

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

Date of decision : 15.05.2024

NAME OF THE BUILDER		BRAHMA CITY PVT. LTD.	
PROJECT NAME		MIRACLE MILE-SECTOR-60, TEHSIL-WAZIRABAD, GURUGRAM.	
S.No	Case No.	Case title	Appearance
1.	CR/6420/2022	Skynet Enterprises Private Limited vs. M/s Brahma City Pvt. Ltd.	Shri. Aman Kumar Yadav (Advocate for complainant) Shri. Vikas (Advocate for respondent)
2.	CR/6422/2022	Skynet Enterprises Private Limited vs. M/s Brahma City Pvt. Ltd.	Shri. Aman Kumar Yadav (Advocate for complainant) Shri. Vikas (Advocate for respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA 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(4J) [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 agreement for sale 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, namely, "Inspire" being developed by the same respondent/promoter i.e. M/s Brahma City Pvt. Ltd.
3. Out of the above-mentioned case, the particulars of lead case CR/6420/2022 Skynet Enterprises Pvt. Ltd. V/s M/s Brahma City Pvt. Ltd. are being taken into consideration for determining the rights of the parties.

A. Unit and project related details

4. 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Miracle Mile", Sector-60, Gurugram, Haryana.
2.	Nature of project	Commercial
3.	DTCP License no.	License no. 54 of 2010
4.	RERA registered	Registered 327 of 2017 Dated 23.10.2017



5.	Unit no.	GF-10, ground floor. (Now) GF-37, ground floor. (Earlier) (As on page 35 of complaint)
6.	Unit area	573.58 sq.ft (Now) 626.03 sq.ft. (Earlier) (As on page 35 of complaint)
7.	Provisional booking	06.02.2013 Relating to GF-37. (As on page 33 of complaint)
8.	Date of execution of buyer's agreement	11.01.2019 (As on page 41 of complaint)
9.	Possession clause	Clause 7. POSSESSION OF THE COMMERCIAL UNIT: 7.1 Schedule for possession of the Commercial Unit- <i>Subject to timely payment of all instalments and ensuring compliances/struct adherence by the Allottee, the Promoter agrees and understands that timely delivery of possession of the Commercial Unit to the Allottee and the General Common Areas of the Project to the Association of Allottees as provided under Rule2(1)(f) of Rules is the essence of the Agreement.</i> <i>The Promoter assures to hand over possession of the Commercial Unit as per agreed terms and conditions on or before 31.03.2022 unless there is delay due to "force majeure" court</i>

			<p><i>orders, government policy/guidelines, decisions affecting the regular development of the Project. if the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Commercial Unit.</i></p> <p>(As on page 47 of complaint)</p>
10.	Due date of possession		31.03.2022
11.	Total sales consideration		Rs.75,60,694/- (As per cost sheet on page 114 of complaint)
12.	Amount paid by the complainant	by the	Rs.7,43,000/- (As per receipt for provisional booking on page 33 of complaint)
13.	Offer of possession		Not offered
14.	Cancellation letter		28.05.2020 (As on page 64 of reply)
15.	Occupation certificate		Not received

B. Facts of the complaint

5. The complainant has made the following submissions in the complaint:
- I. That the complainant booked a unit in the commercial project of the respondent viz. 'Miracle Mile' in 2013, pursuant to which allotment of unit bearing no. GF-37, ground floor, admeasuring 626.03 sq.ft. (subsequently re-numbered to GF-10, ground floor, admeasuring



- 573.58 sq. ft.) was made in favor of the complainant. Pertinently, the complainant also booked and was allotted a separate unit bearing no. SF-214, second floor, admeasuring 717.95 sq. ft. on or around February, 2013 (subsequently re-numbered as SF-27, second floor, admeasuring 688.10 sq. ft. in 2018).
- II. The complainant had booked the said units upon the respondent's specific representation that these will be delivered latest by 2018, whereafter, a receipt bearing no. MM-0016 dated 06.02.2013 for provisional booking of the second floor unit on payment of a sum of Rs.7,43,000/- at a basic selling price of Rs.10,000/- per sq.ft was issued to the complainant. However, the respondent failed to deliver the said units by 2018, and hold onto the monies paid by the complainant towards the said units, since 2013. In fact, the approval for the layout-cum-demarcation plan and the zoning plan for the project was received only on or around 2017, as informed to the complainant by the respondent's letter dated 02.12.2017.
- III. Pertinently, from the year 2013 till 2019, the respondent failed to execute any agreement of sale in favor of the complainant in respect of the units in contravention of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016 ("the Act"). The respondent and its directors are liable to be proceeded against per Section 61

read with Section 69 of the Act for willful violation of Section 13(1) of the Act.

- IV. The parties held meetings in 2018-2019 wherein it was discussed that the complainant shall retain the ground floor unit and the monies paid against the second floor unit were requested to be adjusted against the ground floor unit. The respondent was also requested to give the benefit of the reduction in the saleable area of the ground floor unit from 626.03 sq.ft. to 573.58 sq.ft.
- V. In January, 2019, the respondent had without any prior discussion with the complainant, called upon the complainant's authorized representative at the time, Mr. Lalit Kumar, to come to the office of the Sub-Registrar on the pretext of registration for compliance under the Act, and instead got an agreement for sale in respect of the ground floor unit signed and registered on 11.01.2019, without giving the complainant's representative any opportunity to read and verify the contents of the same and seek the approval of the Board.
- VI. Pertinently, the said agreement for sale in respect of the Ground Floor Unit contains a reference to an application form dated 17.07.2018 allegedly submitted by the complainant for allotment of the unit (GF-10) and mentions the date of delivery of the unit as 31.03.2022. The complainant has not submitted any application



dated 17.07.2018 and no such application is the same in complainant's records. The respondent has without the consent of the complainant,

(a) unilaterally extended the time period for delivery of the unit till March, 2022;

(b) reduced the carpet area in the purported agreement for sale of the ground floor unit to 286.79 sq. ft., as against the saleable area of 626.03 sq. ft. originally represented to the complainant in 2013.

VII. Till 2021, the respondent failed to adjust the excess monies towards the ground floor unit. Contrary to the agreement between the parties, the respondent raised further illegal and arbitrary demands on the wherein vide an email dated 04.06.2021 raised an arbitrary demand of Rs.7,33,314/- towards the ground floor unit, two (2) emails on 22.06.2021, again raised illegal and arbitrary demands, firstly, an email issued at 5:26 p.m, demanding a sum of Rs.50,84,665/- , towards both units, thereafter, a revised figure of Rs.29,63,314/- was demanded by a subsequent email at 5:55 p.m. Notably, no basis for the aforementioned figures was provided by the respondent.

VIII. The complainant, by email dated 23.06.2021, requested the respondent for the account statement as well as the status of

construction of the project. Thereafter, a revised statement of accounts of Rs.37,33,313.92/- was submitted by the respondent by email dated 25.06.2021.

- IX. The complainant met the representative of the respondent, Mr. Shahnwaz Khan, on 04.08.2022, who informed the complainant that the respondent cannot adjust the excess monies towards the ground floor unit and that the complainant would either be required to cancel the second floor unit without any adjustment or retain both the units. The respondent further represented that the units would be ready for possession by March, 2023, i.e. after a delay of a year from the date stated in the Agreement and after a period of almost ten years from the date of booking of the units. In furtherance of the said meeting of 04.08.2022, the complainant, by email dated 06.08.2022 consented to retain both the units and requested the respondent to issue a demand letter against both the units so that the complainant can make payments accordingly.
- X. The complainant received the cost sheets under the construction linked payment plan on 06.08.2022 in respect of both the units. As per the cost sheet for the ground floor unit an amount of Rs.11,779.9487/- per sq. ft. was being charged by the respondent,

which is contrary to the amount of Rs.10,000/- per sq. ft. agreed at the time of booking in 2013.

- XI. However, till date, no demand notice has been issued in respect of the unit in terms of the agreement between the parties on 04.08.2022 and 06.08.2022, despite repeated reminders and follow-ups.
- XII. Pertinently, even after the passage of nine (9) years since booking of the ground floor unit, the project is still under construction. Without prejudice, the respondent has also not offered possession of the unit in terms of the Clause 7.1 of the Agreement dated 11.01.2019 as per which possession was to be handed over by 31.03.2022.
- XIII. The complainant is accordingly entitled to payment of delay interest as per Section 19(7) of the Act at the prescribed rate under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. the State Bank of India highest marginal cost of lending rate + 2%, approximately, 10% per annum. Moreover, Clause 9.2 of the Agreement entitles the allottee to stop making further payments to the respondent as demanded, on failure to deliver possession within the agreed time period, and no interest is payable on the balance amounts thereon.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
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 present complaint is not maintainable on the preliminary ground that the averments made, prayers and the reliefs sought in the present complaint, are with respect to Unit SF-27 – with respect to which – a Complaint vide No. 6422/2022 has already been filed before the Authority and the same is pending adjudication. It is submitted that in fact the present complaint is *pari materia* with complaint no RERA-GRG-6422-2022, all averments including the prayers therein are exactly same. It is submitted that the reliefs sought in the present complaint are already a subject matter of a complaint already filed and pending adjudication before the Authority, accordingly, the present complaint ought to be dismissed on this ground itself. The submissions and objections taken hereinafter, are without prejudice to one another.
 - II. That it is submitted that Brahma City is an integrated community township project and the development of the project is steadily going on. It is pertinent to mention here that Licence No. 64/2010 dated 21.08.2010 was issued by the Director of Town and Country

Planning, State of Haryana for the development of the land belonging to the respondent. The said license was granted in favour of the respondent along with some individual land owners and other land-owning companies. The said license was transferred in favour of the respondent by letter dated 18.09.2012 issued by DTCP and a copy of this letter was sent to all the individual landowners and other land-owning companies.

- III. It is submitted that there were *inter se* disputes between the respondent and its associate entities (Brahma entities) on the one part and 'Krrish Realtech Private Ltd.' along with their associated entities (Krrish entities) on the other part. The said issues largely arose on account of unauthorized and illegal acts of one Mr. Amit Katyal entering into illegal transactions without authority, appointing Directors to the Board of BCPL (then Krrish Buildtech Pvt. Ltd.) etc., unauthorized and illegal actions on the part of the Krrish Realtech Private Ltd. and associate entities, in their own name, as well as in the name of the respondent.
- IV. That the aforesaid issues resulted in CLB proceedings initiated by both sides against each other in year 2011. That during the pendency of the CLB proceedings, all the disputes between the Krrish entities on one part and the Brahma entities on the other part, *vis a vis* the present project, came to be settled and resolved in terms of the Settlement Agreement dated 06.08.2012. It is further submitted that in view of the Settlement Agreement dated 06.08.2012, the respective land areas/plots of each of the parties was bifurcated and segregated into "Brahma Allocation" and "Krrish Allocation" respectively.

V. That the said Settlement Agreement was placed before the Hon'ble Company Law Board and by order dated 09.08.2012, the Company Law Board was pleased to take the same on record and dispose of the pending petitions between the parties, in terms of the said Settlement Agreement dated 06.08.2012. The parties are therefore bound by the terms of the Settlement Agreement as well as the order dated 09.08.2012 passed by the Hon'ble Company Law Board recognizing the said Settlement Agreement as binding between the parties. The Company Law Board inter alia directed as under:

"Settlement Agreement dated 06.08.2012 is perused and taken on record and the same shall form part and parcel of the present order and the parties are directed to be bound by the terms and conditions of the Settlement Agreement dated 06.08.2012. Both parties shall have uninterrupted and exclusive right in respect of their respective allocations in terms of the Settlement Agreement."

VI. That thereafter, in view of the obligations/responsibilities under the Settlement Agreement dated 06.08.2012 not being fully met by the Krrish entities, on account of intervening circumstances, an Addendum was executed between the parties to the Settlement Agreement on 31.10.2015. Under the Addendum dated 31.10.2015, it was further agreed upon that the obligation to develop and construct their respective allocations i.e., the Brahma Allocation and the Krrish Allocation shall be that of the respective parties. Furthermore, any development and construction has to be carried out at their own cost and responsibility, without creating any liability of any nature on the other party in any manner. It was further agreed and understood between the parties that neither party shall be liable to fulfill any obligation towards any prospective buyer/s in respect of the other party's allocation.

- VII. It is further submitted that in the beginning of 2015, the License No. 64 of 2010 was quashed by order dated 05.02.2015 of the High Court of Punjab & Haryana at the instance of a third party in **CWP 27665 of 2013 titled 'Fondant Propbuild Pvt. Ltd. & Ors. V. State of Haryana & Ors.'** with the direction to the competent authorities to reconsider the license application afresh.
- VIII. That vide letter and email dated 24.02.2015 the respondent informed the complainant about the judgment dated 05.02.2015 passed by Hon'ble High Court of Punjab and Haryana in writ petition filed by Fondant and Group.
- IX. That vide letter and email dated 16.04.2015 informed the complainant that
- "DTCP has initiated action on its parts as per the directives of Hon'ble High Court and upon our follow-up to inquire the status, we have been told that they have completed significant part of reviewing the application afresh but the review completion process may take some more time"*
- X. It is submitted that the complainant was well aware of the stay on license. The respondent cannot be made liable for the delay or failure due to reasons beyond its control. Vide order dated 01.11.2017, the CBI was directed for investigation with regards to acquisition of land falling in sector 58 to 63 and 65 to 68 of GMUC wherein, application of extension/renewal of license of the appellant was withheld by the DTCP. Thereafter, Hon'ble Supreme Court in Misc. Application No. 1955 of 2018 and M.A No. 2240 of 2018 in Civil Appeal bearing No. 8977 of 2014 has ordered that no further monitoring is required and DTCP vide separate office order dated 03-03-2021 granted relaxation for the period i.e., 01.11.2017 to 11.05.2020 as "Zero Period" wherein approvals were withheld by the department within said period.



- XI. That basis of the aforesaid facts, the curing of the said deficiency was out of control of the respondent as such, on account of the inability of the respondent to cure the deficiencies which were beyond its control.
- XII. That the construction activities at the project site were put in abeyance and no further activity could be carried out. It is stated that thereafter the respondent sought approvals regarding restoration of the license and compliances were submitted from time to time with constant follow ups with the concerned authorities. It is submitted that Director General, Directorate of Town & Country Planning, Haryana vide order dated 02.12.2015 restored the License No. 64 of 2010 of the respondent for a revised area of 141.66875 acres as against original license of 151.569 acres.
- XIII. That vide letter and email dated 15.05.2015 and further email dated 18.12.2015 the respondent informed the complainant that
- " we are happy to inform you that the office of Director General Town & Country Planning, Haryana (DTCP) has reviewed our Application for license afresh, and after considering all the documents and in accordance with applicable statues have vide their Order No. LC-2365/PA(SN)/2015/23665 Dated 02.12.2015 restored License No. 64/2010 as per terms and conditions stated therein for an area measuring 141.66875 acres as per revised Land Schedule".*
- XIV. Thereafter, the Director Town and Country Planning Department finally approved the revised Layout-cum-demarcation plan on 12.06.2017 along-with sanctioning the zoning plan of the project on 07.07.2017. The respondent also obtained sanction building plans to develop the project on 16.01.2018 for construction of commercial unit.
- XV. That vide letter dated 17.07.2018 the respondent intimated the complainant about the changes made in the allotment pursuant to approval of layout-cum demarcation plan, wherein the unit got



renumbered as SF-27 admeasuring 688.10 sq. ft. which was intimated vide letter dated 17.07.2018 – wherein, the complainant was required to convey their consent to such change of unit. However, the complainant vide its email dated 19.07.2018 requested for cancellation of second floor unit. It is submitted that till date, neither has the complainant agreed for cancellation of the unit in question, nor has it paid any money towards the instalments of the same. In fact, the complainant has neither submitted application for allotment, nor entered into an Agreement for Sale with the respondent, with respect to unit SF-27.

XVI. It is submitted that throughout the years from 2018 – till date, the complainant has maintained a very confusing stand. The complainant has on various occasions opted for cancellation of the unit and some other occasions, opted for continuing the allotment of SF-27. In fact, even vide its latest email dated 06.08.2022 and also by way of the present complaint, the complainant purportedly seeks to retain unit SF-27. That, various correspondences were exchanged between the complainant and the respondent, between July 2018 and August 2022, wherein, the complainant requested for cancellation of allotment of Unit SF-27, and accordingly repeatedly requested for adjustment of the money paid towards booking amount against the instalments payable towards unit no. GF-10.

XVII. It is further submitted that a careful perusal of emails dated 21.08.2019, 16.11.2019, 19.12.2019, 03.01.2020, 21.01.2020, 09.11.2020 and 22.06.2021, the respondent had agreed to the requests made by the complainant for cancellation of unit SF-27 and consequent merger of the amount, in fact the respondent had also



attached the merger documents for the purpose of execution by the complainant. However, neither the complainant went forward with the execution of the merger documents, nor did it make any payment towards either of the units. The lackadaisical approach of the complainant is clearly evident from this conduct - wherein the complainant simply wanted to buy time by not paying any money whatsoever. This is further substantiated by the fact that the complainant made contradictory requests vide its own emails dated 01.06.2020, 29.09.2020 and 06.08.2022, requesting the respondent to retain both the units i.e. GF-10 and SF-27 in the name of the complainant, more specifically

"...please keep both the units into our name i.e. Skynet Enterprises Pvt. Ltd...."

It is thus submitted that the complainant has tried to play the game from both sides, wherein, contradictory requests are made, and are now blaming the respondent for anything and everything.

XVIII. It is submitted that vide emails dated 01.06.2020, 29.09.2020 and 06.08.2022, the complainant specifically requested the respondent to retain both the units i.e. GF-10 and SF-27 and has clearly acquiesced to the delay in the construction of the units. In fact, vide various emails, the complainant clearly indicated its willingness to continue with the allotment of the ground floor unit. However, the complainant has not paid a single penny towards the payment of either units, after 2013. It is submitted that the complainant, by way of the present complaint, is attempting to pressurise the respondent. The complainant has clearly violated various provisions agreed between the parties, entitling cancellation of the allotment.



- XIX. It is submitted that till date, neither has the complainant agreed for cancellation of the unit, nor has it paid any money towards the instalments of the same. In fact, the complainant has not even submitted an application for allotment, nor has it entered into an agreement for sale with respect to unit no. SF-27. It is submitted that throughout the years from 2018 – till date, the complainant has maintained a very confusing stand. The complainant has on various occasions opted for cancellation of the unit and some other occasions, opted for continuing the allotment of SF-27. As a matter of fact, the complainant has not come forward to pay a single penny after 2013 i.e. for almost a period of 9 years, the complainant has paid nothing more than the booking amount paid in 2013. It is submitted that the complainant has created a very good alibi in the name of '*request for cancellation of second floor unit*', under the guise of which, the complainant has succeeded in surpassing all basic contractual terms.
- XX. That vide letter dated 28.01.2022, the respondent sent a final cancellation notice to the complainant. It was further informed that a payment of Rs.59,63,075/- is payable as per the payment plan, which if not paid within 7 days, the respondent shall have the right to cancel the allotment and consequently forfeit the earnest money. However, the complainant has not paid any money towards the said unit, and has now filed the present complaint to wash all its previous acts
5. 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

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

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

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay interest for every month of delay at the prevailing rate.

10. The complainant, through a provisional application form dated 12.07.2013, applied for a commercial unit, GF-214, measuring 717.95 sq.ft. in the "Miracle Mile" project within "Brahma City," Sector-60, Gurugram, and paid a booking amount of Rs.7,43,000/-. Additionally, the complainant booked another unit, initially identified as SF-27, in the same project, with a payment of Rs.7,70,000/-. Subsequently, the unit(GF-214) was re-designated as GF-10, with a reduced area of 688.10 sq.ft., and the change was duly communicated to the complainant by the respondent on 17.07.2018. In the same correspondence, the complainant was requested to provide consent to the unit change. However, while the complainant did not respond regarding GF-10, they sought the cancellation of SF-27. An agreement of sale was executed between the parties on 10.01.2019 concerning unit GF-10.
13. On 12.01.2019, the respondent issued a demand notice to the complainant, seeking payment of Rs.22,19,804/- concerning unit GF-10, which went unaddressed. Following this, the respondent dispatched subsequent demand notices on 12.02.2019, 15.03.2019, 02.04.2019, 24.05.2019, 28.06.2019, and 20.08.2019, preceding the cancellation due to non-compliance and failure to settle outstanding dues..
14. On 20.08.2019, the complainant requested the respondent to cancel unit SF-27 and allocate the paid amount to another unit, GF-10. In response, the respondent, via emails dated 19.12.2019, 03.01.2020, and 21.01.2020, provided documents for the merger of the units and adjustment of the payment from SF-27 to GF-10. However, the complainant neither settled the outstanding amounts for both units

nor initiated the execution of merger documents. Furthermore, the complainant made conflicting requests in emails dated 01.06.2020, 29.09.2020, and 06.08.2022, where it explicitly asked the respondent to retain both units. Finally, the respondent issued a final cancellation notice on 28.01.2022.

15. 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 had paid Rs.7,43,000/- against the total sale consideration of Rs.75,60,694/-. The respondent/builder sent various demand letters dated 12.02.2019, 15.03.2019, 02.04.2019, 24.05.2019, 28.06.2019 and 20.08.2019 which were to be payable as per payment plan before issuing a cancellation letter dated 28.01.2022 asking the allottee to make payment of the amount due within 7 days, failing which the unit would stand cancelled.. However, since these efforts yielded no positive results and ultimately led to the cancellation of the unit, the cancellation is deemed valid in accordance with the terms and conditions outlined in the application form. Furthermore, section 19(6) of the Act of 2016 imposes an obligation on the allottee to make timely payments. Therefore, in this case only refund can be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the

Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

16. Keeping in view the aforesaid factual and legal provisions, the respondent can deduct the amount paid by the complainant against the allotted unit upto 10% of the consideration amount in terms Regulations 11(5) of 2018. However, the amount paid by the complainant i.e., Rs.7,43,000/- constitutes less than 10% of the sale consideration of Rs.75,65,490/-.

G. Directions of the Authority:

17. Hence, in view of the findings recorded by the authority on the aforesaid issues, cancellation is held valid and no case of interest of delayed possession is made out. Hence, the complaint is dismissed being devoid of merits.
18. The complaints stand disposed of.
19. File be consigned to the registry.

Dated: 15.05.2024



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory
Authority, Gurugram