

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

Complaint no. :	3146 of 2020
Date of filing :	08.10.2020
Date of decision :	06.02.2024

Usha Sharma R/o: H.no. P6/1, DLF City, Phase-2, Gurugram, Haryana.	<b>Complainant</b>
Versus	
1. M/s Silverglades Infrastructure Pvt. Ltd. 2. M/s Everlike Builcon Private Ltd. <b>Both Regd. Office at:- C-8/1-A, Vasant Vihar, New Delhi.</b>	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

<b>APPEARANCE:</b>	
Shri Nitin Jaspal (Advocate)	<b>Complainant</b>
Shri Harshit Batra (Advocate)	<b>Respondent no.1</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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

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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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Name and location of the project	"Merchant Plaza", Sector 88, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	DTCP license no. details	01 of 2013 dated 07.01.2013 Valid up to- 06.01.2023 Licensed area- 2.75625 acres Licensee- Magnitude Properties Pvt. Ltd.
4.	RERA registered/ not registered and validity status	<b>Registered vide no. 340 of 2017 dated 27.10.2017 for 2.75625 acres</b> <b>Valid up to - 20.12.2020</b>
5.	Building plan approved on	30.05.2013 [Page 25 of reply]
6.	Environmental Clearance approved on	28.02.2014 [Page 31 of reply]
7.	Consent to establish approved on	16.06.2014 [Page 42 of reply]

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8.	Occupation certificate granted on	11.02.2020 [Page 89 of reply]
9.	Date of allotment	12.07.2013 [As per page 51 of reply]
10.	Apartment buyer agreement executed on	17.04.2015 [Page 19 of complaint]
11.	Unit no.	FF-44, first floor [Page 25 of complaint]
12.	Unit admeasuring (super area)	470.93 sq. ft. [Page 25 of complaint]
13.	Possession clause	<b>11. COMPLETION OF THE PROJECT AND POSSESSION</b> 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 or other such approvals required, whichever is later</b> to commence construction of the project or within such other timelines 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 <b>grace period of maximum of 180 days for issuing the Possession Notice ("Grace Period")</b> . [Page 33 of complaint]
14.	Due date of handing over possession	<b>30.11.2017</b> <b>Note:</b> The due date is calculated from the date of building plan approval dated 30.05.2013 and grace period is included.

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15.	Total consideration	Rs. 43,67,975/- (As per Schedule III annexed with the apartment buyer agreement at page 51 of complaint)
16.	Amount paid by the complainant	Rs. 11,60,000/- (As per statement of account at page 92 of reply)
17.	Permissive possession for fit outs	21.05.2019 [As per page 85 of reply]
18.	Possession Notice issued by the respondent on	17.02.2020 [Page 64 of complaint]
19.	Cancellation notice issued by the respondent on	25.08.2020 [Page 66 of complaint] <b>Note:</b> Entire amount paid by the complainant was forfeited by the respondent vide said cancellation letter.
20.	Reminders issued by the respondent for making payment of the outstanding dues	28.04.2014, 27.05.2014, 10.07.2014, 30.12.2014, 21.01.2015, 03.04.2015, 04.05.2015, 27.06.2015, 22.07.2015, 25.08.2015, 15.09.2015, 09.10.2015, 04.12.2015, 08.01.2016, 08.02.2016, 02.11.2016, 05.01.2017, 06.02.2017, 21.04.2017, 01.06.2017, 10.12.2019, [Page 52 to 72 of reply]
<b>Note:</b> The last payment was made by the complainant on 02.04.2013 and has not made any payment thereafter.		

**B. Facts of the complaint:**

3. The complainant has made following submissions in the complaint:
- That the project named "MERCHANT PLAZA" is being developed by respondent on a parcel of land admeasuring 2.75625 acres situated at Sector 88, at Gurugram. After going through the available information



as a power point presentation of the project, the complainant decided to book the unit in the said project. The unit was booked on construction link plan.

- ii. That relying upon the facts and assurances of timely completion of project by the respondent's representatives, the complainant booked a flat bearing no. FF-44, admeasuring super area of 470.93 sq. ft., vide allotment letter dated 12.07.2013. The total sale consideration was Rs. 43,67,975/- and the complainant has paid a sum of paid Rs.11,60,000/- in all.
- iii. That at the time of booking of the unit on dated 28.01.2013, the complainant gave two cheques of Rs. 1,25,000/- and Rs. 3,75,000/- bearing numbers 749384 and 749383 respectively, to the respondents in the name of "EVERLIKE BUILDCON PVT. LTD.", which is duly acknowledged in the statement issued by the respondents. The respondents demanded more than 25% amount of the total sale consideration and subsequently paid by the complainant before execution of the BBA, which is illegal as per section 13 of the Act.
- iv. That on 10.07.2014, the respondents sent a reminder letter for payment of another installment to the complainant. The complainant made payment of the installment as demanded by the respondents and kept on making the payment as and when demanded by the respondents. The complainant requested many time to the respondents to execute

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the builder buyer agreement. But the respondents by giving frivolous excuses, delayed the execution of builder buyer agreement.

- v. That finally the builder buyer agreement was executed inter se parties on 17.04.2015. It is pertinent to mention here that there is a long delay of 2 years and 3 months between the date of booking i.e. 28.01.2013 and the date of execution of agreement i.e. 17.04.2015 and such a long delay between the date of booking and the date of execution of BBA is not justified in the eyes of law.
- vi. That as per clause 11.1 of the buyer's agreement, the project was to be completed within 4 years and 180 days of grace period from the date of approval of the building plan. So, the stipulated date for handing over possession of the said unit was 30.11.2017 but the same was offered on 17.02.2020.
- vii. That the respondents in March 2014, sent a letter to the complainant along with some images to intimate the complainant that they have done the "Bhoomi Pujan" at the project site and they started with the excavation works. But, the work at project site started after 14 months from the date of booking. Upon noticing such delay of 14 months in starting of work at project site, the complainant started losing confidence upon the credibility of the respondents and further lost hope that the project would be delivered by the respondents within proposed period.

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- viii. That complainant with a positive mind frame and hope that the said unit will be delivered within time and as an additional support to make the further payment of the installments of the said unit, the complainant applied for a home loan from the bank namely ICICI bank. That on dated 17.07.2015, the said bank sanctioned a loan amount of Rs. 21,50,000/- vide a letter bearing number 0301630 dated 17.07.2015.
- ix. That when the complainant made verification about the progress of the said project, to the shock and surprise of the complainant, the said project of the respondents was much delayed as per the builder buyer agreement. But the respondents kept on demanding the installments from the complainant, keeping the complainant in dark about the actual position of the said unit. The complainant confronted the respondents about the said delayed construction of the project and asked them to demand the installments only as per the agreed payment plan. But the respondents did not give any satisfactory answer to the complainant, therefore the complainant stopped making further payment to the respondents and suggested the respondents to demand the payment as per the agreed payment plan.
- x. That on 17.02.2020, the respondents sent a possession notice to the complainant. As per the said possession notice, the complainant was invited to take possession of the said unit. Along with the said possession letter, the respondents also sent a statement of account to the complainant in which the outstanding amount Rs. 53,97,631/- was

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payable in respect of the unit. The account statement sent by the respondents is arbitrary in nature and just to harass and to grab the hard-earned money of the complainant. The respondents are not entitled to recover any of the amount mentioned in the said statement of account as the respondents violated the basic terms and conditions of the agreement which are the soul of this agreement.

- xi. That the respondents on 25.08.2020 sent a letter to the complainant regarding the cancellation of the unit booked by the complainant in the said project and forfeiting the entire amount paid by the complainant to the respondent.
- xii. That respondent sent a cancellation letter dated 25.08.2020 stating that allotment in respect of the allotted unit stands cancelled and entire amounts paid by the complainant stands forfeited as per terms of the agreement. The acts of respondents amount to breach of contract since they started demanding monies in advance, failed to deliver project on time and followed by illegal cancellation letter. Also, respondents have bluntly refused to refund any amount paid to them and which shows that respondents are not afraid of any laws laid under RERA.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - i. To refund the entire paid-up amount of Rs. ₹ 11,60,000 /- paid by complainant along with interest for every month of delay at a prescribed rate of interest.

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- ii. Direct the respondent to pay compensation of Rs. 20 lacs on account of mental harassment, agony, physical pain, monetary loss.

**D. Reply by the respondent/builder.**

5. The respondent contested the complaint by filing reply dated 20.10.2020 on the following grounds: -

- i. The complainant booked a retail shop under construction link payment plan in the project, being developed by the respondent. Vide allotment letter dated 12.07.2013, a unit bearing no. FF-44, admeasuring 471 sq. ft. was allotted to the complainant, and subsequently apartment buyer's agreement was executed on 17.04.2015. Various demands letters and reminders as per payment plan were sent to the complainant but the complainant made utter default in payment of dues and outstanding to the respondent.
- ii. The respondent has duly complied with all applicable provisions of the Act and rules made thereunder and also that of agreement for sale qua the complainant and other allottees. Since, the commencement of the development of the project, the respondent has been sending regular updates regarding the progress of the project regularly to all the buyers including the complainant and also the customer care department of the respondent is in regular touch with the buyers for providing them regular updates on the progress of the project.
- iii. The project development was completed in September 2019. The unit was furnished and project was completed in all respect whereupon the



- company applied for the issue of occupancy certificate vide application dated 11.09.2019. The competent authority issued occupation certificate on 11.02.2020. The respondent vide its letter dated 17.02.2020 issued offer of possession to the complainant, but the complainant failed to take possession and made utter violation of agreed terms and condition.
- iv. That as on 24.08.2020, an amount of Rs. 36,44,465/- along with interest Rs. 13,28,703/- was due and payable by the complainant. Since the complainant did not come forward to take the possession of unit, the respondent left with no other option except to cancel the allotment of unit. Vide its letter dated 25.08.2020, the respondent cancelled the allotment and forfeited the earnest amount with interest as per clause 7.3 of the apartment buyer agreement.
- v. That, the complainant/allottee had agreed, under the payment plan of application form and buyer agreement signed by her to pay instalments in time and discharge her obligations as per buyer agreement. However, the complainant miserably failed to pay her installments within time even after sending several reminders and extended timelines, the respondent was left with no other recourse but to cancel the allotment of unit vide letter dated 25.08.2020.
- vi. As per clause 14.1 of the agreement, the company undertake to hand over the possession within 48 months from the date of the approval of the building plan for the project within such other timeline as may be



- directed by any competent authority ("Commitment Period"). The company was further entitled to a further "grace period of 180 days" after the expiry of the commitment period for obtaining occupation certificate. This would work out to 48 + 6 months i.e. 54 months.
- vii. That the parties to the agreement were well aware, conscious of the fact that reasonable delay in handing over may likely to be caused. The terms of agreement encompass force majeure clause, which provided that the date of possession shall get further extended if the completion of the project is delayed by any reason of Force Majeure as the respondent did not agree to perform the impossible. The construction of the project was intermittently stopped by the National Green Tribunal, EPCA and Supreme Court, etc, which was neither anticipated nor is within the control of the respondent. Pertinent to say that following period are excluded from construction period as "Force Majeure" events wherein the company was estopped by statutory authority to continue construction on public safety, health and environment protection.
- viii. That the complainant is allottee, and under obligations to make timely payment and interest, *as the case may be*, under section 19(6) and 19(7) of the Act. However, the complainant failed to make necessary payments in the manner and within the time agreed by them. As per statement of account, the complainant has not made any payment since 2013, and filed this frivolous litigation to escape the obligations and

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liabilities. The complainant is non-payer of instalment and therefore not entitle to any relief, whatsoever.

**E. Jurisdiction of the authority**

6. 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**

7. 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**

8. 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:

**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:**

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

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 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*** and 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*

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*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 case 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 To refund the entire paid-up amount of Rs. ₹ 11,60,000 /- paid by complainant along with interest for every month of delay at a prescribed rate of interest.**

12. The present complaint was disposed of by Adjudicating Officer vide order dated 13.10.2021. Thereafter, the present complaint was remanded by Hon'ble Haryana Real Estate Appellate Tribunal vide order dated 03.03.2023 vide which the order dated 13.10.2021 passed by the Adjudicating Officer has been set aside being beyond jurisdiction and the matter was remanded back to the authority for fresh trial/decision in accordance with law.
13. On 05.12.2023, the proxy counsel for the complainant was directed to clarify regarding the respondent no.2 mentioned in CAO column II but not mentioned in Proforma B and to specify the relief being sought from respondent no.2.
14. The counsel for the complainant states that the cheques for the consideration amount for allotment of the commercial unit were issued in the name of respondent no.2 therefore, respondent no.2 was also named as a party in the matter.

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15. The counsel for the respondent states that in terms of recital B of the BBA dated 17.4.2015, it has been clearly stated that M/s Everlike Buildcon (respondent No.2) has been formerly merged into Silverglades Infrastructure Pvt. Ltd. vide orders of the Delhi High Court dated 05.09.2014 with effective date of 18.09.2014 and in terms of such merger, all assets and liabilities of Everlike Buildcon Pvt. Ltd. have for all purposes devolved upon Silverglades Infrastructure Pvt. Ltd. In view of the above, there is no need to implead respondent no.2 as the same does not exist as an entity and respondent no.1 has taken over all the assets and liabilities of the company.
16. The authority is of the view that since the respondent no.2 stands merged with respondent no.1 and respondent no.1 has taken over the assets and liabilities of respondent no.2, there appears to be no necessity to implead the respondent no.2 in the matter.
17. The counsel for the complainant is seeking refund of the amount deposited for allotment of the commercial unit of the respondent. The complainant had deposited an amount of Rs. 11, 60,000/- against consideration price of Rs. 43,67,975/-. As per the counsel for the complainant, since the complainant was a senior citizen and was indisposed and the respondent was not being able to deliver the allotted unit within the given time as per the apartment buyer's agreement, the complainant verbally requested the respondent to refund the amount deposited. However, the respondent cancelled the unit of the complainant on 25.08.2020 and forfeited the entire amount deposited.

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18. The counsel for the respondent states that the allotment was made under construction linked plan and the complainant defaulted in making payment despite multiple reminders. The occupation certificate for the project was obtained on 11.2.2020 and offer of possession was made on 17.2.2020. After giving numerous opportunities, the unit of the complainant was cancelled on 25.08.2020 due to default in making due payment and the amount deposited by the complainant was forfeited in terms of clause 7.3 of the agreement.
19. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
20. The due date of possession as per buyer's agreement as mentioned in the table above is 30.11.2017 and complaint has been received on 08.10.2020 after possession of the unit was offered to her after obtaining occupation certificate by the promoter. The OC was received on 11.02.2020 whereas, offer of possession was made on 17.02.2020. The complainant-allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made to her and demand for due payment was raised then only, the complainant has filed the

present complaint before the authority. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

21. The right under section 18(1)/19(4) of the Act accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* 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; that: -

25. *The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the complainant-allottee has failed to exercise her right although it is unqualified one. Complainant-allottee has to demand and make her intentions clear that she wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made herself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in

completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

23. In the case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.2021***, some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.
24. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words "liable on demand" need to be understood in the sense that the allottee has to make his intentions clear to withdraw from the project and a positive action on his



part to demand return of the amount with prescribed rate of interest. If he has not made any such demand prior to receiving occupation certificate and unit is ready then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and this proviso to sec 18(1) automatically comes into operation and the allottee shall be paid interest at the prescribed rate for every month of delay by the promoter. This view is supported by the judgement of Hon'ble Supreme Court of India in case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)*** wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate.

25. The unit of the complainant was booked vide allotment letter dated 12.07.2013. The buyer's agreement was executed between the parties on 17.04.2015. There is a delay in handing over the possession as due date of possession was 30.11.2017 whereas the offer of possession was made on 17.02.2020 and thus, becomes a case to grant delay possession charges. The authority has observed that interest of every month of delay at the prescribed rate of interest be granted to the complainant-allottee. But now the peculiar situation is that the complainant wants to surrender the unit and want refund of the entire amount paid by her. Keeping in view the

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aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and judgment of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202*, it is concluded that if the complainant-allottee still wants to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 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"*

26. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.11,60,000/- after deducting 10% of the sale consideration of Rs. 43,67,975/- being earnest money along with an interest @ 10.85% p.a. (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 date of filing

of this complaint i.e., 08.10.2020 till actual realisation of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G. Directions of the authority**

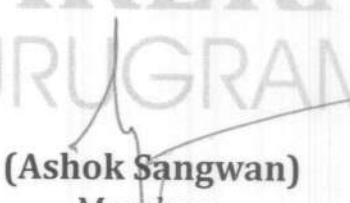
27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent/builder is directed to refund the paid-up amount of Rs.11,60,000/- after deducting 10% of the sale consideration of Rs. 43,67,975/- being earnest money along with an interest @ 10.85% p.a. on the refundable amount, from the date of filing of this complaint i.e., 08.10.2020 till actual realisation of the amount.
- 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 06.02.2024