



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:

12.10.2023

Name of Builder	Movish Realtech Pvt. Ltd. (Earlier known as Ashiana Realtech Pvt. Ltd.)
Project Name	"The Cubix", Sector-23, Dharuhera

Sr. No.	Complaint No.	Complainant
1.	2501 of 2022	Mrs. Uma Khanna W/o Sh. Rakesh Khanna, R/o House no. K-18/10, DLF Phase-2, Gurgaon, Haryana- 122002
2.	2561 of 2022	Mrs. Manita Yadav W/o Sh. Raj Kumar Yadav R/o House no. B-718, Ashoka Marg, Sushant Lok, Gurgaon, Haryana-122002

VERSUS

Movish Realtech Pvt. Ltd.,

through its Managing Director,

Registered Office: 203-205, Progressive Chamber, D-3 Block,

Commercial Complex, Prashant Vihar,

North West Delhi- 110085

....RESPONDENT

Latree

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: - Sh. Kunal Thappa Advocate, counsel for complainants in both the cases through VC

Sh. Kamal Dhaiya, Counsel for the respondent in both cases

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. This order shall dispose of both the captioned complaints filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent, i.e., "The Cubix", Sector-23, Dharuhera, Haryana. The terms and conditions of the Builder Buyer Agreements which had been executed between the parties are also similar. The fulcrum of the issue involved in both cases pertains to failure on part of respondent promoter to deliver timely possession of flats in



question. Also relief of refund has been sought in both the complaints. Therefore, complaint no. 2501 of 2022 titled "Mrs. Uma Khanna V/s Movish Realtech Pvt. Ltd", has been taken as lead case for disposal of both matters.

A. UNIT AND PROJECT RELATED DETAILS OF LEAD CASE:

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

S.No.	Particulars	Details
1.	Name of the project	The Cubix, Sctor-23, Dharuhera.
2.	RERA registered/not registered	Registered(HRERA/PKL/RWR-39-2018 DATED 20.08.2018)
3.	Nature of the Project	Residential Project
4.	DTCP License no.	20 of 2012 valid upto 14.03.2020
5.	Flat no.	1104, 11 th floor, Tower-A-2
6.	Flat area	1300 sq.ft.
7.	Date of builder buyer agreement	01.08.2013
8.	Deemed date of possession	42 months from date of signing of agreement with grace period of 6 months

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9.	Basic sale price	₹29,43,450/-
10.	Amount paid by complainant	₹12,06,880/-

B. FACTS OF LEAD CASE AS STATED IN THE COMPLAINT:

4. Facts of complainant case are that complainant and her relative had booked two flats on 18.03.2013 and 19.03.2013 in respondent project namely; "The Cubix" situated at Sector 23, Dharuhera, being developed by respondent promoter. Vide letter dated 05.06.2013, respondent had issued allotment of flat no. A-2,1104. Builder Buyer Agreement (hereinafter referred as BBA) was executed between the parties on 01.08.2013, copy of same has been annexed as Annexure C-2 with the complaint book. Basic sale price of flat was ₹29,43,450/- out of which complainant had paid an amount of ₹12,06,880/- in the year 2013. Receipts of paid amount by the complainant are annexed as Annexure C-4 (Colly) at page 54-58 of the complaint book. As per clause 6 of BBA construction of flat was to be completed within 42 months from the date of signing of agreement with grace period of 6 months. Accordingly, due date comes to 01.08.2017 but respondent has failed to handover possession till date.
5. Meanwhile, relative of complainant, who was allotted Flat no. A2-1108 was unhappy with the construction/services of respondent,

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therefore she requested for cancellation of her allotment and allocate her all fund in the favour of complainant vide agreement dated 18.11.2014. Copy of agreement is annexed as Annexure C-3. Complainant alleged that the respondent had taken the signatures of Ms. Arti Arora (complainant's relative) on blank format of settlement deed and assured that all amount deposited shall be transferred in the account of complainant. However, respondent mischievously deducted an amount of ₹ 1,35,087/- from the amount deposited by Ms. Arti Arora (complainant's relative) without giving any prior information or notice to complainant or Ms. Arti Arora. However, it was explicitly told by representative of respondent company that no amount shall be deducted but same was done by the respondent which is illegal, arbitrary and against the principles of natural justice. Further, complainant had opted for construction linked plan wherein payments of installments by the complainants were based upon developer attaining construction milestones. Complainant had paid amounts when the same were demanded by the respondent. However, after sometime respondent started demanding unprecedented amount without achieving any milestone as per plan opted by complainant.

6. Further, when complainant visited site for inspection in last quarter of 2019, it was revealed that the construction of Tower A-2 in which complainant flat was situated was ceased and no development works



were carried out and only a concrete structure was erected with raw materials scattered all over. Till date, said area was under developed and no completion certificate was granted to respondent. Furthermore, respondent had furnished information with the Authority for registration of project on 23.10.2019, wherein respondent had provided list of facilities which were not present at site of the project. Respondent had also promised to deliver the possession of booked flat by 01.08.2017 along with all facilities mentioned at the time of booking of flat but respondent till date had failed to abide by its promises. Complainant visited office of respondent time and again to check progress of the project and to talk to representative of respondent who assured that same shall be constructed within stipulated period of time. However, till date, no development regarding facilities have been completed due to which complainant had suffered financially, mentally and physically for which complainant reserved the right to file a separate complaint before the Adjudicating Officer for compensation.

7. Respondent had issued a letter dated 08.09.2018, whereby it is stated that project is heading for completion and construction/completion of project is going on in full swing, however, in reality respondent had applied for revision of complete building plans and had received the approval of revised building plans of project on 30.10.2018, i.e.,


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almost one year after due date of possession. Respondent had revised the building plans in the year 2018 without consent of allottees. Respondent had arbitrarily and without consent of allottees had changed the building plans and also continued to send demand letters to the complainant when no construction or sanctions were given by the competent Authority, which is violation of provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERD) as well as of statutory provisions. Complainant stated that complainant had preferred a unit as per building plans in year 2013 and now changing the same without consent of allottees is completely unfair. So, complainant seeks refund of paid amount along with delay interest.

8. Further, respondent had offered possession to complainant on 10.11.2021, i.e, after delay of 4 years from agreed time as per BBA executed between parties, that too, along with demand letters which were above the agreed sale price of the booked flat. It is a settled principle of law that an allottee cannot be made to wait for indefinitely for possession of unit and amount deposited by complainant shall be refunded back to complainant if builder fails to handover possession within stipulated time.
9. Complainant has further relied upon Judgment passed by Hon'ble Supreme Court in Civil Appeal no. 12238/2018, titled as "Pioneer


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Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan”, wherein Supreme Court had upheld the order of NCDRC for refund of amount along with interest when builder failed to handover the unit within stipulated period of time as per the agreement. Complainant stated that in present case respondent had miserably failed to handover possession to complainant as per time stipulated in BBA executed between parties, as per section 18(1) of RERA Act, 2016 , respondent is bound to refund entire amount. Reference to recent Judgment passed by Hon’ble Supreme Court in case of “Newtech Promoters and Developers Pvt. Ltd. Versus State of UP” has been made by complainant. Hence, present complaint has been filed seeking relief of refund along with interest.

C. RELIEF SOUGHT

10. The complainant has sought following reliefs:
- (i) To direct the respondent-company to refund the entire paid amount of ₹ 12,60,880/- along with interest from date of deposit of each payment at prescribed rate of interest under the Act.
 - (ii) Any other relief -remedy which is deemed fit by this Hon’ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 25.08.2023 pleading therein:



11. That, the complainant has misdirected herself in filing captioned complaint as reliefs being claimed by complainant cannot be said to even fall within the realm of jurisdiction of the Authority. Further, claim for compensation would be adjudicated by Adjudicating Officer as appointed under Section 71 of 2016 Act.
12. Agreement for sale has not been executed as per format prescribed by RERD Act, 2016. Further, the sale agreement executed between parties was executed much prior to coming into force of RERD Act, 2016.
13. Further, respondent stated that project of respondent has already been registered with the Authority vide reg. no. HRERA-PKL-RWR-39-2018 dated 20.08.2018. Respondent stated that possession could not be handed over to complainant in time due to certain force majeure circumstances which were beyond the control of respondents, which includes prohibition of extraction of ground water, prohibition of sand mining, agitations in Haryana etc. Further, respondent has stated that application for occupation certificate was applied by respondent on 07.12.2020. However, due to Covid- Outbreak, occupation certificate was received by respondent on 08.11.2021 from competent Authority. Respondent has also stated that one of the major reason for delay in completion of project was the delay in making payments by many allottees.


Satish

14. Respondent in reply has admitted the fact that Flat no.A-2-1104 was allotted to complainant in respondent's project. However, respondent denied that Ms. Arti Arora cancelled her allotment as she was unhappy with construction services of the project. Rather, her cancellation was happened as Ms. Arti showed her incapacity to pay the installments of the unit booked by her, as same has also been mentioned in settlement agreement referred by complainant at page no. 49-53 of complaint. Hence, Ms. Arti requested respondent to cancel her booking and adjust payment made by her against Unit No. A-2-1104 allotted to complainant. Further, as per clause 7(viii) of BBA, cancellation of unit was subject to forfeiture of earnest money and deduction of EDC, IDC, Taxes etc, if buyer chooses to cancel the booking of the flat. Accordingly, amount paid by Ms. Arti has been transferred to account of complainant as per terms of cancellation clause and requisite deductions.
15. Complainant was liable to pay as per the plan opted by her. However, complainant never adhered to the payment plan and committed various defaults of payments. Moreover, complainant had not cleared the outstanding dues till date, despite receiving offer of possession which shows that complainant since inception was not interested in possession. Complainant is liable for breach of contract of payment clause. At present, almost 30 families are residing happily in the


Arti Arora

project. Respondent stated that due to certain circumstances as explained above, were the reasons for delay in handing over possession to allottees. However, in present case, complainant herself was a defaulter as even after receiving various reminders complainant has not paid outstanding dues till date. All issued reminders are annexed as annexure R-12. After obtaining Occupation Certificate on 08.11.2021, valid legal possession was offered to complainant on 10.11.2021, but complainant never came forward to accept the same. Although, complainant was bound as per Section 19(10) of RERD Act, 2016 to accept the offer of possession within two months but complainant chose not to pay any heed to the same. Therefore, complainant is liable to pay delay interest on delayed payment as per Section 19(7) of RERD Act, 2016 along with holding charges.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. During oral arguments complainants have reiterated their arguments as captured in para 4-10 of this order. Learned counsel for respondent also reiterated his arguments as captured in para 11-15 of this order. Further, respondent stated that project was completed in the year 2021 and possession of booked flat was also offered to complainant on 10.11.2021 but complainant has neither accepted the offer of possession nor agitated the same since 2021. Respondent stated that complainant has not placed



on record any proof of document which shows that complainant had any intention of withdrawing from the project since 2013 till offer of possession in year 2021. However, complainant chose to file complaint for seeking relief of refund before the Authority after 10 months of receiving of offer of possession from respondent. Furthermore, complainants had already got the case decided for compensation before Adjudicating Officer for delay in handing over of possession.

F. ISSUES FOR ADJUDICATION

17. Whether or not the possession offered to complainant by respondent on 10.11.2021 was a legally valid offer of possession?
18. Whether the complainant is entitled to relief of refund along with interest in terms of Section 18 of RERD Act of 2016?
19. Whether deduction done in the amount paid by Ms. Arti, which was later transferred to account of complainant is valid or not?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

20. The Authority has gone through the rival contentions and the documents placed on record. It is admitted by both the parties that the complainant booked a flat, admeasuring 1300 sq.ft. in the real estate project namely; "The Cubix" located at Dharuhera, being developed by promoter for basic sale consideration of ₹ 29,43,450/-. Builder Buyer Agreement was signed on 01.08.2013. The complainant is aggrieved by the fact that the respondent had promised to deliver the



possession of the flat by 01.08.2017. However, same was offered on 10.11.2021, i.e., after four years of delay from time stipulated as per BBA. Complainant stated that said offer of possession was not accepted by her for the following reasons:

- (i) Complainant had opted for construction link plan in the year 2013 and was ready to pay due installments as per construction of the project. Complainant had stated that he had paid money till 2013, but she stopped making payments to respondent after June 2013 as project was still not complete and no construction was going on. Although respondent had issued various demand letters and reminders to complainant, complainant alleged that said demands were not complied with because all such letters were neither in consonance with the plan opted by complainant nor as per terms of BBA.
- (ii) Secondly, respondent had revised the building plans without taking any consent from the allottees and had received approval for the same on 30.10.2018, i.e., after one year from due date of possession, then how it could be assumed that project was even near completion when revised building plans were approved by the concerned department on 30.10.2018. Therefore, offer of possession and demand letters issued by respondent were not adhered by complainant. So, possession offered by respondent was mere a paper



possession which was not valid as construction of project at that time was not complete.

Thus, complainant sought relief of refund of paid amount along with interest be granted to her.

21. On the other hand, respondent has objected to the maintainability of the captioned complaint on following grounds:

- (i) That the relief sought by complainant does not fall within the jurisdiction of this Authority as claim for compensation would be adjudicated upon by Adjudicating officer appointed under Section 71 of the Act 2016. However, on perusal of relief clause sought by complainant, at page no. 19 of complaint book, it shows that complainant has sought relief of refund of amounts paid along with interest from date of deposit of each payment at prescribed rate of interest. It is observed that no where in relief clause sought by complainant, it is mentioned that she is seeking compensation. Although, respondent orally has submitted that complainant had already got her case decided for compensation from Adjudicating officer for delay in handing over of possession. However, no document to this effect has been submitted by the respondent till date, which makes it a mere contention not proven by way of any document. However, if it is considered that respondent wanted to take


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stand that complainant cannot seek main relief of refund or possession along with compensation then, it is made clear in many other cases that seeking compensation with main reliefs is very much permissible as these are parallel remedies given by the Act to allottees. Although, in present case, complainant has only sought relief of refund from the Authority under Section 18 of the RERD Act, 2016. Thus, respondent plea that compensation part has already been decided perse does not bar complainant to seek parallel remedy which in present case is refund.

- ii. Secondly, respondent has taken an objection that agreement to sell was executed between parties in the year 2013 which is much prior to coming into force of RERD Act, 2016. Thus, relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERD Act.

In this regard, Authority observes that after coming into force the RERD Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERD Act of 2016 coming into force the terms of agreement are not supposed to be re-written. The Act of 2016 only ensure that whatever were the obligations of the

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promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERD Act, 2016 was already dealt in detail by this Authority in complaint no. **113 of 2018 titled as Madhu Sareen v/s BPTP Ltd.** Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

As on date, the complainants are aggrieved persons who have not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERD Act, 2016 coming into force. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERD Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be



applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. The general law of the land will regulate such situation and not provision of the agreement.

22. In view of the aforementioned reasons, the present complaint is maintainable and the Authority has complete jurisdiction to adjudicate on present complaint.
23. Proceeding with the matter on merits, Authority observes that builder buyer agreement was executed between parties on 01.08.2013. As per clause 6 of the builder buyer agreement, respondent was under an obligation to handover possession of booked unit by 01.08.2017. However, respondent had offered the possession to complainant on 10.11.2021. It is apparent on record that respondent had failed to handover possession of booked unit to complainant within the time stipulated in the agreement.
24. On the other hand, respondent has stated that project in question had already been registered with the Authority vide registration no. 39/2018. Occupation Certificate for the project has been obtained by the respondent on 08.11.2021 and offer of possession was made to complainant on 10.11.2021. Thus, the offer of possession dated 10.11.2021 was a legally valid offer of possession nonetheless



complainant neither accepted nor agitated the said offer of possession till date. Since, complainant did not conveyed his intention to withdraw from the project after paying an amount of ₹ 12,06,880/- out of total sale consideration of ₹ 29,43,450/- to respondent, which shows that complainant wished to continue with the project. Respondent had completed the unit and offered the possession to complainant on 10.11.2021 but complainant rather than taking the possession had filed a case before Authority on 16.09.2022 for withdrawing out of the project. Respondent had prayed that at such later stage, the complainant cannot be allowed to withdraw from the project.

25. Further, respondent admitted that possession to complainant was not handed over on the promised date as project got delayed due to certain force majeure circumstances which were clearly mentioned under clause 31 of the BBA, which is reproduced below for ready reference:

“the builder shall not be held responsible or liable for not performing any of its obligations or undertakings provided for in this agreement if such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorists acts, sabotage, or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of the Builder.”

Respondent has also stated that due to Covid-19 outbreak, application submitted by respondent on 07.12.2020 for grant of Occupation Certificate was actually received by respondent on 08.11.2021 from



competent Authority, i.e., after almost a period of one year. Respondent has also stated that another major reason for delay in completion of project was the delay in making timely payments by many allottees. Respondent stated that there was no intentional delay on part of respondent in handing over of possession rather complainant is at fault and is liable to pay delay interest on delayed payments as respondent had not cancelled the flat in question and is still ready to handover possession of the booked flat to complainant. With regard to current status of the project respondent has stated that 30 families are residing happily in the project.

26. During hearing, Authority asked specific question to complainant as to what communications were made by complainant after passing of deemed date of possession, i.e, 01.08.2017 till filing of the captioned complaint ,i.e, on 16.09.2022. Further, complainant was also directed to refer to documents which proves that at the time of offer of possession there was no development at the project site and demands raised by respondent were not in consonance to construction taking place at site and terms of BBA.

To, this complainant stated that he has no written communications to this effect although he had visited site many times and found that project was not complete and development work were



going on. Thus, illegal demands raised by respondent were not paid by the complainant after June 2013.

27. Authority has considered respective cases of both sides and has gone through documents placed on record. Authority orders as follows:-

- (i) It is apparent from the fact of the case that agreement was executed on 01.08.2013 and possession was due to be delivered by 01.08.2017 inclusive of the grace period as per agreement. Respondent has completed the project and has obtained the Occupation Certificate on 08.11.2021. An offer of possession was made to the complainant on 10.11.2021, i.e., after obtaining the Occupation Certificate. Hence, prima facie it appears that the offer made by respondent was a valid legal offer of possession. But complainant had not accepted the same for reason already mentioned in para 20 of this order. With regard to objections, so raised, in said para by complainant to offer of possession made by respondent, Authority observes that Complainant has failed to show that how the demands raised by respondent were not in consonance to construction or agreement executed between parties. Furthermore, complainant has also not placed even a single document which shows that after passing due date of possession or even after receiving offer of possession in the year 2021, complainant has contacted the respondent and conveyed his intention to withdraw from the project on account of inordinate delay and illegal demands.



In above situation, it is important to refer to Section 19(10) Of RERA Act, 2016, which state that complainant is also under an obligation to accept the offer of possession within two months. In case allottee does not want to continue with the project he may exercise his unqualified right to seek refund. However, the unqualified right also has to be exercised. Further, Section 18(1) clearly provides that the promoter shall be liable on demand to the allottee, in case the allottees wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest. Meaning, thereby the complainant had to demand refund on lapse of deemed date of possession. In case, where allottee demands the refund, it means allottee intends to withdraw from the project.

However, in the present case, complainant even did not demanded refund when the unit was offered to him. Complainant in present case did not refused the offer of possession nor did demanded for refund of its amount within the period as provided under Section 19(10). Meaning thereby complainant choose to continue with the project. Therefore, at this stage complainant-allottee cannot be allowed refund and prayer of complainant for passing order for refund is declined. However, this is without prejudice to other rights of

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allottee including possession along with delay interest and compensation as per provisions of RERA Act, 2016.

- (ii) Lastly, argument of respondent that delay has been caused on account of force majeure condition cannot be accepted. Such circumstances being cited have been prevailing for last many years, which could have been foreseen at the time of executing builder buyer agreement. Further, nothing extraordinary happened which could be called an act of God or circumstances which could not have been foreseen by the respondents. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020.



whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. ”

In view of above, respondent plea of force majeure circumstances cannot be accepted as same was also not supported by any piece of document.

28. Authority observes that all the disputes between parties stands adjudicated in para 22-27 of this order except issue with regard to total payment made by complainant to respondent. As per complainant amount of ₹ 12,60,880/- stands paid to respondent after adjusting payment made by Ms. Arti Arora of ₹ 6 lacs paid till 19.03.2013(as per receipts annexed with complaint book). However, respondent has stated that Ms. Arti has backed out from project before due date of possession for the reason that she was unable to pay further instalments. Therefore, as per clause 7(viii) of BBA 10% as earnest money of basic sale price was deducted from Ms. Arti payment and rest was transferred to present complainant account. Accordingly, total paid amount comes to ₹ 10,73,573/-. After perusal of clause 7(viii) referred by respondent, Authority is of the view that respondent had right to deducted 10 % of the earnest money from amount paid by Ms. Arti as she had chosen to step out of the project even before expiry of



deemed date of possession. Further, it is admitted fact that an amount of ₹ 6 lac was paid by Ms. Arti till 19.03.2013, thereafter present complainant has paid an amount of ₹ 6,06,880/- However, it is found that respondent nowhere in the reply has admitted or mentioned the actual amount paid by complainant. It is only in the demand letters which are annexed with both complaints as well as respondent in reply are stating that an amount of ₹ 10,73,573/- stands paid by complainant. In absence of agreement executed between Ms. Arti and respondent, it is not possible for Authority to verify whether or not respondent had actually deducted 10 % of basic sale price of booked flat. Therefore, respondent is directed to give proper breakup of amounts received by Ms. Arti and deduction of earnest money in fresh statement of account to complainant.

29. With above directions, case is **disposed of**. Files be consigned to record room after uploading on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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DR. GEETA RATHEE SINGH
[MEMBER]