

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

Complaint no.: 2825 of 2021
Date of filing complaint: 15.07.2021
Date of decision: 29.02.2024

1. Ms. Arti Saptrishi Rakhe
 2. Mr. Manohar Saptrishi Rakhe
- Both RR/o:** - B-703, Shrikrishna Apartment, Plot No. 10, Sector-5, Dwarka, New Delhi-110075

Complainants

Versus

M/s Ashiana Dwelling Private Limited

Regd. office at: 5F, Everest, 46C, Chowringhee Road, Kolkata, West Bengal - 700071

Corporate office at: 3H, Plaza, M6, District Centre, Jasola, New Delhi - 110025

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Vinamra Bansal (Advocate)

Complainants

Shri Deeptanshu Jain (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants 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 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A

A. Unit and Project related details:

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

S. No.	Heads	Information
1.	Project name and location	"Ashiana Mulberry", Sector-2, Gurugram
2.	Project area	10.25 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no.	16 of 2014 dated 10.06.2014 valid up to 09.06.2026
5.	Name of licensee	Ashiana Dwellings Pvt. Ltd.
6.	RERA Registered/ not registered	44 of 2017 dated 11.08.2017 valid up to 30.06.2020 [Ashiana Mulberry phase -1 (Tower 1,2,3,and EWS)] 22 of 2018 dated 23.10.2018 valid up to 30.06.2023 [Ashiana Mulberry phase- II (For Tower- 4,5,6)]
7.	Unit no.	C-1408, 14 th Floor, Tower- T2 [page no. 15 of CRA]
8.	Unit measuring	1210 sq. ft. [page no. 15 of CRA]
9.	Provisional allotment letter	14.03.2017 [page no. 15 of CRA]
10.	Date of execution of apartment agreement by buyer	14.03.2017 [page no. 23 of CRA]
11.	Possession clause	11.2. <i>The Company, based on its present plans and estimates and subject to Force Majeure and all just exceptions and conditions beyond control of the Company and subject to the Allottee making timely payments, shall endeavor to complete the construction work of the said Apartment/Building thereof within a period</i>

A

		<p><i>of 39 (THIRTY NINE) months from the date of this Agreement or start of construction after grant of Environment Clearance by MOEF whichever is later and a grace period of 6 (six) months (Completion date) and shall thereafter apply for grant of the occupation certificate and on receipt of the same will offer possession of the said Apartment to the Allottee.</i></p> <p>[Page no. 37 of CRA]</p>
12.	Date of start of construction	Not available on record
13.	Due date of delivery of possession as per clause 11.2 of the buyer's agreement	<p>14.12.2020</p> <p>(Note: - due date of possession calculated from the date of buyer's agreement i.e., 14.03.2017 as date of start of construction is not available on record+ 6 months grace period)</p> <p>Grace period of 6 months is allowed being unqualified.</p>
14.	Payment plan	Construction linked payment plan. (Page no. 61 of the CRA)
15.	Sales consideration	BSP - Rs.53,40,940/- TSC - Rs.66,47,690/-
16.	Total amount paid by the complainant	Rs.27,48,234/- [As per notice for cancellation dated 16.10.2019 at page no. 105 of CRA]
17.	Request for surrender of unit and reminders	09.05.2018, 20.06.2018, 19.07.2018 [As per page no 90& 101 of CRA]
18.	Demand letters and Reminder letters	07.03.2018, 09.03.2018, 26.03.2018, 25.04.2018, 10.05.2018, 25.05.2018, 12.06.2018 (Page no. 101 to 130 of reply)
19.	Reminders letters with regard to surrender of allotment of unit	09.05.2018, 20.06.2018, 19.07.2018 (Page No. 90 to 101 of the CRA)
20.	Pre- cancellation letter dated	20.12.2018 & 22.01.2019 [as per page no. 98-99 of the reply]

A

21.	Notice of cancellation dated	16.10.2019 (as per page no. 105 of CRA)
22.	Occupation Certificate	Not obtained (Application for OC 31.03.2021)
23.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent is the sole owner of the land parcel admeasuring 10.25 acres situated at Village Sohna, Sector-2, Gurugram, Haryana and obtained a license bearing no.16 of 2014 from the Director General Town and Country Planning, for setting up a residential multi storied building group housing project in the name and style of '*Ashiana Mulberry*'.
- II. That the respondent being in the business of planning and development of housing project, had a project '*The Center Court*' located at Sector-88, Village Harsaru, Gurugram, wherein an apartment for a total consideration of Rs.1,02,98,585/- was allotted to the complainants. Complainants made a payment of Rs.27,48,234/- against the said allotted unit. But due to some uncontrollable circumstances/situations, complainants got their allotment transferred from the project '*The Center Court*' to the project '*Ashiana Mulberry*'.
- III. That on 14.03.2017, respondent issued a provisional allotment letter in reference to an allotment application of the complainants, inter-alia allotting a unit bearing flat no. 'C-1408, Tower-2', in the aforesaid project under a construction linked plan 'performance linked payment plan- H' for a total consideration of Rs.66,47,690/-.
- IV. That the respondent provided a prescribed agreement to the complainants without giving equal bargaining powers, to sign on the dotted lines, which is evident from perusal of the apartment buyer

A

agreement dated 14.03.2017, wherein respondent had marked the 'cross sign (X)' with pencil at the bottom of the pages of ABA. The complainants in terms of the allotment letter and the forfeiture threat mentioned therein, signed the unilateral ABA containing one-sided clauses.

- V. That the on 07.03.2018, respondent generated an Invoice/demand note bearing invoice no. 'AMLT/00169/17-18' for the payment on 'completion of super structure', wherein payments of previous three stages i.e., 'on booking', 'within 30 days from booking' and 'on casting of basement roof slab' were charged under the head 'previous dues'. The aforesaid advance amount was adjusted in total outstanding dues, thereby leaving dues amounting to Rs.13,27,604/-
- VI. That on 13.03.2018, vide an email, respondent sent an invoice/demand note dated 09.03.2018 bearing Invoice no.: 'AMLT/0017/17-18' for the payment on 'completion of internal structure', thereby demanding total outstanding amount of Rs.27,13,572/-. Further, an e-mail dated 13.03.2018 and invoice dated 09.03.2018 followed by reminder dated 26.03.2018.
- VII. That on 13.04.2018 vide an email, the complainant no. 2 informed the respondent that though they are going through a financial crisis, they are ready to pay the previous due amounting to Rs.13,27,604/- and requested for a grace period for the payment of remaining dues of Rs.13,85,968. In reply to the aforesaid email of the complainant no. 2, respondent provided an instalment plan brushing aside the financial position of the complainants.
- VIII. That on 25.04.2018, respondent issued a reminder for the payment of aforesaid outstanding dues, wherein, they allegedly raised delay payment charges upon the aforesaid outstanding dues. That no such charges should have been raised by the respondent, as the delay was caused due

A

to the ongoing conciliation talks between the parties, wherein they were looking for better payment plans considering the poor financial condition of the complainants. They brought the same facts into the knowledge of the respondent and requested for the corrections/rectification in said reminder dated 25.04.2018.

- IX. That after running a number of meetings with the respondent w.r.t the payment plans, complainants were constrained to serve an allotment cancellation notice to the respondent on 09.05.2018, wherein, they urged for leniency and requested the respondent to consider their financial status while making deductions to the refundable amount.
- X. That the complainants were shocked when they received a letter dated 10.05.2018 '*Reminder for clearing the outstanding dues*', wherein, respondent again charged delay payment charges on the outstanding dues. The complainant no.2 immediately made a visit to the respondent office and brought the said unreasonable and outrageous penalty into the knowledge of the respondent and then got to know that the same was mistakenly charged by it, as the respondent unilaterally kept the complainant's booking cancellation process on hold for seeking further possible payment plan as per the previous request of the complainants.
- XI. That the complainants got affronted on the receipt of letters dated 25.05.2018 and 12.06.2018 titled '*Reminder for clearing outstanding dues*', as instead of processing the booking cancellation & refund requests, respondent solely kept the same on hold and was continuously charging the delay payment charges via said letters/reminders.
- XII. That the complainant no.2 again made a visit to the respondent office and asked for a written reasoning/reply against the said conduct. On the requests of complainant no.2, respondent sent an email dated 14.06.2018, inter-alia admitting that the cancellation process was

- unilaterally kept on hold by the respondent as they were finding possible payments plan for the complainants.
- XIII. That on being pestered because of regular visits to the respondent and having unproductive telephonic conversation with respondent executives, the complainant no.2 once again cleared his intention w.r.t the cancellation of booking and requested for the instant refund of amount paid against the said unit, through an email dated 20.06.2018. On 27.06.2018, the respondent sent a format inter-alia seeking consent from the complainants to wait for the said refund till the commencement of possession or further sale of the said unit.
- XIV. That they made a prompt visit to the respondent in receipt of the aforesaid email dated 27.06.2018 and brought the following facts into the knowledge of the respondent:
- a) That the complainants were not in a position to wait for the refunds till the commencement of possession or further selling of unit.
 - b) That the complainants were facing financial crisis thus, request for minimum deduction in refundable amount.
- XV. That one of the respondent's executives 'Mr. Ankit Modi', in order to get the afore stated waiting consents in an unfair manner and with an intent to deceive the complainants, assured the complainant no.2 that respondent have a number of buyers to purchase the complainants unit and for speedy refund transaction, respondent will sell their unit to one of them in a day or two. Mr. Ankit Modi also threatened the complainants for heavy deduction in refundable amount in terms of the ABA. On the representations of Mr. Ankit Modi and under the threat of forfeiture, complainant no.2 showed his willingness to fill the said format of 'waiting consent' and asked for the details of deductions in refundable amounts, vide an email dated 19.07.2018.

- XVI. That in reply to the query for the details of deduction in refundable amount, respondent informed the complainant no.2 that they will deduct only 10% of earnest money along with an amount of Rs.36,919/- against all the paid taxes, brokerage (if any) and interest till 09.05.2018, but in an unfair manner, demanded the 'waiting consent' from the complainants'..
- XVII. That they were shocked when they received a letter dated 16.10.2019, wherein after referring the aforesaid alleged reminder letters, respondent deducted an amount of Rs.5,17,949/- for the delay which was caused due to the above mentioned unrequired and unfruitful conduct of the respondent. That as per clause 3.10 of agreement, respondent was contractually obliged to refund the amount paid by them after deducting overdue interest till the date of written notice provided either through email or registered A/D but in the present case, respondent charged the overdue interest till 10.10.2019 instead of 09.05.2018 (i.e., the date of booking cancellation notice).
- XVIII. That the complainants waited for a very long period and on 05.11.2019, when they were in a financial exigency for some medical emergency, complainant no. 2 requested the respondent to refund the amount paid by the complainants against the said unit after making minimum and reasonable deductions or transfer their allotment to some other affordable/reasonable project, where no additional amount is required upon the aforesaid advance amount. So that he can avail bank loan against the property, but all the efforts went in vain.
- XIX. That the respondent was legally obliged to deduct the reasonable amount from the refundable amount and is further obliged to show the actual loss before forfeiting the said unreasonable amounts under the headings Delay payment charges, brokerage amount and tax paid. That the deduction of said unreasonable amounts would constitute a penalty,

Pa

which is not permissible as per section 74 of the Indian Contract Act. Respondent must provide specific evidence of loss due to the default in payment before deducting any amount, even if they are prescribed in the said one-sided buyer's agreement. Verdict of *Supreme Court in Maula Bux V/s Union of India -1969*.

- XX. That the respondent further provided faults, imperfection, shortcoming or inadequacy in its performance by not making the payment of the alleged refundable amount provided in the letter dated 16.10.2019. That as per clause 3.10 of buyer's agreement, respondent undertook to refund the amount within 120 days from the date of cancellation notice. That the notice was duly served on 09.05.2018 and the payment should have been made till 09.09.2018, but the same has not been made till the present day.
- XXI. That the complainants have right to ask for refund as the cancellation notice was served upon the respondent on 09.05.2018, in accordance to the alleged clauses of the buyer's agreement and the payment against the same has not been made till date, which amounts to the violation of terms of the agreement.
- XXII. The complainants were also entitled for a simple interest @ 18% p.a. upon the refundable amount for the delay in payment of refund, as the sums paid by them has been utilised by the respondent. The said interest is being claimed by the complainants by way of damages also, since the respondent have been enjoying the money of the complainants and consequently either earning interest thereon or saving interest.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- Direct the respondent to refund the amount paid by the complainants against the subject unit after making reasonable deduction, if any, along

12

with the simple interest @ 18% p.a. from the date of booking cancellation notice dated 09.05.2018 till the date of realization and compensation of Rs.2,00,000/- for deficiency in services and damages caused to the complainants.

ii. Direct the respondent to pay the litigation cost and expenses.

5. 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

6. The respondent has contested the complaint on the following grounds:-

- I. That the complainants out of their own free will and volition approached the respondent and booked an apartment in the project "The Centre Court" however, thereafter for the reasons best known to the complainants, they transferred their rights in flat bearing number C-1408, in tower-2, in the project namely "Ashiana Mulberry" situated at Sector-02, Sohna, Gurgaon, and Haryana.
- II. That thereafter, respondent issued the letter of provisional allotment dated 14.03.2017 and provisionally allotted unit bearing no. C-1408, in Tower T2 in the said project. Further, on 14.03.2017 an apartment buyer agreement was executed between the parties herein.
- III. That the said allotment letter and the said agreement also contained the schedule of payment plan, and they were under an obligation to adhere to the said payment plan. The application form under clause 4.1 and the apartment buyer agreement under clause 3.2 and 11.2 provides that the schedule of payments as provided in the application form and apartment buyer agreement is the essence of allotment.

- IV. It is relevant to mention here that soon after the booking was made, the complainants started making defaults in the payment as demanded by them. That all the demands were raised in due compliance of the payment plan as opted by them. The complainants defaulted in making the payment of the demands raised by the respondent which were in due compliance of the payment plan opted by the complainants thus, the complainants have violated the clause 3.4 of the apartment buyer agreement.
- V. That as per clause 11.2 of the apartment buyer agreement subject to timely payment by the allottees as well as subject to force majeure, the construction of the apartment was to be completed within 39 months plus 6 months grace period from the date of the execution of the agreement or start of construction whichever is later. That the construction of the project was stopped several times during the year 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. Due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta VS Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent.
- VI. That the money received from the complainants/allottees has been utilized towards the construction of the project/flat. That during the last three years, real estate sector has seen several events which severely



impacted the real estate sector. However, the construction works of the project is going on despite of the financial obstacles due to economic slowdown.

- VII. That the respondent has completed the construction of the project and vide application dated 31.03.2021 had applied to the Department of Town and Country Planning, Haryana, Chandigarh (“DTCP”) for issuance of occupation certificate for the instant project. That the said application has been duly acknowledged by DTCP and in view of the same the possession will be handed over at the earliest. It is submitted that in view of the afore-mentioned application, it will neither be prudent nor feasible for the respondent to pay back the amount as sought for, owing to the fact that the project is already complete and any directions for refund, coupled with the severe dearth of finances brought about by the Covid-19 pandemic, will result in a severe loss to the project and other allottees who are eagerly waiting for the possession of their respective apartments.
- VIII. That since the complainants defaulted in making payment of the due amounts even after several reminders being issued to the complainants, the respondent was constrained to cancel the allotment made in favour of the complainants. The complaint is filed with ulterior motive to earn wrongfully from the respondent.
- IX. Further, it is relevant here to mention that on 30.09.2020 a team appointed by this Authority duly inspected the project site and was satisfied with the construction activities. It is further submitted that since the money paid by the allottees have only been utilized for construction of the project thus, it is not feasible for the respondent to pay back the amount as sought for and the same will cause severe loss to the project

A

and other allottees who are eagerly waiting for the possession of their respective unit.

- X. That the complainants are seeking compensation without proving the same. It is relevant to mention here that the Hon'ble Supreme Court in a number of judgments has held that compensation for delay is to be the loss incurred by the customer and in the instant case the complainants have failed to provide proof for the same. On the contrary it is the respondent who has incurred loss due to the omissions on part of the complainants. The Respondent had given a discount of Rs.93,792/- to the complainants at the time of allotment however, the complainants in order to hide their own defaults have filed the instant complaint with ulterior motives.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant and respondent have filed the written submissions on 11.01.2024 and 18.01.2024 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated in the written submissions.
- E. Jurisdiction of the Authority**
9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project



in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. 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)(a)

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

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

11. So, in view of the provisions of the Act of 2016 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding delay due to force majeure circumstances.

12. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority and delay in completion of project due to Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due



date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11.2 of agreement which comes out to be 14.12.2020. Though there have been various orders issued by various competent authorities to curb the environment pollution, but these were for a short period of time and the fact that such type of orders are passed by the various competent Authorities from time to time was already known to the respondent-builder. Further, as far as relaxation on ground of Covid-19 is concerned, grace period of six months as provided under clause 11.2 has been allowed to the respondent being unconditional and thus, no further grace period in this regard can be allowed to the respondent.

G. Findings regarding relief sought by the complainants.

G.I Direct the respondent to refund the amount paid by the complainants against the subject unit after making reasonable deduction, if any, along with the simple interest @ 18% p.a. from the date of booking cancellation notice dated 09.05.2018 till the date of realization and compensation of Rs.2,00,000/- for deficiency in services and damages caused to the complainants.

13. The complainants were allotted a unit bearing no. C-1408, 14th floor, tower -T2, vide provisional allotment letter dated 14.03.2017, under performance linked payment plan. They have paid an amount of Rs.27,48,234/- against the sale consideration of Rs.66,47,690/-. As per clause 11.2 of the agreement, the respondent was required to hand over possession of the unit within a period of 39 months from the date of execution of this agreement or start of construction after grant of environment clearance by MOEF whichever is later and a grace period of 6 months ("Committed date") and shall thereafter apply for grant of the occupation certificate and on receipt of the same will offer possession of the said apartment to the allottee. Therefore, the due date of possession comes out to be 14.12.2020. (Calculated from date of execution of this agreement i.e., 27.10.2015 as date

of start of construction is not available on record + 6 months of grace period). The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The complainants have placed an email dated 09.05.2018 on page no. 100 of the CRA form annexed with the complaint and sought refund of the paid-up amount which is reproduced as under for a ready reference:-

Dear Binita,

With extreme disappointment and regret, I would like to inform you that I have decided to cancel and withdraw my booking of apartment in project - Ashiana Mulberry with applicant code # APP-AML/00070/16-17.

I have met your team and written mails on financial difficulties which I am undergoing in managing and solution which I proposed to manage this and my finances around it. You have since not been able to accommodate my request, I am left with no option but to cancel my booking.

I would request for some leniency to be shown on money which will be refunded to me as I am the sole bread earner in family with lot of responsibilities.

14. Further, as per clause 3.10 of the agreement to sell dated 14.03.2017, 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 agreement to sell executed between both the parties. Clause 3.10 of the agreement to sell is reproduced as under for ready reference:

3.10 If, at any time after Provisional Allotment or Apartment Buyer Agreement, the Allottee gives a written notice to the Company through E-mail and Registered Post A/D to cancel the Provisional Allotment/ Agreement, then in that event the Company shall do so and after deducting Earnest Money, brokerages, non-refundable taxes, overdue interest and any other non-refundable amounts from the payments received from the Allottee till that date, shall refund the balance amount to the Allottee without any interest within 120 days from the date of receipt of such written cancellation notice. Upon receipt of any such aforesaid cancellation request, the Company shall be entitled to allot the said Apartment to any other person.

15. 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

Na

penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

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

16. 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 complaints after deducting 10% of the basis 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

A

(MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender/withdrawal request i.e., 09.05.2018 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay the litigation cost and expenses.

17. The complainants are 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.

F. Directions of the Authority

18. Hence, the authority hereby passes this order and issue 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 respondents are directed to refund the paid-up amount of Rs.27,48,234/- after deducting the earnest money which shall not exceed the 10% of the sale consideration of Rs.66,47,690/-. The refund should have been made on the date of surrender i.e., 09.05.2018. Accordingly, the interest at the prescribed rate i.e., 10.85% is allowed on the balance amount from the date of

Ad

surrender/withdrawal request till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

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.

19. Complaint stands disposed of.

20. File be consigned to registry.

Dated: 29.02.2024



HARERA
GURUGRAM

V.1 - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram