

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

Order pronounced on: 14.05.2024

NAME OF THE BUILDER	M/s Coral Realtors Private Limited
PROJECT NAME	"Metro World Mall cum Multiplex"

S. No.	1.	2.
Case No.	CR/5827/2022	CR/5828/2022
Name of complainant	Insta Fintech Pvt. Ltd. through its Director Mr. Satyajit Rai Vaish	Mr. Himangshu Rai Vaish
Name of respondent	<ol style="list-style-type: none"> 1. M/s Coral Realtors Private Limited 2. V.K Jain (Director of M/s Coral Realtors Private Limited) 3. R.K Jain (M/s Coral Realtors Private Limited) 4. Anshul Goel (M/s Coral Realtors Private Limited) <p>All having registered office at: - A-50/2, Mayapuri Industrial Area, Phase-1, New Delhi- 110064</p> <ol style="list-style-type: none"> 5. Piyush Jain (Real Estate Agent and partner of Piyush Jain & Co.) 6. Piyush Jain & Company (Real Estate Firm) 7. Parmod Jain (Real Estate Agent and partner of Piyush Jain & Co.) <p>All having registered office at: - 18, Cassia Marg, DLF Phase-II, Gurugram - 122008</p>	<ol style="list-style-type: none"> 1. M/s Coral Realtors Private Limited 2. V.K Jain (Director of M/s Coral Realtors Private Limited) 3. R.K Jain (M/s Coral Realtors Private Limited) 4. Anshul Goel (M/s Coral Realtors Private Limited) <p>All having registered office at: - A-50/2, Mayapuri Industrial Area, Phase-1, New Delhi- 110064</p> <ol style="list-style-type: none"> 5. Piyush Jain (Real Estate Agent and partner of Piyush Jain & Co.) 6. Piyush Jain & Company (Real Estate Firm) 7. Parmod Jain (Real Estate Agent and partner of Piyush Jain & Co.) 8. All having registered office at: - 18, Cassia Marg, DLF Phase-II, Gurugram- 122008
Appearance	Shri Dhruv Lamba Advocate for complainant and Shri V.K. Jain Director of the company as respondent no. 1 and 3 to 5 None for respondent no. 2,6 and 7	Dhruv Lamba Advocate for complainant and Shri V.K. Jain Director of the company as respondent no. 1 and 3 to 5 None for respondent no. 2,6 and 7

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee 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, "Metro World Mall cum Complex" (commercial project) being developed by the same respondent/promoter i.e., M/s Coral Realtors Private Limited. The terms and conditions of the buyer's agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to execute a conveyance deed, setting aside of cancellation and peaceful physical possession of the units in question.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	M/s M/s Coral Realtors Private Limited
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**At Metro World Mall cum Multiplex", Sector - 55-56,
 Gurugram.**
Occupation Certificate: - 28.05.2018 and 26.12.2019

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Date of handing over of possession	Total Consideration/ Total Amount paid by the complainants in Rs.
1.	CR/5827/2022 Insta Fintech Pvt Ltd through its Director Mr. Satyajit Rai Vaish V/S M/s Coral Realtors Private Limited & 6 Others Date of Filing of complaint 26.08.2022	Reply received on 24.11.2022	111 on 1 st floor Area admeasuring 1716 sq. ft. (super area) [As per page no. 34 of the complaint]	24.09.2021 (As per page no. 23 of the complaint)	10.10.2021 (As per page no. 6 of the complaint)	TSC: - 1,30,00,000/- (As on page no. 17 of the complaint) AP: - 1,20,00,000/- (As alleged by the complainant on page no. 17 of complaint)
2.	CR/5828/2022 Mr. Himangshu Rai Vaish V/S M/s Coral Realtors Private Limited & 6 Others Date of Filing of complaint 26.08.2022	Reply received on 24.11.2022	118 on 1 st floor Area admeasuring 785 sq. ft. (super area) (As per page no. 17 of the complaint)	18.07.2020 (As per page no. 21 of the complaint)	18.07.2020 (As per page no. 27 of the complaint)	TSC: - 49,00,000/- (As per page no. 17 of the complaint) AP: - 40,00,000/- (As alleged by the complainant on page no. 17 of complaint)

The complainant in the above complaints have sought the following reliefs:

1. Direct the respondent to set aside cancellation dated 06.08.2022.
2. Direct the respondents to fulfill its obligations as per section 11(4)(f) of the Act of 2016 and execute a conveyance deed w.r.t. the subject unit in favour of the complainant as provided under section 17 of the Act.

3. Direct the respondent to not intervene into the peaceful possession of the subject unit of the complainant as actual physical possession has already been handed over to the complainant long back vide letter dated 10.10.2021 and the complainant has almost paid the entire sale consideration of the subject unit.

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

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against the allotment of units in the project of the respondent/builder and for not setting aside cancellation dated 06.08.2022, seeking award of execution of conveyance deed.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/5827/2022 titled as Insta Fintech Pvt. Ltd. through its director Mr. Satyajit Rai Vaish V/S M/s Coral Realtors Developers Private Limited and others*** are being taken into consideration for determining the rights of the allottee(s) qua of execution of conveyances deed setting aside of cancelation peaceful physical possession of the allotted unit along with delayed possession charges and others.

A. Project and unit related details

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

CR/5827/2022 titled as Fintech Pvt. Ltd. through its director Mr. Satyajit Rai Vaish V/S M/s Coral Realtors Developers Private Limited and others.

S. No.	Heads	Information
1.	Name and location of the project	"Metro World Mall cum Complex", Sector 55-66, Gurugram
2.	Nature of the project	Commercial Project
3.	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
4.	HRERA registered/ not registered	Not registered
5.	Allotment letter dated	Not placed of record
6.	Date of execution agreement to sell	17.07.2020 (As per page no. 48 of the reply)
7.	Unit no.	111 on 1 st floor, (As per page no. 34 of the complaint)
8.	Super Area	1716 sq. ft. (As per page no. 34 of the complaint)
9.	Possession clause	<i>The First Party admits that the entire Said project will take 6months for the complete interiors to be done and the separate electricity meter shall only be installed after the finishing works of the Said project have been completed.</i> (As per para 6 at page no 26 of reply)
10.	Total consideration	Rs.1,30,00,000/- (As per payment plan on page no. 17 of the complaint)

11.	Total amount paid by the complainants	Rs.1,20,00,000/- (As alleged by the complainant on page no. 17 of complaint)
12.	Occupation Certificate	26.12.2019 (As per page no. 21-22 of complaint)
13.	Offer of possession	10.10.2021 (As per page no. 28 of the complaint)
14.	Cancellation letter dated	06.08.2022 (As per page no. 41 of the complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- a. That on 26.02.2007, the respondent's company M/s. Coral Realtors Private Limited (hereinafter referred to as the "respondent no.1") had purchased the land/ building admeasuring 2700 sq. mtrs. located at plot no. MPSITE, Sector 55-56, Urban Estate, Gurugram-122011 through open auction for a sum of Rs.73.40 Cr. vide allotment letter dated 26.02.2007 from Haryana Urban Development Authority. The due date of making this payment of Rs.73.40 Cr. was in 2011 but it was made in 2021.
- b. That the respondent's company had obtained revised building plan approval letter with enhanced FAR TOD policy vide memo no. Z0002/E0018/UE029/RBPL2/0000000018 dated 19.11.2019 from HUDA Gurgaon for the project namely "METRO WORLD MALL CUM MULTIPLEX" located at sector 55-56, Gurugram, Haryana (hereinafter referred to as the "Project").
- c. That, the respondent's company had already obtained occupation certificate of ground floor (vide Memo No. Z0002/E0018/UE029/OCCER0000000168 dated 28.05.2018) and first

floor (vide memo no. Z0002/E0018/UE029/POCER/0000000001 dated 26.12.2019) in the subject project.

- d. As on 24.09.2021, an agreement to sell was executed between M/s Coral Realtors Pvt. Ltd. (hereinafter referred to as the 'respondent no.1') and M/s Insta Fintech Pvt. Ltd. through its director Mr. Satyajit Rai Vaish (hereinafter referred to as the 'complainant') wherein the respondent's company has agreed to sell the subject unit bearing no. 111 on first floor having a super area of approximately 1716 sq. ft. (net covered area 1030 sq. ft.) for a total sale consideration of Rs.1,30,00,000/-. furthermore, the complainant without any delay had paid an amount of Rs.40,00,000/- vide cheque bearing no. 002855 dated 24.09.2021 drawn on HDFC bank, Panch Shila Park, New Delhi against the total sale consideration of the subject unit to the respondent's company. Further, it was agreed to by both the parties in the said agreement that an amount of Rs.80,00,000/- was to be paid to the respondent's company by 10.10.2021 and the remaining Rs.10,00,000/- was to be paid at the time of execution of the sale deed.
- e. That the payment of Rs.80,00,000/- was made ~~also made~~ by the respondent vide cheque bearing no. 002856 drawn on HDFC Bank, Panch Shila Park, New Delhi against the total sale consideration of the subject unit. It is of grave importance to mention over here that on 10.10.2021, the possession of the subject unit was also handed over to the present complainant namely Mr. Satyajit Rai Vaish.
- f. That the respondent no.2 failed to abide by section 10 of the act of 2016 and introduced the complainant to the respondent no. 1, which has not

registered his project under Act, as mandated by the Act and also committed a breach of trust. Furthermore, the said sale is facilitated by the respondent no.2, who is a registered real estate agent registered with this Authority vide Registration no. 64 of 2017 dated 27.07.2017.

- g. That a conveyance deed had already been executed on 27.10.2021 in favour of the respondent's company namely "M/s Coral Realtors Pvt. Ltd." by the Haryana urban Development Authority.
- h. That as per page no. 3 of the agreement to sell dated 24.09.2021, the respondent's company has agreed to execute and get the sale deed of the subject unit done in favour of the complainant or his nominee/s latest by 30.08.2022, on receipt of full and final balance amount of Rs. 10,00,000/. Moreover, on page no. 5 of the agreement to sell, it is clearly mentioned that in case the respondent no.1 fails to execute the sale deed of the subject unit within 1 year i.e., 30.08.2022, the present complainant have the right to get the same executed through the court at the risk and the cost of the respondent's company.
- i. That the complainant held several meetings with the respondents and requested them to comply with the agreement to sell but to no avail. thereafter, the complainant wrote several mails dated 27.05.2022, 03.06.2022, 08.06.2022, 15.07.2022 and 05.08.2022 for the execution of the conveyance deed to the respondent's company along with all the directors of the company but all in vain. To the utter shock and surprise of the complainant, on 06.08.2022, the respondent no.1 sent an e-mail wherein it was stated that the agreement to sell w.r.t unit bearing no. 114 has been cancelled.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Direct the respondent to set aside cancellation dated 06.08.2022.
 - b. Direct the respondent to execute a Conveyance Deed.
 - c. Direct the respondent not to intervene into the peaceful possession of the complainant as actual physical possession has already been handed over to the complainant long back vide letter dated 18.07.2020.
10. The present complaint was received on 26.08.2022 and the reply on behalf of respondent's no. 1 and 3 to 5 was received on 24.11.2022. The respondent no. 2, 6 and 7 failed to put in appearance before the authority and has also failed to file reply. In view of the same, the matter is proceeded ex-parte against respondent no. 2, 6 and 7.
11. 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's no. 1 and 3 to 5.

12. The respondents no. 1 and 3 to 5 have contested the complaint on the following grounds: -
 - i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The complainants are estopped from filing the present complaint by their acts, omissions, admissions, acquiescence and laches.
 - ii. That the respondent no. 1 purchased the said piece of land as a freehold property in auction in 2007 creating the highest bid in Haryana and thereafter was granted license by the competent authority to construct the said project. Accordingly, in 2015, the respondent no. 1 launched its

- project, namely, "Metro World Mall Cum Multiplex," situated at Sector 55-56, Gurugram, and Haryana after taking all the requisite clearances and licences from all the appropriate authorities. The said project was completed in May 2018 and in the same year the occupational certificate of the project was also received from the competent authority i.e. HSVP.
- iii. That in the month of May 2020, Mr. V K Jain director of M/s Coral Realtors, Metro World Mall, and Gurugram was introduced with Mr. Satyajit Rai Vaish and his father by through common friend Mr. Piyush Jain. It was informed that Mr. Satyajit Rai Vaish is a private financier and he gives loan @ 12% per annum, but for surety and security of his loan amount he entered into agreements to sell against the property. Mr. Satyajit Rai Vaish promised the respondents, that he could arrange the funds worth Rs. 6 Crores @ 12% interest rate for his project, however against the said loan, the respondent no. 1 was to enter into agreement to sell for the units/shops in the Metro World Mall as collateral. Accordingly, the respondents believing their bona fide entered into numerous agreements to sell with the promise to return the loan amounts and cancel the agreements at the relevant time. The respondent in total entered into 13 agreements to sell with various persons (including Satyajit Vaish director of the present complainant).
- iv. Pursuant agreed between the parties that the amount invested by the investors would be returned by May 2021 with an interest rate of 12% P.a., but after mutual agreement, the same was extended till May 2022. Furthermore, in order to secure the investments of the financiers and Mr. Satyajit Rai Vaish, various sales agreements were executed on similar

dates between respondent no. 1 and a member of the consortium of financiers. However, the said agreements were merely a formality as Mr. Satyajit Rai Vaish had approached respondent no. 1 through Mr. Piyush, who has close connections with the company.

- v. Accordingly, the respondents entered into 13 agreements to sell with various other persons (including with the director of the present complainant, Mr. Satyajit Rai Vaish) with the promise to return the loan amounts and cancel the agreements at the relevant time. The respondent no. 1 handed over the said ATS to Mr. Satyajit Rai Vaish for the signature of all the other investors and financiers, and the latter got the same signed on a stamp paper by the concerned persons who invested and provided the loan to Mr. Rai. It is pertinent to mention here that all the agreements were only on E-stamp papers and none of the agreements were notarized.
- (i) Out of the 13 agreements to sell, 2 were from the purposes of sale deed and remaining 11 were for the purposes of loan, in the aforesaid transactions 4 were entered into with Satyajit and his family members:
- The 2 agreements to sell for the purposes of sale deed and have already been executed and allotted letters for shop no. G-17 and G-46 have been issued in favor of Mr. Satyajit Rai Vaish and Ms. Tulika Vaish.
 - Agreement to sell dated 22.06.2021 between applicant VK Jain and Tulika Vaish w/o Mr. Satyajit Rai Vaish for Unit No. G-17 for sale consideration of Rs 90 lacs.
 - Agreement to Sell dated 30.06.2021 between Applicant VK Jain and Satyajit Vaish for Unit No. G-46 for sale concentration of Rs 90 lacs.

- Agreement to Sell dated 18.7.20 between Applicant VK Jain and HR Vaish for Unit No. 118 for sale concentration of Rs 49 Lacs. As per the terms of the Agreement, the sale deed was to be executed by 30.07.2021. This agreement to sell stands on a different footing as it was only for the purposes of loan and not for the purposes of Sale. As already submitted the same stood expired on 30.07.2021
- vi. That pursuant to the arrangement agreed upon between the parties, respondent no. 1 on timely basis started paying the interest to every investor. Furthermore, it was agreed between the parties that once the entire interest on the financed amount is paid, the units given as collateral shall stand cancelled, and a cancellation letter will be shared with the financiers.
- vii. That when the respondent as per the oral understandings was supposed to refund the loan amount of Rs.6,00,00,000/- to the financiers, however Mr. Satyajit Rai Vaish with mala fide intent and out of sheer greed, breached the terms of the understanding between the parties. The property rates having shot up, Mr. Satyajit Rai Vaish and his father got greedy and demanded for execution of agreement to sell in their favor.
- viii. It important to throw light on the fact that until May 2022, the complainant did not raise any query or request regarding the execution of the sale deed pertaining to the units allotted to him as collateral against his loan.
- ix. That in order to resolve the issue between the parties amicably, the parties herein also availed mediation services from a mediation consultancy firm namely, NICHE Corpfinance Pvt. Ltd. but to no avail as

Mr. Satyajit Rai Vaish did not agree to any offer initiated by the answering respondent due to his mala fide intentions and ulterior motives.

- x. In furtherance of their design to harass the applicant and abuse the process of law, Mr. Satyajit Rai Vaish wrote complaint no. 3957-P to SHO PS Sector 56, Gurugram dated 11.8.2022; DCP, East Gurugram dated 12.08.2022 and 13.08.2022 bearing Complaint No. 4004-P & 4022-P, Commissioner of Police, Haryana dated 30.10.2022 alleging that the Applicant along with the CO-accused has cheated and refused to execute Sale deeds (subject matter of the present complaint also).
- xi. It submitted that the aforementioned complaints came to be closed vide closer report dated 27.10.2022 issued by SHO, Sector 56, Gurugram and affirmed by DCP, East and ACP Sadar Gurugram. That having failed to convince the Gurugram Police, Mr. Satyajit Rai Vaish filed various complaints before EOW, Gurugram Police being 14986/CP/22/APR D.t 28.09.2022, 641-DS D.t 28.09.2022, 384-P ACP Crime-2 Dt. 29.09.2022, 280 and EOW-II Dt. 01.10.2022. It submitted that the fate of the said complaints were concluded by an enquiry report prepared by PS EOW-II and approved by Commissioner of Police, Gurugram, ACP Crime 2, GGM and DCP, South, GGM. Copy of the enquiry report prepared by P/SI Sanjay, EOW-II, Gurugram dated 12.10.2022 vide which the **complaint was rejected on account of no cognizable offence being made out.**
- xii. On three occasion, Mr. Satyajit Rai Vaish entered into Metro Mall along with bouncers/goons carrying weapons and assaulted the manager and mall staff and tried to forcefully take possession of the units. Aggrieved by this, the Mall Manager called the emergency number 112 for police

help on 06.08.2022 and applicant filed a complaint at PS Sector 56, Gurugram which culminated into an FIR dated 31.11.2022, bearing number 403 of 2022 under section 148, 149, 323, 451 & 506 of IPC and Section 25 of Arms Act against Mr. Satyajit Rai Vaish.

- xiii. It is worth noting that in February 2022, Mr. Satyajit Rai Vaish approached the Respondent No. 1 to execute the sale deeds as the property were purchased for his personal use. Based on his representation, the Respondent No. 1 allotted two units to the Complainant, bearing the numbers G-17 and G-46, and further executed the sale deeds for both the units. What is pertinent to note here is that Mr. Satyajit Rai Vaish never made any correspondence, orally or in writing, to execute the sale deed of the units that were allotted as securities in 2020 as an investment transaction.
- xiv. It is pertinent to mention here that when the complainant approached the respondent no. 1 to purchase the units bearing nos. G-17 and G-46, he could easily have asked the respondent no. 1 for the execution of sale deeds for the other units as well, but he did not as it was already understood that the said units were only collateral and nothing else. Furthermore, it is submitted that the act of respondent no. 1 executing the sale deeds for the units purchased by the complainant for his personal use without any documentation clearly shows their bona fides.
- xv. The present complaint is devoid of any true and correct facts put forth by the complainant. An instant complaint, which is preferred by the complainant, is out of sheer greed after seeing the sudden surge in real estate and the real value of the units in the respondent project that were

given to him as security. It is submitted that Mr. Satyajit Rai Vaish has blatantly breached the terms of the oral agreement and understanding between the parties and filed the instant complaint before this Hon'ble Tribunal in order to harass the Respondent No. 1 for the execution of the sale deed for the allotted units to him against his investment.

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

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

15. 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.I. Subject-matter jurisdiction

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

Section 11

.....
(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

17. 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 complainant at a later stage.
- F. **Findings on the relief sought by the complainant:**
F.I Direct the respondent to set aside the cancellation letter dated 06.08.2022.
F.II Direct the respondent to not intervene into the peaceful possession of the subject unit of the complainant as actual physical possession has already been handed over to the complainant long back vide letter dated 10.10.2021 and the complainant has almost paid the entire sale consideration of the subject unit.
18. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
19. The complainants submit that it was allotted a unit bearing no. 111 on 1st floor vide agreement to sell dated 24.09.2021. Complainants paid an amount of Rs.1,20,00,000/- against the total sale consideration of Rs.1,30,00,000/-. As per para 6 of the agreement, the respondent will take 6 months for the completion of interiors and the separate electricity meter shall only be

installed after the finishing works of the said project have been completed. On receipt of the balance payments of the unit as above from the second party, shall execute a conveyance deed and convey the title of the unit together with the right in the common areas within one week of the balance payment made by the second party to the first party in case the first party fails to execute the sale deed of the above said unit within 1 year i.e., 30.08.2022, the second party shall have the rights to get the same executed through the courts at the risk and cost of the first party. If there is any delay in sale deed of the unit, the first party shall be liable to pay delay charges @ 18% per annum for the period of delay.

20. The complainant submitted that the complainant held several meetings with the respondents and requested them to comply with the agreement to sell but to no avail. Thereafter, the complainant wrote several mails dated 27.05.2022, 03.06.2022, 08.06.2022, 15.07.2022 and 05.08.2022 for the execution of the conveyance deed to the respondent company along with all the directors of the company but all in vain. To the utter shock and surprise of the complainant, on 06.08.2022, the respondent no. 1 sent an e-mail wherein it was stated that the agreement to sell w.r.t unit bearing no. 114 has been cancelled. Nothing w.r.t unit bearing no. 111 has been said in the e-mail dated 06.08.2022.
21. Further, during the proceedings dated 14.05.2024, the counsel for the respondent stated that the respondent/promoter is willing and ready to set aside the cancellation and submitted that physical possession will also be handed over of the allotted unit after furnishing the unit in terms of the

specifications in agreement to sell as the occupation certificate has already been received on 26.12.2019 for the particular floor.

22. Based on the afore-mentioned facts and circumstances, it is the determination of the Authority that in accordance with the offer presented by the respondent, it is apparent that the unit in question has not been sold as of yet, and furthermore, no third-party rights pertaining to the said unit have been established. Consequently, based on this assessment, the Authority concludes that the legal status of the unit remains unchanged, and no transfer of ownership or rights has taken place. Further, the respondent company has also showed its interest to set aside the termination letter and to restore the unit to the complainants. In view of the above, the respondent shall handover the physical possession of the unit to the complainants in terms of the agreement to sell within a period of 30 days from the date of this order.

F.III Direct the respondents to fulfill its obligations as per section 11(4)(f) of the Act of 2016 and execute a conveyance deed w.r.t. the subject unit in favour of the complainant as provided under section 17 of the Act.

23. The complainant raised contention that the respondent has not executed the conveyance deed in favour of complainant till date. The respondent is obliged to execute conveyance deed as per section 17(1).

Section 17(1)

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

24. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. However, the respondent/promoter has submitted that physical possession will also be handed over of the allotted unit after furnishing the unit in terms of the specifications in agreement to sell as the occupation certificate has already been received on 26.12.2019 for the particular floor. Further, only administrative charges of up to Rs.15,000/- can be charged by the promoter/developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the local administration in this regard vide circular dated 02.04.2018.
25. Although section 17 of the Act obligates the respondent/promoter to get the execute the registered conveyance deed in favour of the complainant/allottee after getting the OC from the competent Authority but section 3 of the Act also restricts the respondent to advertise, market, book, sell or offer for sale, or invite person to purchase in any manner any plot, apartment or building in any planning area without getting the real estate project registered. The section 3 of the Act of 2016, is reproduce as under:-

“3. Prior registration of real estate project with Real Estate Regulatory Authority.—(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

*Explanation.—*For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

26. In the present matter the respondent has applied for registration of the said project on 28.06.2023 and the Authority vide order dated 26.02.2024, imposed a penalty of Rs.50 lakhs for applying the registration after creation of 3rd party rights. The respondent/promoter filed an appeal bearing no. 200 of 2024 before the Appellate Tribunal against the order dated 26.02.2024. Since the

said matter is pending for adjudication before the Appellate Tribunal and project will be considered for registration after disposal of the said appeal and requisite compliance by the promoter. Therefore the Authority hereby directs the respondent/promoter to execute the registered conveyance deed within 60 days after the registration of the project before the Authority.

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


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.05.2024