

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

Complaint no.: 6628 of 2022
Order pronounced on : 09.04.2024

Karishma Bisht
R/o: - House no.67, Huda Plots, Sector 56, Gurugram

Complainant

Versus

1. M/s Suposhaa Realcon Private Limited
2. M/s Suposhaa Realcon Private Limited
Office at:- Unit no. SB/C/2L/Office/017A,
M3M Urbana Sector – 67, Gurugram, Haryana – 122102
3. Smartworld Realcon Private Limited
4. Vivek Singhal CEO Smartworld Developers
Office at:- M3M International Financial Center, Tower-2,
12 A Floor, Sector 66, Gurugram, Haryana-122002
5. Ruchit Pruthi Director Chaahat Home Infratech Pvt. Ltd.
6. Sushant Bali
7. Hulas Sharma FOS Manager at Chaahat Homes
Office at:- M3M TeePoint, South Block, 6th Floor, Sector-
65, Gurugram, Haryana-122002
8. Rohit Yadav Sales Executive Chaahat Homes
Office at:- M3M TeePoint, South Block, 6th Floor, Sector-
65, Gurugram, Haryana-122002

Respondent(s)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Karishma Bisth
Ms. Shriya Takkar (Advocate)
Shri Aditya Chhibber (Advocate)

Complainant
Respondent No. 1 to 4
Respondent No. 5 to 8

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ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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 complainant, 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 of the project	'Smart World Orchard, Sector -61, Gurugram, Haryana
2.	Nature of the project	Independent floor residence
3.	Project area	20.60902 acres
4.	DTCP License no.	68 of 2021 dated 16.09.2011 Valid up to 15.09.2026
5.	Licensee Name	Commander Realtors Pvt. Ltd. & Ors. C/o Suposhaa Realcon Pvt. Ltd.
6.	RERA registered/ not registered	RERA registered vide no. 74 of 2021 dated 03.11.2021 Valid up to 21.12.2024
7.	Unit no.	L-3B [pg. 47 of complaint]
8.	Unit area admeasuring	1120 sq. ft. (Page no. 47 of complaint)

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9.	Welcome letter dated	16.02.2022 (Page 43 of complaint)
10.	Date of allotment letter	16.02.2022 (Page no.45 of complaint)
11.	Date of apartment buyer agreement	Annexed but not executed
12.	Possession clause as per unexecuted BBA	<p>"7. POSSESSION OF THE FLOOR RESIDENCE: 7.1 Schedule for possession of the floor Residence-</p> <p>ii. The Promoter assures to offer possession of the Independent floor residence along with exclusive right to use individual demarcated proportionate terrace and basement area and one car parking space as per agreed terms and conditions herein on or before the Completion Time Period i.e. 31 Dec 2024 unless there is delay due to Force Majeure Event, reason beyond the control of the Promoter, non-compliance on the part of Allottee(s) including on account of any default on the part of the Allottee(s), Court orders, Government policy/guidelines, decisions affecting the regular development of the Project or due to any event or reason, which is recognised as a ground for extension by the Authority."</p> <p>(Annexure 8 at page 17 of application for placing of facts by respondent)</p>
13.	Due date of delivery of possession	31 Dec 2024 (As per mentioned in the BBA)
14.	Total sale consideration	Rs.88,20,000/- (As per payment plan at page 49 of complaint)
15.	Total amount paid by the complainant	Rs.55,28,000/- [as alleged by the complainant in her brief facts at pg. 19 of complaint and the

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		same was denied by the respondent in its reply at pg. 26 of reply]
16.	Pre-Cancellation letter	30.07.2022 (pg. 89 of the reply)
17.	Cancellation letter	04.08.2022 (pg. 90 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Refunded amount	The respondent submitted that the complainant paid only Rs.18,00,000/- + Rs.2,00,000/- to the respondent and respondent builder has refunded the entire amount on 29.09.2022 and 15.02.2023 respectively without any deduction.
21.	Surrender/Withdrawal request made by the complainant through legal notice	27.07.2022 (pg. 62 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- i. That the complainant is a citizen of India and resident of house no. 67, Huda Plots, Sector 56, Gurugram, Haryana, India. She had invested her entire life savings and booked a plot in the project namely "Smart World Orchard" being developed by the respondent within the territory of Gurugram.
- ii. That the respondent no. 1 to 4 are companies duly incorporated under the companies Act, 1956, engaged in the business of construction and development in the real estate sector and claims to be one of the leading

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real estate companies. Respondents through its marketing representative approached the complainant advertising about the project in question. The marketing representatives, for and on behalf of the respondents, made all claims with regard to the project and the respondent, and further lured the complainant for booking a unit in the above said project of the respondents.

- iii. That, Initially, the complainant agreed to purchase 2 units bearing no. L-3B and L-3C having 1120 sq. ft. each for a consideration of Rs.1,22,89,200/-. The complainant paid booking amount of Rs.2,00,000/- in respect of each unit. Later, it was agreed that the complainant will retain only one unit i.e., L-3B and payment for both the units will be credited in the account of unit no. L-3B only, being developed in the aforesaid project and respondents promised the complainant to give him a custom payment plan of 15:85 i.e., 15 percent to be paid on booking and 85 percent to be paid on possession/handover of the unit. But an amount of Rs.2,00,000/- is still not credited in the account of unit no. L-3B.
- iv. That subsequently, the respondents vide intimation for acceptance of application form cum welcome letter dated 16.02.2022, confirmed the allotment plot bearing no. L-3B, admeasuring 1120 sq. meters in favour of the complainant.
- v. That the complainant alleged that she made a payment of Rs.55,28,000/- in total including Rs.35,28,000/- paid in cash to the respondents, as and when demanded by the respondents for the said unit.
- vi. Despite, after receiving 10% of the total sale consideration the respondent herein failed to execute any builder buyer agreement which

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- ought to have been executed in accordance with the provisions of section 13 Act of 2016.
- vii. Further, it is alleged that after making payment of Rs.35,28,000/- in cash, that the respondent issued a letter dated 25.02.2022 stating that the BSP was reduced from Rs.10,450/- to Rs.7,500/- and the total sale consideration was reduced to Rs.88,20,000/-. Also, the payment plan which was discussed at beginning i.e., 15:85% has not been adhered by the respondent.
 - viii. That the said acceptance to the proposal floated on the part of the respondents, that there was no builder buyer agreement executed between the complainant and respondents.
 - ix. That complainant sent the legal notice dated 27.07.2022 and the same was replied on 05.09.2022 through her counsel to respondents stating that she is no longer interested to retain the unit in the said project anymore and asked the respondent for the refund in the same.
 - x. That complainant alleges there has been various deliberate, malafide acts and omissions right from the beginning at the time of allotment of the unit, the terms and conditions of the agreement has not been made as per the payment plan discussed in the beginning i.e., 15 percent to be paid on booking and balance 85 percent to be paid on possession.
 - xi. That there is a grave deficiency in service, malpractice and non-performance of the obligations on the respondents part and even no builder buyer agreement is executed. That there is deficiency in service on the part of respondents, as they failed to adhere to their own commitments
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s):

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- I. Direct the respondent to return the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate of interest.
 - II. Direct the respondent to pay the earnest money along with litigation charges of Rs.10,00,000/- (Ten lakh only) to the complainant.
 - III. Direct the Suspension of License of channel Partner "Chaahat Homes Infratech Private Limited".
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 respondent(s)**
6. The respondent(s) by way of applications and reply made following submissions:-
- D.1 Reply by respondent no 1 & 2 along with application of additional facts put on record dated 20.02.2023 and 02.04.2024 respectively**
- i. That the respondent no.1 & 2 states that the complainant has applied for allotment of an independent floor through her broker M/s Chaahat Homes Infratech Pvt. Ltd. vide application form dated 05.11.2021 and paid booking amount of Rs.7,50,000/-. The respondent company allotted unit no. L-3B vide allotment letter dated 16.02.2022. The complainant opted for specific payment plan (15:75:10). The respondent has also acceded to the request of the complainant and transferred the amount paid i.e., Rs.2,00,000/- towards unit no. L-3B in the project.

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- ii. That the complainant vide letter dated 17.02.2022, sent three copies of the buyer's agreement for execution and raised demand as per the payment plan opted by the complainant.
- iii. The complainant approached the respondent that the floor be provided in a bare shell condition. The respondent acceded to the request of the complainant and the price of the floor was reduced from Rs.10,450/- to Rs.7,500/- per sq. ft. Thus, the total consideration cost of the unit was reduced to from Rs.1,22,89,200/- to Rs.88,20,000/- plus other charges. Thereafter, a revised allotment letter was issued by the respondent.
- iv. Since, the complainant was not making payment of the outstanding dues and was not coming forward to execute the buyer's agreement, the respondent issued pre-cancellation letter dated 30.07.2022. As the complainant continued to breach the terms of application form, the respondent was constrained to terminate the allotment by issuing cancellation notice date 04.08.2022.
- v. That the complainant has paid Rs.18,00,000/- against the outstanding dues of Rs.48,51,000/-, and the respondent has refunded the entire amount of Rs.18,00,000/- without any deductions vide RTGS (UTR No. KKBKR52022092800802418) on 28.09.2022. Due to some confusion, the amount of Rs.2,00,000/- was lying in the suspension account. Now, the amount of Rs.2,00,000/- was refunded to the complainant on 15.02.2023 vide RTGS (UTR No. ICICR52023021500395299). Thus, the present complaint is infructuous.

D.2 Reply by respondent no. 3 along with application for dismissal of Complaint

- vi. That the respondent no.3 i.e. Smartworld Developers Private Limited has no locus or any concern with the lis in question as it is a separate

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and a distinct legal entity, which has erroneously been impleaded by the complainant in the array of the respondents.

- vii. That the respondent submitted that the said project is part of the licensed affordable plotted colony under the Deen Dayal Jan Awaas Yojna, which is being promoted and developed by M/s. Suposha Realcon Pvt. Ltd., respondent No. 1 and 2 herein. "Smartworld Orchard" is a RERA registered project of M/s. Suposha Realcon Pvt. Ltd. Therefore, Mr. Vivek Singhal who is the CEO of M/s. Smartworld Developers Pvt. Ltd. i.e., respondent no.4 herein has no privity of contract with the complainant on account of the mis-joinder and non-joinder of necessary parties.
- viii. That the booking amount against the said unit was paid to and received by M/s. Suposhaa Realcon Pvt. Ltd., the promoter and the developer of the project and the application form signed by the complainant was also submitted to the M/s. Suposhaa Realcon Pvt. Ltd., It is submitted that no payments whatsoever have been made to the respondent no.3 with respect to the subject unit and thus no cause of action has arisen to make the respondent no.3 a party to the present complaint. That Section 31 of the RERA Act, 2016 states that:
- a. *31. Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*
 - b. *Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*
 - c. *(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].*

- ix. That the respondent no. 3 states that the mark 'Smartworld' is being used by the promoter M/s. Suposhaa Realcon Pvt. Ltd. under a license from Smartworld Developers Private Limited, use whereof is subject to the brand licensing arrangement between the M/s. Suposhaa Realcon Pvt. Ltd. and Smartworld Developers Private Limited. It is submitted that there is brand usage arrangement between the respondent no.1 and respondent no.3, whereby respondent no.3 has granted the promoter a limited license to use the brand name, logos, image and other such signage, solely for the purpose of activities related to promotion/advertising (branding rights) and allied activities for the said project.
- x. That the subject project is part of the licensed affordable plotted colony under Deen Dayal Jan Awaas Yojna which is being promoted and developed by M/s Suposhaa Realcon Pvt. Ltd. i.e., respondent no.1 & 2 herein. Therefore, respondent no.3 has no privity of contract with the complainant.
- xi. That the booking amount was paid to and received by M/s Suposhaa Realcon Pvt. Ltd. and the application form was also submitted by the complainant to M/s Suposhaa Realcon Pvt. Ltd. That no payment whatsoever have been made to the respondent no.3 with respect to the subject unit. Thus, no cause of action has arisen to make respondent no.3 a party to the present complaint.
- xii. That the Hon'ble Apex Court in Chief conservator of forests govt. of A.P vs Collectors and Ors. (2003 (3) SCC 472 has categorically held as under:
- d. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and*

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misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause title so that the party before the court is correctly described; however a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order I of C.P.C. mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order I C.P.C. provides remedy when a suit is filed in the name of wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

D.3 Reply by respondent no. 4 along with application for deletion of name

- xiv. That the respondent no.3 i.e. Smartworld Developers Private Limited has no locus or any concern with the lis in question as it is a separate and a distinct legal entity, which has erroneously been impleaded by the complainant in the array of the respondents, hence the name of the CEO of Smartworld Developers Pvt. Ltd. i.e., Mr. Vivek Singhal has to be deleted.
- xv. That the respondent no. 4 submitted that the said project is part of the licensed affordable plotted colony under the Deen Dayal Jan Awaas Yojna, which is being promoted and developed by M/s. Suposha Realcon Pvt. Ltd., respondent no. 1 and 2 herein.

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“Smartworld Orchard” is a RERA registered project of M/s. Suposha Realcon Pvt. Ltd. Therefore, Mr. Vivek Singhal who is the CEO of M/s. Smartworld Developers Pvt. Ltd. i.e., respondent no.4 herein has no privity of contract with the Complainant.

- xvi. That the respondent no.4 in the present complaint is neither a necessary party nor a proper party and there is no privity of the contract in existence with the complainant herein. That it is a settled law that a company is a juristic person. Therefore, a company has to act through a living human being. Collectively, decisions on behalf of the company are taken by the board of directors of a company. An individual director or a CEO has no power to act on behalf of a company of which he is a CEO or the director, unless there is a specific resolution of the board of directors of the company giving specific power to him/her, or, where the articles of company confer such a power. That the CEO of the company acts in a fiduciary capacity vis-à-vis the company. He performs acts and duties for the benefit of the company. The CEO has been authorized to perform certain acts on behalf of the Company and, as such, CEO of the company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company.
- xvii. The complainant has neither made any averment against the respondent no.4 nor made any prayer/relief against the respondent no.4.
- xviii. That the respondent no.3 i.e., Smartworld Developers Pvt. Ltd. has no locus with the lis in question and a distinct legal entity which has been erroneously impleaded by the complainant. Hence the name of

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the CEO of Smartworld Developers Pvt. Ltd. i.e., Mr. Vivek Singhal has to be deleted.

- xix. An individual director or a CEO has no power to act on behalf of a company of which he is CEO or director unless there is specific resolution of the board of directors of the company confer such power. The CEO has been authorized to perform certain acts on behalf of the company and as such, CEO of the company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company.
- xx. The respondent no.4 is neither a necessary nor proper party and has been improperly joined in the array of parties.

D.4 Reply by respondent no. 5 to 8

- i. That the respondent no. 5 states that complainant has without showing any cause of action sought relief against a company i.e. Chaahat Homes Infratech Private Limited, but has failed to implead the said company as a party to defend its claim. On the other hand, though directors of the company are not personally liable, and there is no specific allegation or relief against the director, the complainant had made the director of the company as a party.
- ii. That the respondent no. 6 to 8 are not employees of the Chaahat Homes Infratech Private Limited, but are independent consultants. Against whom there are no specific averment or relief sought but still have been impleaded as a party in the present complaint.
- iii. That respondent no. 8 being an independent agent worked for the complainant only to facilitate the purchase and make it easy for them to meet the technicalities involved in the process of booking of a unit.

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iv. The respondent no. 5 to 8 states that the present complaint is infructuous as the refund has already been made by the respondent no. 1.

7. That the copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

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

E. I Territorial Jurisdiction:

9. 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:

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;

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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."

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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I Direct the respondent to return the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate of interest.

12. In the present complaint the complainant intends to withdraw from the project and is seeking relief w.r.t refund along with interest for the amount paid to the respondent(s). That the complainant was allotted a plot bearing no. L-3B, for an area admeasuring 1120 sq. feet in the project named 'Smart World Orchard at Sector -61, Gurugram, Haryana vide booking cum welcome letter dated 16.06.2022. The total sale consideration of plot was Rs.88,20,000/- and She made a payment of Rs.55,28,000/- in total including Rs.35,28,000/- paid in cash. But, complainant can't produce any documentary evidence on record w.r.t. to entire amount paid.

13. That the respondent promoter has denied receiving any cash component and has admitted receiving an amount of Rs.18,00,000/- against the outstanding dues of Rs.48,51,000/- and Rs. 2,00,000/- was paid against the expression of interest towards purchase of a different unit i.e. L-3C which

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was later requested to be cancelled by complainant and subsequently requested to transfer and adjust the amount in the account of unit L-3B.

14. That the respondent has sent reminders letters for outstanding dues and execution of agreement to sell to the complainant on 17.02.2022, 23.02.2022 and 10.03.2022 respectively, but complainant has only paid Rs.18,00,000/- against the outstanding dues of Rs.48,51,000/- and the agreement to sell was also not executed by the complainant.
15. It is evident that the complainant has sent a legal notice on 27.07.2022, with regard to cancellation of unit due to non interest of complainant to proceed in the said project and asking for refund. That the respondent no.1 who was not even the party to that legal notice has sent a reply to the said legal notice.
16. The counsel for the respondent denied having any cash component by the respondent. Since, the complainant was not making payment of the outstanding dues and was not coming forward to execute the buyer's agreement, the respondent issued pre-cancellation letter dated 30.07.2022.
17. After, considering the documents available on record as well as submissions made by the parties, the Authority was in the view that the complainant did not come forward to finalize the booking formalities and to execute the buyer's agreement. Instead, the complainant through a legal notice made a request for refund of the entire paid-up amount on the account that the complainant is no longer interested in the said project way before the due date of possession i.e., 31.12.2024. As the complainant continued to breach the terms of application form, the respondent was constrained to terminate the allotment by issuing cancellation notice date 04.08.2022. That the complainant has paid Rs.18,00,000/- against the outstanding dues of Rs.48,51,000/-. The respondent refunded the entire amount of Rs.18,00,000/- without any deductions vide RTGS (UTR No.

KKBKR52022092800802418) on 28.09.2022. Due to some confusion, the amount of Rs.2,00,000/- was lying in the suspension account. Now, the amount of Rs.2,00,000/- was refunded to the complainant on 15.02.2023 vide RTGS (UTR No. ICICR52023021500395299).

18. The complainant needed to be vigilant before purchasing the unit and at this stage no relief can be granted in their favour for their negligence. The due procedure of law cannot be allowed to be misused by the litigants. Therefore, after considering the above said facts, the relief of refund is disallowed as the amount paid by the complainant has already been returned to the complainant by the respondent and the present complaint is dismissed being devoid of merits.

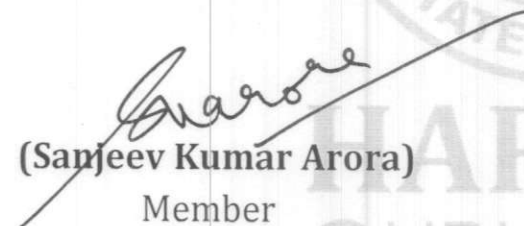
F.II Direct the respondent to pay the earnest money along with litigation charges of Rs.10,00,000/- (Ten lakh only) to the complainant.

19. The complainant is seeking relief w.r.t litigation charges in the aforesaid relief, 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. (supra)*, 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 complaint in respect of compensation.

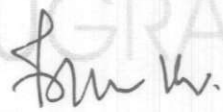
F.III Direct the Suspension of License of channel Partner "Chaaht Homes Infratech Private Limited".

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20. That the complainant is seeking the suspension of License of channel Partner "Chaat Homes Infratech Private Limited" which is not even a party to the present complaint and relief cannot be granted against a party which is not even pleaded in the complaint.
21. Moreover, suspension of license doesn't fall in jurisdiction of this Authority and for the same competent authority may be approached by the complainant. That the complainant does not come forward to finalize the booking formalities and to execute the buyer's agreement.
22. The complainant needed to be vigilant before purchasing the unit and at this stage no other relief can be granted in their favour for their negligence. The due procedure of law cannot be allowed to be misused by the litigants. Therefore, after considering the above said facts, the cancellation is held valid, and the present complaint is dismissed being devoid of merits. File be consigned to registry.
23. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2024