BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**1652 of 2022**
First date of hearing:	**22.07.2022**
Date of decision :	**09.02.2024**

Alok Gupta Address : - R/o: 66, Tagore Park, Model Town, Part-I, Dr. Mukherjee Nagar, North West, Delhi-110009	**Complainant**
Versus	
M/s Advance India Projects Limited Office at: - AIPL Business Club, 5th Floor, Golf Course Extension Road, Medawas, Sector-62, Gurugram-122002	**Respondent**

CORAM:	
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:	
Sh. Rahul Yadav	Advocate for the complainant
Sh. Dhruv Rohtagi	Advocate for the respondent

ORDER

1. The present complaint dated 13.04.2022 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 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act

or the Rules and regulations made there under or to the allottee 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.	Project name and location	"AIPL Joy Central" Sector-65, Gurugram.
2.	Project area	3.987 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	249 of 2007 dated 2.11.2007 valid till 01.11.2024
5.	Name of licensee	Wellworth Projects Developers Private Limited
6.	RERA registered/not registered	**Not Registered**
7.	Old Unit no.	FL-24, 2nd Floor [Page 111 of reply]
8.	Old Unit measuring	146.01 sq. ft. [Page 111 of reply]
9.	New Unit no.	FL-20, 2nd floor [Page 206 of reply]
10.	New Unit measuring	185.07 sq. ft. [Page 206 of reply]
11.	Date of allotment letter	17.08.2017 [Page no. 99 of reply]
12.	Date of buyer agreement b/w original allottees i.e. Neha Garg & Navdeep Kumar and respondent	04.11.2017 [Page no. 109 of reply]
13.	Assignment of booking to the complainant	01.04.2018 [page 195 of reply]

14.	Possession clause	Cannot be ascertained
15.	Due date of possession	04.11.2020 (Calculated as 3 years from date of BBA (04.11.2017) as decided by Hon'ble Supreme Court in Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018)
16.	Assured return clause	32. Assured return Where the Allottee has opted for the Payment Plan as per Annexure A attached herewith and accordingly, the Company has agreed to pay Rs. 5,599/- per month by way of assured return to the Allottee **from 06.09.2017 till the date of issue of Notice of Possession of the unit.** The return shall be inclusive of all taxes whatsoever payable or due on the return.
17.	Total consideration	Rs. 22,72,659/- [As per statement of account dated 15.07.2022 on page no. 211-212 of reply]
18.	Total amount paid by the complainant	Rs. 8,21,693/- [As per statement of account dated 15.07.2022 on page no. 211-212 of reply]
19.	Reminders by respondent to make payment	11.04.2021, 06.05.2021, 05.06.2021 [page 196-198 of reply]
20.	Pre termination letter	07.06.2021 [page 210 of reply]
21.	Date of Termination of unit	24.08.2021 [page 213 of reply]

22.	Occupation certificate	24.12.2021 [page 207 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That the respondent unilaterally cancelled the allotment vide termination letter dated 24.08.2021 and forfeited a sum of Rs. 4,96,569/- on account of earnest money, GST on earnest money, interest accrued till August 23,2021, GST on interest, marketing expenses, GST on marketing expenses, and taxes on total demanded amount.
5. That the respondent by citing wrongful reasons terminated the agreement unilaterally without taking into consideration that the complainant had borne the effect of changes in allotment and in the hope of possession of the said unit continued investing in the said project for the past 4 years and more.
6. That the complainant had no option but to accept the terms of the buyer's agreement without any negotiation because of the assurance given by the respondent that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the complainant.
7. That the complainant has been denied possession and assured returns for their unit from 24.08.2021 till date due to the unilateral termination of the agreement. The complainant at the time of booking had expected physical possession of the said unit as per the scheduled delivery date and therefore kept investing money in the project.

8. That the respondent allotted a new unit no. to F.L -20, admeasuring 185.07 sq. ft. from unit no F.L 24 area 146.01 sq. ft. without any prior consent from the complainant and increased the area from 146.01 sq. ft. to 185.07 sq. ft.
9. That the said conduct of the respondent goes against the Section 14(2) protection accorded to the interests of the buyer wherein the clause even unfairly obligates the buyer to make additional payments and fulfil the demands in connection with such increased super area putting the interests of the buyer in jeopardy.
10. That the respondent under the unit buyer's agreement agreed to pay an amount of Rs.5039.00 per month from 12.04.2017 till the issuance of notice of possession of the unit including all relevant taxes per month by the way of assured return to the allottees. However, the respondent has failed to make these payments on timely basis.
11. That the project of the respondent is registered with the Haryana Real Estate Regulatory Authority, hence the said complaint is amenable to the territorial jurisdiction of this Hon'ble Authority. The delay compensation for the consideration paid by the complainant, for the unlawful loss and mental agony, falls within the pecuniary jurisdiction of this forum.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s)

    I. Direct the respondent not to cancel the allotment of the unit.

    II. Direct the respondent to pay the balance amount due to the complainant from the respondents on account of the assured returns, interest as well as compensation, as per the guidelines laid in the RERA, 2016.

III. Direct the respondent to adjust the entire amount of interest due to the complainant from the date of the delivery period as per the buyer's agreement to the actual delivery of possession against the just and legal demands from the complainant, if any, as per the guidelines laid in the RERA, 2016.

13. On the date of hearing, the authority explained to the respondent /promoter on the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

14. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

15. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 04.11.2017, as shall be evident from the submissions made in the following paras of the present reply.

16. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

17. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the

present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

18. That the complainant is not an "Allottee" but an Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.

19. That the original allottees (Ms. Neha Garg and Mr. Navdeep Kumar) had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number SF/FL 24, 2nd Floor admeasuring 146.01 sq. ft. (tentative area) situated in the project developed by the Respondent, known as "AIPL Joy Central" at Sector 65, Gurugram, Haryana. That thereafter the original allottees vide application form dated 18.07.2017 applied to the respondent for provisional allotment of a unit bearing number SF/FL 24 in the project. The original allottees prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottees were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottees took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the original allottees.

20. That the booking was categorically, willingly and voluntarily made by the original allottees with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause 43 of the schedule I of the application form.
21. That pursuant to the execution of the application form, the respondent had no reason to suspect the bonafide of the original allottees and the allotment letter dated 17.08.2017 was issued to the original allottees.
22. That thereafter, buyer's agreement dated 04.11.2017 was executed between the original allottees and the respondent.
23. That thereafter, the original allottees executed an agreement to sell in favour of the complainant for transferring and conveying rights, entitlement and title of the subsequent allottee in the unit in question to the complainant.
24. That the complainant further executed an affidavit dated 28.03.2018 and an indemnity bond dated 28.03.2018 whereby complainant had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was further declared by the complainant that the complainant jointly and/or severally undertake to keep the beneficiary, its successors and assigns harmless and indemnified against any claims, losses, damages, costs including litigation costs etc. of all kinds whatsoever suffered or incurred directly or indirectly or in any manner whatsoever by the beneficiary on account of the transfer of the booking in favour of the aforesaid transferee(s) at any point of time in present or future. Similarly, the original allottees had also executed an affidavit and indemnity bond on the same lines. Further, the respondent issued the assignment letter dated 01.04.2018 in favour

of the complainant. The respondent, at the time of endorsement of the unit in question in his favour, had specifically indicated to the complainant that on account of the defaults in timely payment of the instalment amounts, the complainant would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the complainant. The complainant is conscious and aware of the fact that he is not entitled to any right or claim against respondent.

25. That as per clause 12 of the buyer's agreement as well as the clause 18 of the schedule I of the application form, the applicant shall get possession of the unit only after the applicant has fully discharged all his obligations and there is no breach on the part of the applicant and complete payment of sale consideration against the unit has been made and all other applicable charges/dues/taxes of the applicant have been paid. Conveyance / sale deed/necessary transfer documents in favour of the applicant shall be executed and/or registered upon payment of the entire sale consideration and other dues, taxes, charges etc. in respect of the unit by the applicant.

26. That in the present case, the complainant failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely installments. The respondent was constrained to issue reminders to the complainant. The respondent had categorically notified the complainant that he had defaulted in remittance of the amounts due and payable by him. It was further conveyed by the respondent to the complainant that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.

27. Further as per clause 40 of schedule I of the application form, subject to the aforesaid and subject to the applicant not being in default under any part of this agreement including but not limited to the timely payment of the total price and also subject to the applicant having complied with all formalities or documentation as prescribed by the company, the company endeavors to hand over the possession of the unit to the applicant within a period of 48 (forty eight) months, with a further grace period of 6 (six) months, from date of commencement of the excavation work at the project site and this date shall be duly communicated by the company to the applicant. The excavation of the project commenced on 26.06.2017. Accordingly, the due date of possession turns out to be 26.12.2021, including the grace period. The OC was applied for on 09.05.2021, which was granted on 24.12.2021. Hence, there is no delay whatsoever on the part of the respondent. It is the complainant himself, who has been in default of his obligations of timely payment of the instalments, and hence, is not entitled to any relief whatsoever.
28. That the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainant on 21.11.2019. The complainant neither paid any heed to the requests of the respondent nor came forward with objections, if any. The complainant chose to be mute spectator by not even replying to the said letter.
29. That the respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc. being circumstances beyond the control of the respondent and force majeure circumstances, that the payment of assured return was severely

affected during this period and the same was rightfully intimated to the complainant by the letter dated 30.11.2019.

30. That the arrangement between the parties was to transfer the constructive possession of the unit and the same was categorically agreed between the parties in the application form and no protest in this regard had ever been raised by the complainant and the same was willingly and voluntarily accepted by the complainant.

31. That the complainant has filed the present complaint before the Hon'ble Authority which is not maintainable. The complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Hon'ble Authority.

32. That the respondent cannot pay the "Assured Returns" to the complainant by any stretch of imagination in the view of prevailing laws. That on 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits, the "Assured Returns Scheme" given to the complainant fell under the scope of this ordinance and the payment of such returns became wholly illegal. That later, an act by the name "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes such as "Assured Returns" have been banned and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination the Respondent can continue to make the payments of the said assured returns in violation of the BUDS Act.

33. That as per clause 32 of the said agreement, it was the obligation of the respondent to give the assured returns amounting Rs. 5,599/- from

06.09.2017 till the date of issue of notice of possession. That the assured returns were rightly credited to the complainant by the respondent from 06.09.2017 till 20.04.2021.

34. That thereafter, the complainant through the letter dated 13.04.2021 was informed about the re-allocation and area change of the unit number SF/FL 24 to F.L.20, on second floor admeasuring 185.06 sq. ft super area. The construction was done in compliance with the sanctioned plans as approved by the competent authorities and the complainant was very well informed at the time of execution of the indemnities and affidavits that only the tentative unit has been allotted which is subject to changes as per the approved plans.

35. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 09.05.2021.

36. That the complainant has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for development of the project in question. The respondent issued a pre-termination letter dated 07.06.2021 thereby requesting the complainant to clear his outstanding amount and complete all necessary formalities as per the terms and conditions of the buyer's agreement but on the contrary, the complainant evidently ignored all the requests of the respondent.

37. That it was an obligation of the complainant to make the payments against the unit, however, the complainant has gravely defaulted in the same. That the total sale consideration of the unit was Rs.22,72,659/-, against which a total demand of Rs. 15,48,083/- was raised by the

respondent. The complainant has paid only a sum of Rs.8,21,693/- and there was an outstanding of Rs.7,26,390/-, which remained unpaid despite repeated reminders, until the termination of the allotment.

38. That due to the non-compliance of terms and conditions of the buyer's agreement and despite of issuing reminders, pre-termination letter, the complainant didn't came forward to clear the outstanding dues of the said unit in question, hence, the respondent was constrained and left with no other option to but to cancel the said unit in question and to forfeit the money paid by the complainant as per the terms and conditions of the buyer's agreement. That the termination letter dated 24.08.2021 cancelling the said unit in question was issued to the complainant informing them about the termination of the buyer's agreement and forfeiture of the earnest money in accordance with the agreement.

39. 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 on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

40. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

41. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

42. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 respondents

F.I Objection regarding complainant being investors.

43. The respondent has taken a stand that the complainant is the investor and not consumer, therefore they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the

promoter 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 plot buyer's agreement, it is revealed that the complainant is buyer and he has paid total price of Rs.8,21,693/- to the promoter towards purchase of an apartment in the project of the promoter. 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;"*

44. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoter and complainant, it is crystal clear that the complainants 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

I. Direct the respondent not to cancel the allotment of the unit.

II. Direct the respondent to pay the balance amount due to the complainant from the respondents on account of the assured returns, interest as well as compensation, as per the guidelines laid in the RERA, 2016.

III. Direct the respondent to adjust the entire amount of interest due to the complainant from the date of the delivery period as per the buyer's agreement to the actual delivery of possession against the just and legal demands from the complainant, if any, as per the guidelines laid in the RERA, 2016.

45. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 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, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

46. However, in the present matter BBA was executed on 04.11.2017 and in the buyer's agreement there is no specific time period for handing over of possession. Therefore, to calculate the due date of possession a considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5***

SCC 442 : (2018) 3 SCC (civ) 1 and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -:

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

47. Accordingly, the due date of possession is calculated as 3 years from the date of buyer's agreement i.e., 04.11.2017. Therefore, the due date of possession comes out to be 04.11.2020.

48. The original allottee booked a unit in the project of the respondent namely, AIPL Joy Central at Sector-65, Gurugram and was allotted a unit bearing no. FL-24, 2nd floor admeasuring 146.01 sq. ft. Thereafter on 04.11.2017 the buyer's agreement between the original allottee and the respondent was executed. Further the unit was subsequently transferred to the comaplinant on 01.04.2018. The respondent company completed the construction and development of the project and got the OC on 24.12.2021. However, the complainant defaulted in making payments and the respondent was to issue reminder letters dated 11.04.2021, 06.05.2021, 05.06.2021 and demand-cum-pre-cancellation notice dated 07.06.2021 requesting the complainant to comply with their obligation. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainants failed

to act further and comply with their contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 24.08.2021. Now the question before the authority is whether the cancellation issued vide letter dated 24.08.2021 is valid or not.

49. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid Rs. 8,21,693/-against the total sale consideration of Rs.22,72,659/-.The respondent/builder sent demand letters dated 11.04.2021, 06.05.2021, 05.06.2021, before issuing a demand-cum-pre-cancellation notice dated 07.06.2021 asking the allottees to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 24.08.2021. Further, section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 04.11.2017 which is subsequently endorsed in favour of complainant is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux vs Union of India 1969(2) SCC 554*** **and where in it was held that** a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract

Act,1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."*

50. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.8,21,693/- after deducting 10% of the sale consideration i.e., 22,72,659/- being earnest money along with an interest @10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 24.08.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

51. 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 is directed to refund the paid-up amount of Rs. 8,21,693/- after deducting 10% as earnest money of the sale consideration of Rs. 22,72,659/- with the interest at the prescribed rate i.e., 10.85% on the balance amount, from the date of termination/cancellation i.e., 24.08.2021 till date of actual refund.

ii. The amount of assured return if any, paid to the complainant be adjusted.

iii. 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.

52. Complaint stands disposed of.

53. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.02.2024