BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**7148 of 2022**
Date of complaint :	**24.11.2022**
Order pronounced on:	**25.04.2024**

Om Prakash Singh R/o: B-1/B-1, Meera Colony, BHU Varansai, Uttar Pradesh-221005.	**Complainant**
Versus	
M/s Vatika Limited Registered office: Vatika Triangle, 4th Floor, Sushant Lok, Phase 1, Block -A, Mehrauli – Gurugram Road, Gurugram – 122002.	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Shri Vinit Kumar Srivastava, Advocate	Complainant
Shri Dhruv Dutt Sharma, Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details.

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

S. N.	Particulars	Details
1.	Name and location of the project	"Xpression" by Vatika, Sector-88B Gurugram
2.	Project area	38640.48 Sq. mtrs.
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no.	94 of 2013 dated 31.10.2013 Valid upto 30.10.2019
5.	RERA registered/ not registered and validity status	**Registered** vide no. 271 of 2017 dated 09.10.2017 Valid upto 08.10.2022
6.	Unit no.	HSG-028, pocket-H-2, level-1 (page 19 of complaint)
7.	Unit area admeasuring	1350 sq. ft. (as per BBA page 19 of complaint)
8.	Builder buyer agreement	29.03.2016 (page 17 of complaint)
9.	Possession Clause	**13.** *"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates* ***to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the*

		Allottee(s) to abide by any of the terms or conditions of this Agreement..." **(Empasis supplied)**
10.	Due date of possession	29.09.2020 (Calculated from the date of execution of BBA including grace period in lieu of Covid-19.)
11.	Sale Consideration	Rs.86,17,012/- (as per BBA page 20 of complaint)
12.	Amount paid by complainant	Rs.16,41,742/- (as per SOA dated 13.04.2023 at page 14 of reply)
13.	Email for refund	09.04.2018 (page 58 of complaint)
14.	Reminder letter	15.06.2021, 17.08.2021, 14.04.2022 (as per cancellation letter page 57 of complaint)
15.	Notice for Termination	14.04.2022 (page 24 of reply)
16.	Cancellation letter	26.04.2022 (page 57 of complaint)
17.	Legal Notice (for Possession)	28.05.2022 (page 61 of complaint)
18.	Occupation Certificate	Not Obtained
19.	Offer of possession	Not Offered

B. Facts of the complaint:

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

a. The complainant has booked a unit bearing no. HSG-028, Pocket-H-2, Level-1 in the project namely "Xpressions by Vatika" situated at Sector-88B, Village- Harsaru, Tehsil & District - Gurugram, Haryana, under the surmises of several false and fake promises by the promoter.

b. That by builder buyer agreement dated 29.03.2016 was executed between the parties as per the terms and conditions as mentioned therein. The said builder buyer agreement is one sided and against the provisions of applicable laws as on the date of its execution.

c. That as per the terms of builder buyer agreement the payment plan which was provided to complainant is construction linked payment plan and complainant made payment as per demand letters issued by the promoter.

d. That complainant was never informed about the progress of construction and date of providing complete and legal possession of the said flat along with all amenities. In the meantime, he came to know that project was delayed and there was no clarity about when construction to be resumed and the possession of his dream unit will be provided to complainant.

e. On 09.04.2018, the complainant intimated to the respondent that due to unavoidable personal circumstances he is unable to continue with the said flat in the aforesaid project. That complainant neither got proper response from promoter nor got his hard-earned money paid to the promoter due to fake and false commitment made by the complainant.

f. That to the utter shock to the complainant, complainant received a letter from the office of the complainant titled as "Notice for termination..... Xpression by Vatika" dated 11.07.2017 and in the same respondent/promoter have demanded to pay the so-called dues as per their whim and fancy. The said demand was not as per construction stage and thus the said demand has no legal and valid in the eyes of law. He has paid a sum of Rs.16,41,742/-, till date as against the said unit.

g. That after knowing the actual construction position of the project complainant came to know and was told by the official of respondent that

the said project is delayed and there is no clarity of construction and possession of the unit and they suggested complainant to stop payment as the project is a stand-still project and the respondent /promoter intended to scrap the same or to transfer the same to other developer.

h. The complainant is in receipt of letter dated 27.04.2022, from the respondent in which they have mentioned that the agreement of the unit has been cancelled and the amount deposited by complainant has been forfeited and respondent have demanded from the complainant a sum of Rs.10,52,237/- as per respondent /promoter calculation, the said demand which has been asked as per the calculation made as per one sided calculation made by the respondent /promoter.

i. That the respondent/promoter have ignored or better to say avoided that the Real Estate (Regulation and Development) Act, 2016 has been notified from 01.05.2016 and State of Haryana have notified the Rules under the Act. After the said implementation, respondent is bound to follow the Act and Rules as notified and the dictatorship and monopolistic practices, one sided agreement have been suitable substituted from the effective date of said act and rules made there under.

j. The relevant provision of Haryana Real Estate (Regulation and Development) Rules, 2017 Rule 9.3 (ii), provides as follows:

> *"In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage along with parking (if applicable) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and nonpayment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the*

allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination."

k. That in the light of this provision, the letter dated 26.04.2022 is completely against the sacrosanct purpose of the Act of 2016 and Rules made there under.

l. Thus, the complainant is entitled for refund of his paid amount along with interest at the rate of MCLR+2% per annum from the date of payment to the respondent /promoter till the date of refund by respondent /promoter as the default was on the part of the respondent /promoter. Thus, in the interest of justice is humbly prayed that the respondent be ordered to return the paid amount along with interest at the rate of MCLR+2% per annum.

C. Relief sought by the complainants: -

4. The complainant has sought following relief(s): -

   a. Direct the respondent to refund of his paid amount along with interest at the rate of MCLR+2% per annum from the date of payment to the respondent /promoter till the date of refund by respondent/ promoter.

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

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

   a. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.

b. That the complaint filed by the complainant before this Authority, besides being misconceived and erroneous, is untenable in the eyes of law.

c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

d. That at this stage, it would be just and proper to refer to certain provisions of the Rules of 2017, which may be relevant for the adjudication of the present lis and which, for ease of reference, are reproduced hereunder: -

2017 Haryana Rules

Rule 8: *Agreement for sale: -*

Rule 15: *Interest payable by the promoter and the allottee –*

From the conjoint reading of the aforementioned Sections/ Rules, Form and Annexure 'A', it is evident that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure 'A', which is required to be executed inter se the Promoter and the Allottee.

It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer agreement, executed much prior to coming into force of 2017 Haryana Rules.

The adjudication of the complaint for refund and interest, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. This submission of the respondent inter alia,

finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant.

e. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.

f. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.

g. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainant has also misdirected in claiming refund and on account of alleged delayed offer for possession.

It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 4 years from the date of execution of the

agreement, unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said Unit. Reference may be made to clause 13 of the builder buyer agreement.

> ***"13. Schedule for Possession of the said Residential Floor*** *That the Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement."*

In the present case, it is a matter of record that the complainant has not fulfilled his obligation and has not even paid the installments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainant.

h. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs.92,38,415/-, the amount actually paid by the complainant is Rs.16,41,742/-i.e., around 17% of the total sale consideration of the Unit. It is further submitted that there was an outstanding amount of Rs.45,48,222/- (including interest) payable by the complainant as on 10.02.2022 as per the payment plan opted by the complainant. That the last payment was made by the complainant on 02.02.2016 that is much before the proposed date of delivery of possession. That the complainant has till date not made the payment of demand raised on 'completion of super structure and start of flooring work inside the unit'. That on 14.04.2022, the respondent again called upon the complainant with

an opportunity to make the payment within 7 days failing which the unit of the complainant shall stand cancelled. It is further submitted that despite the number of opportunities the complainant failed to make the payments. However, the complainant did not bother to make the payment and therefore the respondent was constrained to cancel the builder buyer agreement vide letter dated 26.04.2022 and the complainant is now left with no right, title, interest etc. in the present unit. It is pertinent to mention here that earlier also the complainant wrote an e-mail dated 09.04.2018 to the respondent that due to some unavoidable circumstances he cannot continue in the project and surrendered his unit. Thus, the complainant after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainant.

7. All other averments made in the complaint were denied in toto.

8. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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;*
> ***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.*

12. 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.

F. Findings on the objections raised by the respondent

F. I Objection regarding jurisdiction of the complaint w.r.t the flat buyer's agreement executed prior to coming into force of the Act.

13. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out rightly dismissed as the buyer's agreement

was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

14. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind*

that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

15. Also, in appeal no. 173 of 2019 titled ***as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya,*** in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to refund of his paid amount along with interest at the rate of MCLR+2% per annum from the date of payment to the respondent /promoter till the date of refund by respondent/ promoter.

17. In the present complaint, the complainant intends to withdraw from the project and is seeking refund as provided under the proviso to section 18(1) of the Act. Section18(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 to 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"*

18. The complainant claiming refund of amount paid to the respondent-promoter under the provision 18(1) of the Act, 2016, Though, after the request for refund from the complainant-allottee through email dated 09.04.2018, the respondent-promoter failed to refund the amount paid by the complainant, failing which the complainant-allottee filed the present complaint and seeking refund with interest.

19. The complainant was allotted a residential floor bearing no. HSG-028, Sector-88B, Plot No.–14, ST, H-21, Level-1, having tentative super area 1350 sq. ft., under construction linked payment plan and a builder buyer's agreement was executed between the parties on 29.03.2016, on the above-mentioned unit. He had paid an amount of Rs.16,41,742/- against the total sale consideration of Rs.86,17,012/-. As per clause 13 of the agreement, the respondent was required to complete the construction of the residential floor within a period of 48 months from the date of execution

of this agreement. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 29.03.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 29.09.2020. (including grace period). However, the complainant has placed an email dated 09.04.2018 on page no. 58 of the complaint and sought refund of the paid-up amount with interest before the due date of possession which is reproduced as under for a ready reference: -

-------Original Message-------
From: Om Prakash Singh [poonom@rediffmail.com]
Sent: 9/4/2018 9:40 PM
To: cm@vatikagroup.com
Subject:
Dear sir/madam,
Please take note of my mail on 5th April 2018, in which I had requested you that due to certain unavoidable personal circumstances I am unable to continue in this project. I didn't receive your reply. still, **I am unable to continue in this project, please refund my money.**
Regards.

20. The respondent has raised a plea in its reply that the complainant has sought the relief of refund. The respondent submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Therefore, various demands, reminders and final opportunities were given to the complainant. Accordingly, the complainant failed to abide by the terms of the builder buyer's agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

21. As per clause 2 of the builder buyer's agreement, the respondent /promoter have right to cancel the unit and forfeit the earnest money in case the allottee breached the terms and conditions of the flat buyer's agreement executed between both the parties. Clause 2 of the builder buyer's agreement is reproduced as under for ready reference.

> *"2. EARNEST MONEY*
>
> *The allottee has entered into this Agreement on the condition that 10% of the basic sale price and preferential location charges (10% of [BSP + PLC]) of the said residential floor shall be related as Earnest Money to ensure fulfillment, by the allottee, of the terms and conditions as contained in the application and this Agreement. The said earnest money shall be forfeited by the developer on the event of the failure of the allottee to perform his obligations or to fulfill any of the terms and conditions set out in this agreement and on occurrence of such failure, the developer shall refund residual amount remaining after deduction of earnest money and all non-refundable amounts (such as brokerage paid, service tax, VAT, other applicable tax, cess, duties, etc. charges for dishonor of cheque, interest on delayed payment etc.) to the allottee without any interest or compensation of whatsoever nature. The allottee agrees that the conditions for forfeiture of the earnest money shall remain valid and effective till the execution and registration of the conveyance deed for the said residential floor and the allottee has agreed to this condition to indicate his/her commitment to faithfully abide by all the terms and conditions contained in his/her application and this agreement."*

22. 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 farmed 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."*

23. So, keeping in view of the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest on such balance amount at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 09.04.2018 till

the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

24. 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/ promoter is directed to refund the paid-up amount of Rs.16,41,742/- after deduction of 10% of the sale consideration as earnest money along with interest on such balance amount at the rate of 10.85% p.a. as prescribed under rule 15 of the Rules, 2017, from the date of surrender i.e., 09.04.2018 till its actual realization.

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

25. Complaints stand disposed of.

26. File be consigned to registry.

Dated: 25.04.2024

V.I

(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram