's agreement is enforceable between the parties. The above-said project has already been completed and the complainant has already obtained occupancy certificate on 11.02.2020.
- iii. That the offer of possession dated 17 .02.2020 in terms of buyer's agreement was given to the respondents, wherein the respondents were invited to take possession of unit no. FF-44 as allotted to them vide allotment letter dated 12.07.2013 in the above-said project. The respondents were invited to take possession of unit. However, in contravention and violation of the buyer's agreement, the respondents failed to take possession of unit, till the date of filing of present complaint.
- iv. That till the date of filing the present complaint, the respondents have paid Rs. 13,77,798/- to the complainant as on date. As per statement of account of the complainant, an amount of Rs. 42,42,083/- is outstanding towards installment and an amount of Rs. 24,38,466/- is outstanding towards interest as on 30.06.2020. The respondents have been continuously defaulting in making payments of their instalments dues. As per last payment request dated 17.02.2020 sent by the complainant to respondents, an amount of Rs. 63,14,407/- was due and payable by the respondents.





- v. That despite hurdles, hindrance, escalation in cost of material and equipment, stay imposed by Apex Court and National Green Tribunal, the complainant has been able to complete the project in time, on the faith and trust of the buyers including respondents. However, the faith and trust has been crushed by the buyers including the respondents by making default in taking possession of the unit. Also, the respondents agreed under the payment plan signed by them, to pay the installments on time. The respondents have failed to make payments of their respective installments as demanded by the complainant as per agreed payment plan. The respondents failed to clear their dues despite repeated reminders by the complainant. The complainant also informed the respondents, through various demand/payment request letters, that home loan facility was available by leading banks/NBFCs such as HDFC, ICICI, SBI, Central Bank of India, Reliance Home Finance Limited, Tata Capital Home Loan at good rate of interest.
- vi. That the complainant has duly complied with all applicable provisions of the Act and rules made thereunder and also that of agreement for sale qua the respondents. Since starting the development of the project, the complainant has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondents and also the customer care



department of the complainant is regularly in touch with the buyers for giving updates on the progress of the project.

- vii. That the complainant vide its letter dated 21.05.2019 also offered the following benefits to all the buyers including the respondents: a) Loyalty discount on final settlement; b) No maintenance charges during the period of 4 months; c) No maintenance charges for 12 months from the date of offer of possession; d) Priority for leasing assistance on first come first serve basis.
- viii. That in terms of clause 7 of the buyer's agreement, the respondents are responsible and obligated to pay the instalments within the time agreed there in and any delay in making payment shall be chargeable with 15 % simple interest. In terms of clause 13.5 of buyer's agreement, the respondents have no right to withhold the due payments for any reason whatsoever.
- ix. That the complainant has already suffered huge financial losses in lieu of non-payment of installments by buyers. In spite of default of non-payment of installments by the buyers, the complainant has completed project and offered possession thereof to the respondents. However, the respondents have neither made timely payment nor come forward to take possession of unit offered to them.
- x. That the respondents are under obligation and responsible to pay and complainant is entitled to recover the due amount along with interest agreed in terms of the buyer's agreement under section 19 (6) and (7)





of the Act and Rule 15 of the rules and to take the possession under section 19(10) of the Act. In view of the forgoing, it is clear that respondents have committed the breach of the said buyer's agreement as well violation of the provisions of the Act. Under section 31(1) of the Act, the Hon'ble Authority is empowered to adjudicate the present complaint being filed by the complainant as promoter of the project against the respondents being allottee of the project. In view of the above, the complainant prays for the following relief from this Hon'ble Authority.

**C. Relief sought by the complainant/promoter**

4. The complainant has filed the present complaint for seeking following reliefs:
  - i. Direct the respondents to make payment of outstanding dues of Rs. 42,42,083/- under the buyer's agreement read with other provisions of the Act.
  - ii. Direct the respondents to take possession of unit under the provisions buyer's agreement.
  - iii. Direct the respondents to pay interest of Rs. 24,38,466/- calculated upto 30.06.2020 as per buyer's agreement and read with other provisions of the Act.
  - iv. To impose penalty-cum-cost to the sum of Rs.50,000/- on the respondents towards forced litigation imposed upon the complainant.



v. Any other relief, as deem and fir, may also kindly be passed in the interest of justice.

5. On the date of hearing, the authority explained to the respondent-allottees about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents**

6. The respondents have contested the complaint on the following grounds:

i. That the complainant has not approached the hon'ble authority with clean hands and in order to evade its liability of refunding the amount paid by the respondents, it has filed the present complaint which is devoid of any merit. The complainant in the instant complaint has tried to misled the Hon'ble authority by stating that the possession is offered in terms of the buyer's agreement dated 08.01.2015. The complainant has concealed various material facts. The respondents had booked the unit in the project being developed by the complainant allured due to the advertisements and promises made by the complainant with respect to the timely possession of the unit, the respondents booked the unit in the year September 2012. The complaint is an afterthought by the complainant because the respondents have surrendered their unit long back and the same was



also cancelled by the complainant but the complainant has not disclosed the same before this authority.

- ii. That the respondents had booked a commercial space in the project Merchant Plaza, Sector 88, Gurugram, Haryana after making a payment of booking amount on 01.10.2012. Pursuant to the booking, the complainant without even allotting a unit/commercial space to the respondents or executing any agreement had collected an amount of Rs. 13,77,798/- from the respondents.
- iii. That it was only after a delay of 9 months from the date of booking, the respondents vide allotment letter dated 16.07.2013 were allotted a unit bearing no. GF-93 located on ground floor having total super area of 494 sq. ft. to the respondents. The complainant did not execute any agreement with the respondents and vide email dated 02.01.2015 requested the complainant to execute a buyer's agreement with the respondents. Finally on 08.01.2015, after a delay of almost 27 months from the date of booking, the complainant executed buyer's agreement with the respondents. The agreement contained absolutely one sided and arbitrary terms and conditions which the respondents could not negotiate as any dispute would have led to cancellation of allotment and forfeiture of earnest money. Therefore, the respondents did not have any option but to sign on the dotted lines.

- iv. That the respondents were not in condition to continue with the project and therefore vide pre-cancellation letter dated 16.04.2016, the complainant gave final opportunity to the respondents to make payment of the due amount. Therefore, the respondents vide email dated 21.06.2016 expressed their inability to make payment of the due amount. Therefore, the respondents vide email dated 21.06.2016 expressed their inability to make payment as they were under deep financial crisis and depression. The respondents requested the complainant to deduct minimum amount or even waive the deduction and refund the amount paid by the respondents.
- v. That the complainant did not reply to the aforesaid email sent by the respondents, therefore the respondents sent a reminder email dated 23.11.2016. Subsequently, the complainant acknowledged the email sent by the respondents and requested time to get back to them.
- vi. That despite acknowledging the request for refund made by the respondents, the complainant did not take any action with respect to the same, therefore, the respondents again vide email dated 23.04.2017 and 28.04.2017 followed up with the complainant on his request for refund. Therefore, the complainant vide email dated 29.04.2017 assured the respondents that they have noted the concerns and will get back to the respondents at the earliest. That despite assuring the respondents twice, the complainant did not take any action with regards to cancellation of the unit booked by the



respondents. Further, the complainant had already sent pre-cancellation letter to the respondents way back in 16.04.2016 even then the complainant did not honour the request made by the respondents.

- vii. That the respondents have been requesting the complainant since June 2016 seeking cancellation and refund of the amount paid by them, however to no avail. Therefore, again vide email dated 03.05.2017, the respondents requested the complainant to refund the amount paid by them and cancel the allotment. The complainant sent a cancellation notice dated 30.06.2017 cancelling the allotment of the respondents without refunding the amount paid by the respondents.
- viii. That despite cancelling the unit of the respondents, the complainant did not refund the amount. As per clause 6.1 of the agreement, it was agreed that upon request by the respondents, the complainant shall be bound to cancel the allotment of the respondents and refund the amount after necessary deductions. Therefore, the respondents again vide email dated 07.01.2018 requested the complainant to refund the amount paid by them but the complainant did not pay any heed to the same. The respondents vide email dated 04.09.2019, 10.01.2019 followed up with the complainant seeking refund of the money after necessary deductions but to no avail as the complainant despite cancelling the allotment of the respondents paid no heed to the same.



- ix. That the complainant has approached the Hon'ble Authority with unclean hands and with malafide intentions to unjustly enrich itself with the amount paid by the respondents and is unwilling to refund the amounts paid by the respondents. The respondents could not visit and meet the complainant as the respondents are based in Singapore and the same was informed to the complainant also. It is with this malafide intention to coerce the respondents to stop seeking refund of the amount, the complainant despite cancelling the allotment of the respondents way back in June, 2017 offered possession to the respondents on 17.02.2020 and further sought payment of Rs.63,14,407 from the respondents.
- x. That the complainant had itself cancelled the unit booked by the respondents vide cancellation notice dated 30.06.2017 then how can the possession be offered in February 2020. That the respondent no.1 lost his job and is under tremendous financial crisis and it is for the same reason he had requested the complainant to refund the amount, however no affirmative action in this regard was taken by the complainant. In view of the above facts, the present complaint filed by the complainant deserves to be dismissed.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents. The respondent-allottees have file written synopsis on 23.02.2024 wherein apart from





reasserting the facts already stated in the reply, the respondent-allottees have relied upon the judgement of 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 that it is an unqualified right of the allottee to seek refund under section 18(1) of the Act.

**E. Jurisdiction of the authority**

8. 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**

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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

9. 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 and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

**F. Observations of the authority**

10. The present matter was heard and disposed of by the authority vide proceedings dated 28.09.2021 wherein the complainant/builder was directed to refund the amount deposited by the respondent-allottee after deduction of 10% of the total sale consideration as per regulation dated 05.12.2018 as the subject unit was cancelled vide letter dated 30.06.2017.
11. Thereafter, the complainant builder filed an appeal on 29.08.2022 against the impugned order of the authority dated 28.09.2021 before the Hon'ble Appellate Tribunal, Chandigarh which was listed on 16.11.2022.
12. Meanwhile, the respondent allottee preferred execution petition bearing no. 4739-2022 for execution of the order dated 28.09.2021. Vide order dated 22.12.2022 signed on 28.03.2023 by adjudicating officer, the executing court passed the following directions:

*"File put up today. It is intimated by Legal Executive and C.A. that Recovery Certificate has been issued in this case to the Collector, Gurugram. Let case file be consigned to record room. Same be not weeded out till further orders."*

13. In pursuance of the aforesaid directions, Ld. Collector issued recovery certificate dated 03.05.2023 and against which the complainant-



promoter-applicant filed an application bearing no. 698/2023 in appeal no. 623/2022 in Hon'ble Appellate Tribunal seeking stay of execution proceedings and consequently issuance of recovery certificate dated 03.05.2023. On 30.05.2023, the Hon'ble Appellate Tribunal was pleased to issue direction that factum of pendency of appeal be conveyed to executing courts. Furthermore, Ld. Collector adjourned the proceedings till 28.08.2023 in lieu of the orders of appellate tribunal dated 30.05.2023.

14. Finally, the said appeal was allowed by the tribunal vide order dated 16.08.2023 and the order of the authority dated 28.09.2021 was set-aside on grounds that the bare perusal of the order is in nature of proceedings and not informed by elaborate reasoning. Accordingly, the matter was remitted back to the authority for fresh decision.
15. The applicant-complainant produced order dated 16.08.2023 of the Hon'ble Appellate Tribunal before the Ld. Collector, however acting in arbitrary manner, the Ld. Collector issued final recovery certificate on 22.09.2023 wherein the applicant was directed to deposit the bank draft of Vivek Madan and Ritu Madan on or before 10.10.2023.
16. Therefore, an application dated 05.10.2023 was filed by the complainant-promoter for stay the operation of order dated 22.12.2022 in execution along with stay the operation of recovery certificate dated 22.09.2023 issued execution petition.
17. Vide order dated 19.12.2023, the authority observed as under:



*"Since the Hon'ble Appellate Tribunal vide order dated 16.08.2023 in above appeal has set aside the order passed by the Authority on 28.09.2021 and hence, the **decree issued in pursuance to said order is void** and no further action on same be taken before passing of the final order by the authority in case after hearing arguments of both the parties."*

18. Thus, the application dated 05.10.2023 was allowed by the authority and has decided to adjudicate the present matter afresh in terms of directions passed by Hon'ble Appellate Tribunal dated 16.08.2023.

**G. Finding on the relief sought by the complainant/promoter**

- G.I Direct the respondents to make payment of outstanding dues of Rs. 42,42,083/- under the buyer's agreement read with other provisions of the Act.
- G.II Direct the respondents to take possession of unit under the provisions buyer's agreement.
- G.III Direct the respondents to pay interest of Rs. 24,38,466/- calculated upto 30.06.2020 as per buyer's agreement and read with other provisions of the Act.

19. In the present complaint, the complainant-promoter has prayed that the respondent-allottees be directed to make payment of outstanding as per the payment schedule within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

20. **Due date of possession and admissibility of grace period:** Clause 11.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

*"11.1 Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over possession of the Unit within a period of 4 (four) years from the date of **approval of the Building Plans** or other such approvals required, whichever is later to commence construction of the project or, within such other time lines as may be directed by any Competent Authority ("Commitment Period"). The Buyer further agrees that even after expiry of the Commitment Period, the Company shall be further entitled to a grace period of a maximum of 180 days for issuing the Possession Notice ("Grace Period").*  
*(emphasis supplied)*



21. The promoter has proposed to hand over the possession of the said unit within 4 (four) years from the date of approval of the building plans or other such approvals required, whichever is later and it is further provided in agreement that promoter shall be entitled to a grace period of 180 days for issuing the possession notice. The building plans were approved by the competent authority on 30.05.2013. The period of 4 years expired on 30.05.2017. Further, the complainant is also entitled a grace period of 180 days for issuing the possession notice. For issuing possession notice, it is pre-requisite to apply and obtain the completion certificate/occupation certificate in respect of the unit and/or the project. In terms of order dated 08.05.2023, passed by the Hon'ble Appellate Tribunal in appeal no. 433 of 2022, grace period of 180 days is allowed. Thus, the due date of handing over of possession comes out to be 30.11.2017 including grace period of three months.
22. In the present complaint, the subject unit was allotted to the respondents vide allotment letter dated 16.07.2013 and thereafter, the buyer's agreement was executed inter se parties on 03.06.2015. The due date for handing over of possession comes out to be 30.11.2017 as computed above. On perusal of documents on record, it is observed that the occupation certificate of the said project was granted by the competent authority on 11.02.2020 and the complainant has offered possession of the subject unit to the respondents-allottees on 17.02.2020.





23. The complainant-promoter is contending that the respondents-allottees have failed to abide by the terms and conditions of the buyer's agreement by not making the payments in timely manner as per the payment plan opted by them and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further, despite repeated follow-ups by the promoter and having performed its contractual obligations, the respondents-allottees withheld to perform their contractual obligation. In terms of clause 7 of the buyer's agreement, the respondents are contractually obligated to pay the instalments within the time agreed therein and any delay in making payment shall be chargeable with 15 % simple interest. In terms of clause 13.5 of buyer's agreement, the respondents have no right to withhold the due payments for any reason whatsoever. The respondents-allottees have failed make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Section 19(6) and 19(7) reads as under:

*"Section 19: - Right and duties of allottees. -*

.....

- (6) *every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*





(7) *the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

24. The authority observed that the possession of the plot was offered to the respondent-allottees on 17.02.2020 and despite repeated reminders to the respondent-allottees, they are not coming forward to take possession of the unit after clearing the outstanding dues and to execute conveyance deed. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act.
25. On the other hand the respondents-allottee while filing reply is counter claiming refund of the entire amount paid by them stating reason that they were not in condition to continue with the project and therefore, vide pre-cancellation notice dated 16.04.2016, the complainant gave final opportunity to the respondents to make payment of the due amount. Thereafter, the respondents vide email dated 21.06.2016 expressed their inability to make payment as they were under deep financial crises and depression. Thus, the respondents requested the complainant to deduct the minimum amount or even waive the deduction and refund the amount paid by the respondents.
26. The authority observes that as far as payment of outstanding dues of concerned, the Authority observes that the respondent-allottees have made payment of Rs. 13,77,798/- till date against the total sale



consideration of Rs. 51,71,616/-. It is pertinent to note that the respondent-allottees have not paid any instalments after 06.07.2013 as per details on page 92 of complaint. Also, an email dated 21.06.2016 was sent by the respondents to the complainant seeking cancellation and refund of the amount paid by them. It is evident from the conduct of the respondent-allottees that they do not wish to continue to continue with the project.

27. Keeping in view the aforesaid facts and submissions made by both the parties, the authority is of the view that no one can be forced to purchase a plot as they have already surrendered the subject unit vide email dated 21.02.2016, but the same was surrendered prior to the due date of possession as per the buyer's agreement executed inter se parties, which will amount to the breach of the contract on the part of the complainant-allottee. Accordingly, the complainant-promoter is entitled to forfeit 10% the sale consideration as laid by the Hon'ble Appellate Tribunal in appeal no. 255 of 2019 titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd. & anr.:**

*"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government" .*

28. In light of the aforesaid reasons, submissions and case laws referred above, the relief sought by the complainant-promoter cannot be



granted and are hereby declined in view of surrender of allotment made by the respondent-allottees vide email dated 21.06.2016. However, the complainant-promoter is entitled to forfeit earnest money as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under:

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

29. Thus, keeping in view the aforesaid legal provisions and orders passed by the Appellate Tribunal mentioned above, the complainant-promoter is directed to refund the deposited amount of Rs. 13,77,798/- after deducting 10% of the sale consideration i.e., Rs. 51,71,616/- being earnest money along with an interest @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 on the refundable amount, from the surrender i.e., 21.06.2016 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.



**G.IV To impose penalty-cum-cost to the sum of Rs.50,000/- on the respondents towards forced litigation imposed upon the complainant.**


30. The complainant is also seeking relief w.r.t. litigation expenses. 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.* 2021-2022(1) RCR(c),357 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the authority:**

31. 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:
- The complainant-promoter is directed to refund the deposited amount of Rs. 13,77,798/- after deducting 10% of the sale consideration i.e., Rs. 51,71,616/- being earnest money along with an interest @10.85% on the refundable amount, from the surrender i.e., 21.06.2016 till date of realization of the said amount.



- ii. A period of 90 days is given to the complainant-promoter to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 27.02.2024