

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

Date of decision: 25.01.2024

NAME OF THE BUILDER		SS GROUP PRIVATE LIMITED	
PROJECT NAME		"THE CORALWOOD"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1866/2022	Ravi Shankar Jalan V/S SS Group Private Limited	Shri Gaurav Bhardwaj (Advocate for complainants)
2.	CR/1279/2022	Anand D Maheshwari V/S SS Group Private Limited	
3.	CR/1631/2022	Sarita Jalan V/S SS Group Private Limited	Shri Rahul Bhardwaj (Advocate for respondent)

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of all the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the flat buyer's agreement executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

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namely, "The Coralwood" (group housing complex) being developed by the same respondent/promoter i.e., M/s S.S. Group Private Limited (formerly known as M/s North Star Apartments Private Limited). The terms and conditions of the flat buyer's agreement and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, hence, the complainant(s) wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect to the allotted unit with interest and litigation expenses.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	SS Group Private Limited at "The Coralwood" situated in Sector-84, Gurugram.
<p>Possession Clause: - Clause 8: - Possession 8.1 Time of handing over the possession</p> <p>(a) Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentations etc., as prescribed by the developer, the developer proposes to hand over the possession of the flat within a period of thirty-six (36) months from the date of signing of this agreement. However, this period will be automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of the thirty-six (36) months or such extended period (for want of building sanctioned plans), for applying and obtaining the occupation certificate in respect of the group housing complex.</p>	

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Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid
1.	CR/1866/2022 Ravi Shankar Jalan V/S SS Group Private Limited. D.O.F 26.04.2022 Reply 24.01.2023	1201 A, Type-B, Tower-A, 13 th Floor 1890 sq. ft. super area. (page no. 24 of complaint)	08.08.2012 (page no. 23 of the complaint)	08.08.2015	TSC: - Rs.82,04,840/- AP: - Rs.26,31,808/- Credit note: Rs.11,00,000/- (As per customer ledger dated 09.06.2021 at page no. 49 of complaint)
2.	CR/1279/2022 Anand D Maheshwari V/S SS Group Private Limited. D.O.F 31.03.2022 Reply 24.01.2023	1202A, Type-A, Tower-B, 13 th Floor 1890 sq. ft. super area. (Page no. 27 of complaint)	06.08.2012 (Page no. 26 of the complaint)	06.08.2015	TSC: - Rs.82,04,840/- AP: - Rs.26,72,620/- Credit note: Rs.5,00,000/- (As per customer ledger dated 09.06.2021 at page no. 53 of complaint)
3.	CR/1631/2022 Sarita Jalan V/S SS Group Private Limited. D.O.F 12.04.2022 Reply 24.01.2023	1202 A, Type-A, Tower-A, 13 th Floor 1890 sq. ft. super area. (Page no. 16 of complaint)	08.08.2012 (Page no. 15 of the complaint)	08.08.2015	TSC: - Rs.82,04,840/- AP: - Rs.17,00,000/- Credit note: Rs.5,00,000/- (As per customer ledger dated 09.06.2021 page no. 42 of complaint)

Note: In the table referred above certain abbreviation have been used. They are elaborated as follows:

Abbreviation	Full Form
DOF	Date of filing compliant
TSC	Total sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the flat buyer's agreement and for not handing over the possession by the due date, seeking award for refund of the amount paid by them along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/1866/2022 titled as Ravi Shankar Jalan V/S S.S. Group Private Limited* are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details.

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

CR/1866/2022 titled as Ravi Shankar Jalan V/S S.S. Group Private Ltd.

S. No.	Particulars	Details
1.	Name of the project	"The Coralwood", Sector-84, Gurugram, Haryana
2.	Project area	15.275 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	59 of 2008 dated 19.03.2008 Valid upto 18.03.2025

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5.	Name of licensee	North Star Apartments Private Limited
6.	RERA Registered/ registered	Registered vide no. 381 of 2017 dated 12.12.2017 Valid upto 31.12.2019
7.	Unit no.	1201 A, Type-B, Tower-A, (Page no. 24 of complaint)
8.	Unit area	1890 sq. ft. (super area). (Page no. 24 of complaint)
9.	Date of allotment letter	17.05.2012 (Page no. 17 of the complaint)
10.	Date of execution of flat buyer's agreement	08.08.2012 (Page no. 23 of the complaint)
11.	Possession clause	Possession Clause: - Clause 8: - Possession 8.1 Time of handing over the possession (a) Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentations etc., as prescribed by the developer, the developer proposes to hand over the possession of the flat within a period of thirty-six (36) months from the date of signing of this agreement. However, this period will be automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of the thirty-six (36) months or such extended period (for want of building sanctioned plans), for applying and obtaining the occupation certificate in respect of the group housing complex.
12.	Due date of possession	08.08.2015 (calculated form the date of execution of buyer's agreement)
13.	Total sale consideration	Rs.82,04,840/- (as per schedule of payments at page no.

		42 of complaint)
14.	Amount paid by the complainant	Rs.26,31,808/- (as per customer ledger dated 09.06.2021 at page no. 49 of complaint)
15.	Additional benefit given by respondent	Credit Note of Rs.5,00,000/- on 13.05.2013 and of Rs.6,00,000/- on 20.11.2013 (as per applicant ledger page no. 49 of complaint)
16.	Demand/ reminder letter	09.11.2013, 12.12.2013, 18.01.2014, 02.07.2014, 07.08.2014, 21.07.2016 and 16.03.2017. (Page no. 62-75 of reply)
17.	Occupation certificate	17.10.2018 (as per page no. 79 of reply)
18.	Offer of possession for fit outs	21.09.2018 (as per page no. 59 of reply)
19.	Notice for cancellation	29.03.2019 (as per page no. 78 of reply)
20.	Cancellation of allotment letter	08.04.2021 (as per written submissions of the respondent)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That in 2012, the respondent advertised about its new group housing project namely "The Coralwood", wherein the respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project is strategically located and aimed at providing residences designed to offer comfortable living with the help of modern living and basic facilities and surrounded by beautiful flora and green landscapes.
 - That on believing the representation made by respondent in its advertisement and in the lookout for an affordable adobe for himself and his family and applied for booking of an apartment in the said project on 14.05.2012 and made a payment of Rs.7,00,000/- through instrument

- bearing no. 326509 dated 14.05.2012. Thereafter, the complainant was allotted a unit bearing no. 1201A, type B, tower A, admeasuring 1890 sq. ft. (super area) in the said project vide allotment letter dated 17.05.2012.
- c. Thereafter, on 08.08.2012, a buyer's agreement was executed between the parties with respect to the unit in question.
- d. That when the complainant received the copy of agreement post signing, there were taken aback to see that as per Clause 8.1(a) of the flat buyer's agreement, the respondent undertook to handover possession within 36 months from the date of signing of agreement, i.e. by 08.08.2015. The agreement further bared some unfair clauses, namely the stark contrast between the interest being charged by the respondent on the delayed payments and the delayed possession charges for which the complainants were entitled on account of delay in handing over possession in violation of the agreement. Also, as per clause 6 of the agreement, upon delay in payments, the allottee could be made liable to the extent of paying 18% interest per annum. On the contrary, as per clause 8.3(a), upon delay in handing over possession, the respondent company would be liable to pay compensation only to the extent of Rs.5/- per sq. ft. of the super area of the unit for the period of delay. Such clauses of the agreement are clearly unfair and arbitrary thus making the agreement one-sided. Accordingly, the complainant pointed out these unfair clauses to the respondent, but to no avail as the respondent kept on evading the matter on one pretext or the other.
- e. That the respondent conduct had been dubious since the very inception of the transaction in question as can be highlighted from the fact that the



- unjustifiably made the complainant to sign an unfair agreement and later, the respondent miserably failed in completing the construction and handing over possession on or before said due date.
- f. That the complainant kept making further payments in accordance with the demands raised by the respondent only to find out upon his visit to the project site around November-December 2013 that the project was still in the initial stage of construction despite lapse of almost 1.5 years from the date of booking. To this, the complainant took a serious note as the due date of handing over possession was 08.08.2015 and with such snail-paced work with only a handful of workers active at the project site, the project was impossible to be completed in 1.5 years. The complainant pointed out the same to the respondent and sought a concrete response over the same as well as an explanation regarding the unfair clauses in the agreement. However, the respondent failed in explaining his stand or from ensuring speedy construction progress. Accordingly, the complainant very specifically said that he cannot be expected to keep paying money for a project which has bleak possibility of completion and henceforth, the payment disbursal shall be made by him only in accordance with the actual construction status and not as per the misleading demand letters.
- g. That till date, the complainant has made payment of Rs.37,31,808/- as per the payment plan from the booking in 2012 till now.
- h. That the complainant kept visiting the project site every month to keep a close watch on the construction status, only to be stunned to see that the construction pace was completely in contrast to the demand letters being sent by the respondent and the project couldn't be expected to have been

completed before another 4-5 years, Accordingly, the complainant asked the respondent to refund back the amount paid by him as he couldn't have been expected to keep depositing his hard earned money with the respondent swaying away from his legal obligations. However, the respondent kept evading the matter and kept falsely assuring that the project shall be completed on time and the possession of the unit in question would be delivered as per schedule.

- i. That not only the respondent failed in refunding the amount paid by the complainant but also failed in constructing the project. The respondent failed in fulfilling all the representations and assurances made as well as the legal obligations.
- j. That the complainant kept making calls and through personal visits, meetings and telephonic conversations, kept requesting the respondent to refund the deposited amount of Rs.37,31,808/- along with interest but all went in vain as the respondent did not pay any heed to the persistent requests of the complainant to refund the amount rather, to the utter shock of the complainant, vide notice for cancellation dated 29.03.2019, the respondent threatened forfeiture of earnest money which left the complainant aghast as it was the respondent who failed in executing a fair agreement and in completing construction as per schedule and in refunding back his hard-earned money. Accordingly, the point of forfeiture does not arise when the respondent was himself at fault.
- k. That the complainant booked the unit with high hopes and dreams. However, the respondent simply refrained from adhering to his commitments, though the respondent never failed in raising payment demands irrespective of the

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pace of construction, but when it came to sticking to its representations, assurances as well as legal obligations, they failed miserably. The respondent illegally retained the hard-earned money paid by the complainant for so many years thereby causing wrongful loss to the complainant and wrongful gain to the respondent.

1. That Accordingly, the complainant is entitled to get refund of their unit along with interest on the paid amount at the rate as prescribed by the Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainants: -

9. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the amount received from the complainant in the respect to the allotted unit with interest.
 - b. Direct the respondent to make the payment of Rs.55,000/- on account of litigation expenses.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

11. The respondent contested the complaint on the following grounds: -
 - a. That the complainant approached the respondent and expressed an interest in booking a unit in the residential project developed by the respondent known as "The Coralwood", Sector 84, District Gurugram, Haryana. Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was





- only after the complainant was fully satisfied about all aspects of the project, and took an independent and informed decision, un-influenced in any manner by the respondent, based upon advice from its sales organizer M/s C.M.D. Developers and Promoters Pvt. Ltd.
- b. Thereafter, the complainant vide advance registration form /application form dated 14.05.2012 applied for an allotment of unit in, respondent's upcoming project which was proposed to be developed by the respondent. Pursuant to it, the complainant was allotted a unit no. A-1201, 13th floor, tower-A vide allotment letter dated 17.05.2012 accepted by representative of C.M.D. Developers on behalf of the complainant. The complainant consciously and willfully opted for a construction linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The Respondent had no reason to suspect the *bona fide* of the Complainant and proceeded to allot the unit in question in their favor.
- c. That the registration form and allotment letter being the preliminary and the initial drafts contained the basic and primary understanding between both the parties, to be followed by the buyer's agreement to be executed between the parties. After fulfilling certain documentation and procedures the buyer's agreement dated 08.08.2012 was executed between the parties, which contained the final understandings between the parties stipulating all the rights and obligations.
- d. That, the complainant was allotted the unit at the basic price of Rs.3800/- per sq. ft. with preferential location charges (PLC) of Rs.50/- per sq. ft.,

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external development charges (EDC) of Rs.271 per sq. ft., infrastructure development charges (IDC) of Rs.35/- per sq. ft. to be payable as per the payment plan and the sale consideration of the subject unit was Rs.82,04,840/-. However, the sale consideration amount was extensive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainant at the applicable stage. But, the complainant defaulted in making payments towards the agreed sale consideration of the subject unit from the very inception i.e. after signing the allotment letter.

- e. That the complainant till the issuance of the final demand letter have only paid Rs.23,00,000/- towards the total sale consideration of Rs.82,04,840/- which only accounts to approx 28% of the total sale consideration. The complainant was very well aware of the continuous delays and was reminded on continuous basis through the demand letters. Both the parties agreed as per the terms and conditions and the complainant was well aware that "time being the essence" the total sale consideration to be paid according to the construction linked plan/down payment plan.
- f. That the last payment towards the agreed sale consideration was made on 04.10.2012 of Rs.5,00,000/- and since then no payment have been made by complainant. The respondent continuously sent numerous demand letters to clear the outstanding dues but the respondent's request fell on deaf ears of the complainant which clearly reflects that the complainant was in clear breach of the terms and conditions of the buyer's agreement. The complainant has failed to pay the remaining sale consideration amounting to Rs.59,04,840/- (without interest). The respondent has sent



- numerous demand letters to the complainant on account of non-payment of the outstanding dues. The first demand letter dated 09.11.2013 was issued to the complainant.
- g. That the construction of the project was within the time-line as stipulated in the buyer's agreement and accordingly, the complainant was supposed to pay the installments of the subject unit by way of construction linked-payment plan. The respondent out of its goodwill issued an offer of possession on 21.09.2018 with the condition to the complainant to pay the remaining consideration amount. The respondent further sent another remind letter dated 18.01.2020 to the complainant regarding the possession/execution and registration of conveyance deed with the condition to clear the outstanding dues but the complainant miserably failed to adhere with the said letters.
- h. That the respondent from the very inception had to run after the complainant to clear the outstanding dues. The same are evident by the very fact that for every instalment towards the unit, the respondent had to send them the demand notice to clear the outstanding bills. The respondent has sent numerous demand letters, reminder letters and notice dated 09.11.2013, 12.12.2013, 18.01.2014, 02.07.2014, 07.08.2014, 11.01.2016, 21.07.2016 and 16.03.2017 to the complainant but no payment howsoever was made by the complainant. The respondent continuously sent numerous demand letters to clear the outstanding dues but the respondent's request fell on deaf ears of the complainant which clearly reflects that the complainant was in clear breach of the terms and conditions of the buyer's agreement. The respondent left with no other



- option and was constrained to cancel the unit allotted to the complainant vide notice for cancellation letter dated 29.03.2019.
- i. That the complainant after being the willful defaulter in complying with the terms and conditions of the buyer's agreement are trying to take a shelter under the garb of the Act, 2016 and are shifting the burden on the part of the respondent whereas, the respondent has suffered huge financial loss due to such willful defaulters. Despite, there being a number of defaulters in the project, the respondent itself infused huge amount of funds into the project.
 - j. That, the complainant has miserably and willfully failed to make the outstanding payments in time as well in accordance with the terms and conditions of the buyer's agreement. The total delay in rendering the payment towards the outstanding payment by the complainant is Rs.59,04,840/- without interest on various occasions under different installments.
 - k. That it is respondent who shall be entitled for the relief for breach in the terms and conditions of the buyer's agreement by the complainant. As per the clause 1.2(f) of the buyer's agreement the respondent is entitled to forfeit the earnest money as well as the brokerage along with the taxes and interest.
 - l. Similarly, the respondent through the buyer's agreement clearly stipulated to the complainant that "time being the essence", the allottees are entitled and duty bound to pay the charges on or before the due date or as and when demanded by the respondent as the case may be. Furthermore, as per the clause 15 of the buyer's agreement, the complainant was made

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aware that he/she shall perform and comply with all covenants and obligations required to be performed or complied.

m. Therefore, by perusal of the above-mentioned clauses, the respondent is entitled to forfeit 10% of the total sale consideration along with the taxes already paid by the respondent to the concerned authorities.

n. That the project at present stands completed and the respondent obtained the occupational certificate in 2018 from the competent authorities. The respondent has already complied with various precedents created by this Hon'ble Authority by refunding the amount along with the interest to the allottee with respect to the refund of the amount during the stage of cancellation of the unit due to the continuous defaults, latches and failure on the part of the allottees. Therefore, any relief cannot be given to the complainant as it would be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.

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

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

E. Written submission made by the respondent

14. The respondent filed the written submission on 15.01.2023, and made the following submissions: -

- I. That it is the respondent who in good faith offered the complainant with credit notes worth of Rs.11,00,000/-.
- II. That the respondent is willing to refund the complainant's amount, since third party right has already been created, after

deduction of 10% of earnest money as per Shivani Dewan and other judgments.

F. Jurisdiction of the authority

15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

16. 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.

F.II Subject matter jurisdiction

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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



18. 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.

G. Findings on the objections raised by the respondent

G.I Objection regarding jurisdiction of the complaint w.r.t the flat buyer's agreement executed prior to coming into force of the Act.

19. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out rightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
20. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between

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the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to



the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

23. The respondent took a stand that the complainant is investor and not consumers and therefore, he is 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, and he has paid total price of Rs.26,31,808/- 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;"

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24. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat 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.

H. Findings on the relief sought by the complainants.

- H.I Direct the respondent to refund the amount received from the complainant in the respect to the allotted unit with interest at the prescribed rate.
25. In the present complaint, the complainant intends to withdraw from the project and is seeking refund as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"

26. The complainant was allotted an apartment bearing no. 1201A, Type-B, Tower-A, having admeasuring 1890sq. ft. super area vide allotment letter dated 17.05.2012, under construction linked payment plan. Thereafter, a flat buyer's agreement was executed between the parties on 08.08.2012, on the above mentioned unit. He had paid an amount of Rs.26,31,808/- against the total sale consideration of Rs.82,04,840/-. As per clause 8.1 of the agreement, the respondent was required to hand over possession of the unit within a period of 36 months from the date of registration of this agreement. However, this period will be automatically stands extended for the time taken in getting the building plan sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six (36) months or such extended period (for want of building sanction plans), for applying and obtaining the occupation certificate in respect of the group housing complex. Therefore, the due date of possession comes out to be 08.08.2015. (calculated from the date of execution of this agreement i.e., 08.08.2012).
27. The respondent has raised a plea in its reply that the complainant has not challenged the cancellation and sought the relief of refund. The respondent submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Therefore, various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 08.04.2021. Accordingly, the complainant failed to abide by the terms of the flat buyer's agreement executed inter-se parties by defaulting in making payments in a time bound manner as per

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payment schedule. Now, the question before the authority is whether this cancellation is valid or not?

28. The authority has gone through the payment plan, which was annexed in the BBA and duly signed by both the parties. As per payment plan agreed between the parties, the complainant has only paid 28% of the sale consideration and has paid the last payment on 11.09.2013. Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties and the complainant has failed to fulfil the obligations conferred upon them vide section 19(6) & (7) of the Act of 2016, wherein the allottee was under obligation to make payment towards consideration of allotted unit. The respondent after giving demands and reminders dated 09.11.2013, 12.12.2013, 18.01.2014, 02.07.2014, 07.08.2014, 11.01.2016, 21.07.2016 and 16.03.2017 for making payment for outstanding dues as per payment plan and also issued the offer for possession for fit outs of unit vide letter dated 21.09.2018. However, the complainant has failed to take possession and clearing the outstanding dues. Therefore, the respondent issued notice for cancellation letter 29.03.2019 and finally cancelled/terminated the unit of the complainant vide letter dated 08.04.2021. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit.
29. As per clause 1.2(f) of the flat buyer's agreement, the respondent /promoter have right to cancel the unit and forfeit the earnest money in case the allottee breached the terms and conditions of the flat buyer's

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agreement executed between both the parties. Clause 1.2(f) of the flat buyer's agreement is reproduced as under for ready reference.

"1.2(f). Earnest Money

The Flat Buyer(s) has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her/them towards the SALE PRICE, the Developer shall treat 10% of the SALE PRICE as earnest money (hereinafter referred to as the "Earnest Money") to ensure fulfillment, by the Flat Buyer(s) of the terms and conditions as contained in the application and this Agreement.

The Flat Buyer(s) hereby authorize the Developer to forfeit out of the amounts paid/payable by him/her, the EARNEST MONEY as aforementioned together with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature in the event of the failure of the Flat Buyer(s) to perform his/her/their obligations or fulfill all/any of the terms and conditions set out in this Agreement executed by the Flat Buyer(s) or in the event of failure of the Flat Buyer(s) to sign and return this Agreement in its original form to the Developer within thirty (30) days from the date of its dispatch by the Developer.

The Flat Buyer(s) agrees that the conditions for forfeiture of EARNEST MONEY shall remain valid and effective till the execution and registration of the conveyance deed for the said FLAT and that the Flat Buyer(s) hereby authorizes the Developer to effect such forfeiture without any notice to the Flat Buyer(s) and the Flat Buyer(s) has/have agreed to this condition to indicate his/her/their commitment to faithfully fulfill all the terms and conditions contained in his/her/their application and this Agreement."

30. Further as per clause 9.3(1) of the buyer's agreement the allottee has fails to make payment within a period of 90 days from the raising such demand the respondent has right to cancel the allotment of the allotted unit in terms of buyer's agreement agreed between the parties.
31. In case of default by allottee under the condition listed in clause 9.3(1) above continues for a period beyond ninety (90) days after notice from the promoter in this regard, the promoter may at its absolute discretion cancel the allotment of the apartment along with car parking in favour of the allottee and refund the money paid to it by the allottee by forfeiting the earnest money paid for the allotment and interest component on delayed



payment (payable by the customer for breach of agreement and non-payment of any due payable to the Promoter). The balance amount of money paid by the allottee shall be returned by the Promoter to the allottee within ninety (90) days of such cancellation. On such default, this Agreement and any liability of the Promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty (30) days prior to such termination.”

32. The respondent/promoter issued demand letters and further, issued termination/cancellation letter to the complainant. The respondent cancelled the unit of the complainant after giving adequate demand notices. Thus, the cancellation of unit is valid.
33. 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*,

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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."

34. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant in the below mentioned table after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 08.04.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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Sr. No.	Case/ Complaint No.	Total amount paid by complainant (as alleged in complaint) in Rs.	Credit note (as mentioned in applicant/customer ledger) in Rs.	Paid-up amount (After adjustment of Credit Note) in Rs.
1.	CR/1866/2022	37,31,808/-	11,00,000/-	26,31,808/-
2.	CR/1279/2022	31,72,620/-	5,00,000/-	26,72,620/-
3.	CR/1631/2022	22,00,000/-	5,00,000/-	17,00,000/-

H.II Direct the respondent to make the payment of Rs.55,000/- on account of litigation expenses.

35. The complainant is seeking above mentioned 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. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the authority

36. 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):
- The respondent/ promoter is directed to refund the paid-up amount to each of the complainants after deduction of 10% of the sale consideration as earnest money along with interest on such balance


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amount at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation i.e., 08.04.2021 till its realization as per amount mentioned in para no. 34 of the said order.

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.

37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
39. File be consigned to registry.

Dated: 25.01.2024


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

HARERA
GURUGRAM