

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

Complaint no.: 495 of 2023
Date of filing: 14.02.2023
Date of decision: 16.05.2024

Mrs. Jyoti Chawla

Mr. Gagan Chawla

Complainant

Both R/O: - PD-98B, Pitampura, New Delhi - 110034

Versus

Godrej High View LLP

Regd. Office at: Godrej One, 5th floor, Pirojshanagar
Eastern Express Highway, Vikhroli, Mumbai - 400079

Corporate Office at: 3rd Floor, UM House Tower A, Plot
No. 35, Sector - 44, Gurugram - 122002, Haryana.

Respondent No.1

Aum Shri Hotels and Resorts Pvt. Ltd.

Regd. Office at: E 3/6 Model Town, New Delhi -
110093

Respondent No.2

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Ranjan Sardana

Shri Rohan Malik

Counsel for the Complainants

Counsel for the Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Godrej Nature Plus", Phase- 1, Sector-33, Sohna, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	18.744 acres
4.	DTCP License	01 of 2014 dated 03.01.2014
5.	RERA Registered/ not registered	265 of 2018 dated 30.01.2018 valid up to 30.01.2028
6.	Unit No.	E-1403, on 14 th Floor, Tower-F (Page no. 60 of complaint)
7.	Date of booking application form	29.03.2018 (Page no. 60 of complaint)
8.	Date of allotment	15.05.2018 (Page no. 60 of complaint)
9.	Date of builder buyer agreement	25.06.2018 (Page 52 of complaint)
10.	Possession clause	6.2 Possession <i>The Developer shall offer possession of the apartment to Buyer for the said apartment on or before 30th of June 2023 ('Completion Time Period). The competition time period shall stand reasonably extended on account of (i) any Force Majure Event and/or (ii) reasons beyond the control of Developer and/or its agents and/or (iii) due to non-compliance on part of the Buyer including on account of any default on the part of Buyer. ('Extension Event) In case the Developer is unable to offer possession on or before the Completion Time Period for any reasons</i>



		<i>other than those set out in the foregoing, then on demand in writing by the Buyer, the Developer shall refund the amounts received from the buyer along with prescribed interest in accordance to the Applicable Laws.</i>
11.	Due date of possession	30.06.2023 (As per possession clause of BBA at page 71 of the complaint)
12.	Total sale consideration	Rs. 80,80,979/- (Page no. 100 of complaint)
13.	Total amount paid by the complainants	Rs. 25,90,786/- (Confirmed by the counsel for the complainant during proceedings)
15.	Cancellation Letter	29.09.2020 (Page no. 135 of reply)
16.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That the instant complaint is against the wrongful forfeiture of the entire amount and/or refusal to refund any amount out of sum total of ₹25,90,768/- (which is ~32% of the total cost of the apartment) paid by the complainant and her husband ("allottees") to the developers for the 2 BHK apartment bearing address apartment no. 1403, tower-E, phase-I having carpet area of 76.46 square meters, exclusive area of 15.98 square meters, total area amounting to 92.44 square meters in the project called as "Godrej Nature Plus" situated at Sector 33, Sohna, Gurugram on placing a request for cancellation of the allotment due to medical exigency with her husband.



- b) That the allottees have booked the apartment vide application form dated 29.03.2018 by paying the booking amount of ₹1,00,000/- and the total cost of the apartment is ₹80,80,979/-.
- c) That the situations became worse in 2020 after the COVID-19 pandemic situation and due to various restrictions like on travel, work etc. and due to this allottees all financial planning was completely derailed. Complainant faced salary cuts and her husband's business literally toppled. These situations and uncertainties had further severely impacted her husband's health and now his health became first priority of the complainant and thus, had to channelise all their resources to protect his life and health.
- d) That for the above-stated reasons, they were not able to make further payments of the apartment to the developer(s). They brought these issues before various concerned officers of the Developer and requested them to kindly cancel the allotment and refund their money so that they can utilise this amount to save his husband's life through various emails and have also shared medical records of her husband through various emails. For this they submitted his reports and other medical documents from time to time however, all in vain.
- e) The developer had terminated /cancelled the allotment in September, 2020 and intimated the allottees vide email dated 30.09.2020 regarding the termination without any prior notice. Even then the developer did not refund any amount to the allottees even as per its own calculations whatsoever.
- f) The applicant, in search of relief, had also written a letter requesting for refund of the funds to save life of her husband to the most respected head of Godrej group - Sh. Adi Godrej and other senior officers - Mr. Pirojsha

Godrej, Mr. Jamshyd Godrej and Mr. Nadir Godrej vide letter dated 29.07.2022 along with even dated email.

- g) The complainant had written another / reminder letter dated 25.12.2022 to the above-stated dignitaries of Godrej group seeking for their kind indulgence in the matter however, all efforts in vain and this time vide email dated 26.12.2022, marked to the husband of the complainant, the developer has insensitively and outrightly rejected the request of the complainant to refund the amount.
- h) That as per relevant clauses (like 7.5, 9.3) of the apartment for sell, the developers should have given 30 days prior notice to the allottees before terminating the allotment followed by refund of the amount after deducting the booking amount. However, no such procedure was followed by the developers and they had directly terminated the allotment and did not return any amount to the allottees.
- i) That in yet another violation of the provisions of the Act, the developers have taken sum total of Rs. ₹8,56,503/- which is more than 10% of the cost of the Apartment which amounts to ₹ 8,08,097/- before execution of AFS. This is in clear violation of section 13 of the Act.
- j) The developers are also liable to pay interest towards the amount along with interest @18% for the period starting from 13.11.2020 till the date of actual payment along with adequate compensation of ₹10,00,000/- for causing immense mental agony to the Complainant and her Husband and litigation expenses of ₹2,00,000/-.

C. Relief sought by the complainants.

4. The complainants have sought following relief:

A

- i. Direct the respondents to refund the total amount paid i.e., Rs. 25,90,768/- by the complainants along with the interest @18% from the relevant date.
- ii. Direct the respondents to not to cancel the allotment and take any adverse/ coercive step against the complainant and her husband and the apartment.
- iii. Direct the respondent to not to sell the apartment to any other person.
- iv. Revocation/cancellation of the registration certificate granted to the project for contravention of provisions of act.
- v. To impose heavy penalty on the developers under section 38 of the Act.
- vi. Direct the respondents to pay damages of Rs.10,00,000/- for causing mental agony and delay in treatment of her husband.
- vii. Direct the respondents to pay litigation cost of Rs. 2,00,000/-

D. Reply by the Respondent No.1

5. The respondent no.1 contested the complaint on the following grounds:-

- a) The Respondent seeks to state the following brief facts before raising objections to the present complaint. The complainant (co-allottee) along with her husband Mr. Gagan Chawla (main allottee) vide application form dated 29.03.2018 ("application form") applied for the allotment of a 2BHK residential unit bearing No. E - 1403 ("unit") in the project for a total cost of property of Rs. 80,80,980/- (exclusive of taxes).
- b) That after executing the application form, respondent no.1 as per the opted payment plan issued an invoice dated 30.03.2018 of amount Rs. 3,02,703/- towards the 1st milestone i.e., advance amount (being part of the booking amount). It is apposite to mention here that the said amount

A✓

was received on after a delay of 21 days i.e., after the expiration of the due date.

- c) That respondent no.1 issued another invoice dated 09.04.2018 towards the 2nd milestone i.e., within 30 days from the booking of amount Rs.5,60,886/- and again the complainant made the delay of 19 days to pay the requisite amount.
- d) Pursuant to that the respondent no.1 allotted the residential unit bearing no. e-1403 vide allotment letter dated 15.05.2018 ("allotment letter"), capturing the details of pricing of the unit and the opted payment plan. Later, being agreed and satisfied with the terms and conditions of the AFS the complainant along with her husband executed the agreement for sale on 27.06.2018.
- e) Subsequent to the execution of the AFS, respondent no.1 as per the opted payment plan issued another invoice dated 10.07.2018 towards the 3rd milestone i.e., within 75 days of the booking amount of Rs. 8,63,589.06/-.
- f) When even after the expiration of the due date of the 3rd milestone no payment was received from the complainant and her husband, the respondent sent various reminders letters dated 10.08.2018, 13.08.2018, 26.08.2018, and 10.09.2018 and vide the said letters requested the complainant and her husband to clear their outstanding dues and also informed that all outstanding amount(s) carry a penal interest which as per RERA is currently 2% above the existing three year SBI MCLR (State Bank of India - Marginal cost of Fund Based Lending Rate) from the date they fall due till the date of realization of payment by us along with applicable GST @ 18% on interest paid post 1st July'17.
- g) When again no payment was received, respondent no.1 was constrained to send a last and final reminder dated 25.09.2018 to the complainants and while referring to the previous reminder emails again requested the

complainant and her husband to make the requisite payments/instalments immediately.

- h) In pursuance of the same the complainant and her husband made the payment towards the invoice dated 10.07.2018 after a huge delay of 68 days.
- i) As the complainant and her husband were continuously making delays in making the payments towards every milestone. respondent no.1 vide email dated 07.01.2019, pre-intimated the complainant and her husband that the demand for the next milestone i.e., "completion of 5th floor slab" shall be tentatively due within the next 10-15 days.
- j) Respondent no.1 issued another invoice dated 01.02.2019 towards the 4th milestone i.e., on completion of completion of the 5th floor of amount Rs. 8,63,589.06/-. With regard to the same when again no payment was received from the complainant and her husband on time, respondent no. 1 again had to send various reminders letters and interest letters dated 09.02.2019, 20.02.2019, 25.02.2019, 06.03.2019 07.03.2019, 20.03.2019, 27.04.2019, and 02.06.2019.
- k) Subsequent to that, again no payment was received from the complainant, and her husband, and due to the same respondent no.1 was again constrained to send a last and final reminder dated 13.07.2019. To the aforesaid last and final reminder, the complainant and her husband made the payment after an enormous delay of 227 days on 04.10.2019 i.e. after the expiration of the due date of 19.02.2019 incurring an interest of amount Rs. 24,944.57/-.
- l) On 13.01.2019 and 20.01.2020 respondent no.1 issued demand letters along with an invoice towards the 5th and 6th milestone i.e., on completion of completion of the 10th and 18th floor of amount Rs. 8,63,589.06/-, respectively.

- m) When again no payment was received on or before the due dates of the aforesaid invoices from the complainant and her husband, respondent no.1 again had to send various reminder letters and interest letters dated 01.02.2020, 10.02.2020, 10.02.2020, and 24.02.2020. Due to the same respondent no.1 was again forced to issue the Last and Final reminder dated 20.03.2020 (Pre-Term).
- n) Upon issuance of multiple reminders, the husband of the complainant vide email dated 23.03.2020 informed the respondent due to some financial difficulty he is currently unable to make payments, and further requested to provide him time till April and he will clear all the dues by that time.
- o) Even after providing 4 extra months to the complainant and her husband to clear their outstanding dues, respondent vide email dated 19.08.2020 again requested the complainant to comply with their obligations in terms of the application form / agreement for sale including payment of dues, applicable interest on overdue payments and further requested the complainant to provide the details of the payment if they have made it.
- p) After providing countless opportunities to the complainant, when no requisite payment was received towards the aforesaid invoices dated 13.01.2019 and 20.01.2020 (due dates were well before the out-break of COVID), the respondent terminated the allotment in question vide email dated 29.09.2020. Upon termination, the respondent forfeited the amount in terms of the AFS, including the delayed interest of Rs. 4,39,237/-, taxes of Rs. 4,25,168/- and the brokerage of Rs. 6,30,686/-.
- q) In response to the termination notice, the complainant sent an email dated 29.09.2020 and the same was replied to by the respondent vide email dated 30.09.2020 and it was reiterated that the allotment stood terminated.



- r) The complainant vide email dated 05.01.2022 i.e., after 2 years from the date of termination and for the first time informed the respondent that her husband was suffering from some medical condition. And due to the said reasons, she could not continue with the allotment and further requested for a complete refund of the amount paid.
- s) After considering the reports of the Complainant's husband and after having various discussions with them, the Respondents vide email 17.04.2022 informed the Complainant that their request has been sent to the management and a revert will be sent in due time.
- t) In pursuance to the same, respondent no.1 and the management went through all the previous history and payment records of the complainant and her husband and realised that the complainant and her husband are big-time defaulters so far as their financial obligations are concerned and due to the said reason, their allotment was terminated way back in Sep' 2020. The complainant was also reminded that the respondent on multiple occasions had offered solutions to avoid this from happening, however, to no avail. Vide the aforesaid email respondent no.1 also notified that even the payments which were received prior to the diagnosis of the illness were also received with a huge delay. It is noteworthy to highlight that the complainant requested for refund on the health conditions after a delay of 2 years from the date of termination. In view of the aforesaid, the Respondent was unable to accept the request for refund.

E. Reply by the Respondent No.2

6. The respondent no.2 contested the complaint on the following grounds: -
- a) The respondent No. 2 is a company registered under the Companies Act, 1956. The respondent no. 2 is the owner of a parcel of land admeasuring 18.744 acres situated at Sector 33, Sohna, Haryana. The answering

- respondent has granted and transferred the exclusive development right to the respondent no. 1 on the entire projects land.
- b) The respondents duly executed a development agreement on 22.09.2017. As per the development agreement, the answering respondent transferred irrevocable and exclusive development rights in respect of the project land to the respondent no. 1. The project is being implemented/developed and driven by the respondent no. 1 and all aspects of the project including but not limited to quality, cost, design, layout, aesthetics, marketing etc is being done by the respondent no. 1. The developer i.e., the respondent no. 1 has the exclusive and irrevocable sale rights.
- c) The answering respondent has also executed a General Power of Attorney (hereinafter "GPA") dated 22.09.2017 in favour of the respondent no. 1. As per para 27 of the GPA, the respondent no. 1 has the right to negotiate, sign, execute all buyer agreements/agreement to sell/ agreement for sale/ transfer, conveyance/sale deed, lease/license agreements or deeds.
- d) It is submitted that as per para 7 of the Development Agreement, the respondent no. 1 has the sole and exclusive right to prepare and finalize all documents agreements which would be signed by the purchaser.
- e) The answering respondent being the land owner was a party to the agreement for sale, however, the answering respondent had no role in the negotiation of this transaction. Even in the agreement for sale, the answering respondent's role is limited in recitals wherein it is represented about the answering respondent being the land owner and having given development right to the developer. All the material terms and conditions including that of terms, payment schedule & manner of payment, interest, construction, possession, procedure for taking

possession of apartment, time is essence, etc all the material terms and conditions of the agreement for sale is between the respondent no. 1 and the complainant.

- f) The allottees and the respondent no. 1/developer negotiate among themselves and draft their respective deeds/documents/agreements and agree to any payment plan and refund of any payment. The answering respondent has never been a part of any such negotiation.
- g) As is evident from the above facts, the answering respondent has no role whatsoever in allocating any flat or receiving any money from the complainant. Even the complainant never made any representation or complaint to the answering Respondent regarding any forfeiture of money/ booking amount.
7. 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 submission made by the parties.

F. Jurisdiction of the Authority

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

F. I Territorial jurisdiction

9. 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.

F. II Subject-matter jurisdiction

R

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

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

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on **11.11.2021** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."



13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Finding on objections raised by the respondent no.1

G.I. Objection regarding non-joinder of necessary party.

14. The respondent has raised an objection that the complaint is liable to be rejected at the threshold for want of the necessary party. It is a matter of record that the booking and allotment of the unit in question was made in the name of the complainant as well as Mr. Gagan Chawla. It is also admitted that the other co-allottee is not a party to the present complaint. It is submitted that to the best of the knowledge of respondent no.1, no power of attorney has been filed on behalf of the said co-allottee. Thus, the present complaint is liable to be rejected on this count solely.

15. The assertion that the complaint should be dismissed due to the absence of the necessary party. While it is true that initially, Mr. Chawla was not included as a party and the lack of a power of attorney, it is essential to consider the evolving nature of the complaint. Notably, the complainant has taken proactive steps by filing an application on 14.03.2024 to amend the memo of parties, thereby including Mr. Chawla as a party to the complaint. This amendment demonstrates the complainant's commitment to ensuring that all relevant parties are duly represented in the proceedings. Dismissing the complaint solely on grounds of non-joinder would disregard the genuine efforts of the complainant to rectify the initial oversight and seek redress for their grievances. Therefore, it is imperative to consider the amended memo of parties and proceed with the complaint based on its merits rather than



technicalities. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

G.II Objection regarding no cause of action and abuse of process

16. The respondent has raised another objection that the complaint is liable to be dismissed for want of cause of action. In this regard, it is contented that the terms and conditions of the application form were agreed by the complainant and her husband which clearly show that respondent no.1 has a right to forfeit the booking amount upon cancellation of the booking for any reason not attributable to the respondent.
17. The assertion that the complaint lacks cause of action and should be dismissed due to the forfeiture clause in the application form overlooks critical aspects that warrant consideration. While it is acknowledged that the terms and conditions of the application form include provisions for forfeiture of the booking amount in certain circumstances, it is essential to examine the circumstances surrounding the cancellation of the booking.
18. The Complainant and her husband entered into the agreement under circumstances that have since undergone significant changes, including unforeseen events such as Mr. Chawla's deteriorating health and the adverse impacts of the COVID-19 pandemic. These extraordinary circumstances, beyond the control of the complainant, rendered it impracticable to fulfil the terms of the agreement. Additionally, it is important to note that the complainant herself initiated the cancellation of the unit by formally requesting it via email dated 05.01.2022. This action further underscores the significant change in circumstances that led to the cancellation, emphasizing the impracticability of fulfilling the terms of the agreement due to reasons beyond the complainant's control. In light of this, dismissing the complaint solely based on the forfeiture clause would not only overlook the fundamental principles of equity and fairness but also disregard the

A

complainant's proactive steps to address the situation. Therefore, it is imperative to consider the entirety of the circumstances surrounding the cancellation, including the complainant's request, to ensure a fair and just resolution of the matter. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

H. Findings on the relief sought by the complainants.

H.I Direct the respondents to refund the total amount paid by the complainants along with the prescribed rate of interest.

19. That the complainants booked a unit E-1403, Tower-F, 14th floor in the project of the respondent namely, "Godrej Nature Plus" admeasuring carpet area of 46 sq. mtrs. for an agreed sale consideration of Rs.80,80,979/- against which complainants paid an amount of Rs. 25,90,468/-. That the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the 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, —

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

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

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

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."

(Emphasis supplied)

20. The occupation certificate/part occupation certificate of the buildings/towers where allotted unit of the complainants is situated is still

A

not obtained by the respondent. However, the complainants have already wished to withdraw from the project.

21. Further, vide proceedings dated 26.10.2023, the counsel for the respondent stated at bar that cancellation/termination has been made on request of the complainant and deduction of 20% of earnest money has been made as per BBA which was executed on 27.06.2018. The counsel also emphasises that that the unit was cancelled after issuance of 14 reminders and the deduction may be allowed for the brokerage and interest on delayed payments and earnest money as per para 20 of reply.
22. Though the complainants, wished to withdraw from the project and demands refund of the paid-up amount received by the promoter/respondent in respect of the unit with interest on account of inability to continue with the project due to medical conditions of her husband leading to financial distress in continuing with the project.
23. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be

forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

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

24. Admissibility of refund at prescribed rate of interest: The complainants are seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

R

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

27. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). Accordingly, the promoters are liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest.

29. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 25,90,768/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date

+2%) on such balance amount from the date of surrender till the date of actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H.II Direct the respondents to pay damages of Rs.10,00,000/- for causing mental agony and delay in treatment of her husband.

H.III Direct the respondents to pay litigation cost of Rs. 2,00,000/-

30. The complainant in the aforesaid relief is seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

I. Directions of the Authority

31. 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. 25,90,768/- after deducting 10% of the total sale consideration of Rs. 88,88,014/- being earnest money along with the interest @ 10.85%

A

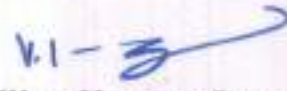
p.a. on the refundable amount from the date of surrender till the actual date of realization as per provisions under rule 15 of the rules, 2017.

II. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 16.05.2024


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram