

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

Date of decision: 16.08.2024

NAME OF THE BUILDER		M/S NINANIYA ESTATES LTD.	
PROJECT NAME		Prism Portico	
S. No.	Case No.	Case title	Appearance
1	CR/5948/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
2	CR/5952/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
3	CR/5957/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
4	CR/5963/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
5	CR/5964/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
6	CR/5978/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
7	CR/5981/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
8	CR/5982/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
9	CR/5983/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
10	CR/5984/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
11	CR/5989/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
12	CR/5990/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
13	CR/6001/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal

			Sh. Vijender Parmar
14	CR/6002/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
15	CR/6020/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
16	CR/6021/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
17	CR/6025/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
18	CR/6026/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
19	CR/6027/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
20	CR/6622/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
21	CR/6662/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
22	CR/6689/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar
23	CR/6691/2022	Rajat Jain V/S Ninaniya Estates Ltd.	Sh. Animesh Goyal Sh. Vijender Parmar

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of the twenty three (23) complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be



- responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Prism Portico situated at Sector-89, Gurugram being developed by the same respondent/promoter i.e., M/S Ninaniya Estates Ltd. The terms and conditions of the application form fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit.
 - The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Prism Portico" at sector 89, Gurgaon, Haryana.
Project area	NA
DTCP License No.	NA
Rera Registered	Not Registered
Possession clause: NA	
Due date of possession: NA	
Occupation certificate: Not obtained	
Offer of possession: Not offered	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the	Relief Sought
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						complainant	
1.	CR/5948/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	612	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
2.	CR/5952/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	602	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
3.	CR/5957/ 2022 Rajat Jain V/S	523	550 sq. ft.	NA Payment receipt:	NA	TSC: - NA	Refund



	Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4			02.04.20 13			AP:- Rs. 8,93,017 /-	
4.	CR/5963/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	508	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	-	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
5.	CR/5964/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2	510	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA		TSC: - NA AP:- Rs. 8,93,017 /-	Refund



	Reply status: 18.04.202 4						
6.	CR/5978/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	521	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
7.	CR/5981/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	520	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
8.	CR/5982/ 2022	519	550 sq. ft.	NA Payment receipt:	NA	TSC: - NA	Refund



	Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4			02.04.20 13		AP:- Rs. 8,93,017 /-	
9.	CR/5983/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	518	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
10.	CR/5984/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2	517	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund



	Reply status: 18.04.2024						
11.	CR/5989/2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.2022 Reply status: 18.04.2024	516	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
12.	CR/5990/2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.2022 Reply status: 18.04.2024	514	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
13.	CR/6001/2022	512	550 sq. ft.	NA	NA	TSC: - NA	Refund



	Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4			Payment receipt: 02.04.20 13		AP:- Rs. 8,93,017 /-	
14.	CR/6002/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	511	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
15.	CR/6020/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2	507	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund



	Reply status: 18.04.202 4						
16.	CR/6021/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	506	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
17.	CR/6025/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	503	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
18.	CR/6026/ 2022	615	550 sq. ft.	NA	NA	TSC: - NA	Refund



	Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4			Payment receipt: 02.04.20 13		AP:- Rs. 8,93,017 /-	
19.	CR/6027/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	502	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
20.	CR/6622/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2	524	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund



	Reply status: 18.04.202 4						
21.	CR/6662/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	614	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
22.	CR/6689/ 2022 Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4	501	550 sq. ft.	NA Payment receipt: 02.04.20 13	NA	TSC: - NA AP:- Rs. 8,93,017 /-	Refund
23.	CR/6691/ 2022	522	550 sq. ft.	NA	NA	TSC: - NA	Refund



Rajat Jain V/S Ninaniya Estates Ltd. DOF: 09.09.202 2 Reply status: 18.04.202 4			Payment receipt: 02.04.20 13		AP:- Rs. 8,93,017 /-	
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)						

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/5948/2022 Rajat Jain V/S Ninaniya Estates Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Project and unit related details

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

CR/5948/2022 Rajat Jain V/S Ninaniya Estates Ltd.

S. N.	Particulars	Details
1.	Name and location of the project	"Prism Portico Executive Suite, Sector 89, Pataudi Road, Gurugram, Haryana
2.	RERA Registered/ not registered	Not Registered
3.	Date of agreement to sell	Not executed
4.	Payment receipt dated	02.04.2013 (page no. 17 of complaint)
5.	Unit no.	612 (page no. 17 of complaint)
6.	Unit area admeasuring	550 sq. ft.
7.	Possession clause	NA
8.	Due date of possession	NA
9.	Total sale consideration	NA
10.	Amount paid by the complainant	Rs. 8,93,017/- (as alleged by complainant)
11.	Reminders	07.04.2016, 08.06.2016 (Page no. 18-19 of reply)

12.	Cancellation letter	02.07.2016 (page no. 17 of reply)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

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

7. That the respondent specifically stated that the possession of the unit shall be delivered within 3 months of signing of the agreement to sell. The property dealers/agents hired by the respondent for marketing the project approached the complainant for booking a commercial suite in the project of the respondent showing them the rosy pictures.
8. That the application form for booking the said commercial suite was submitted and the respondent allotted apartment no. 612, in Prism Portico, Situated at Sector-89, Pataudi Road, Gurugram in the year 2013, but respondent did not issue any allotment letter despite being several requests made by the complainant for issuance of allotment letter. The complainant deposited a sum of Rs.5,00,000/- vide receipt dated 02.04.2013 to the respondent.
9. That the complainant further deposited a sum of Rs.3,93,017/- in this way the complainant deposited a total sum of Rs.8,93,017/- with the respondent.
10. That at the time of issuance of receipt dated 02.04.2013 of initial payment, the complainant was apprised that the possession of the unit complete in all respect would be handed over to the complainant within a period of 36

months from the date of issuance of receipt. The respondent also assured that the respondent would also execute a regular builder buyer agreement with the complainant with respect to the allotted unit in due course of time.

11. That however the respondent never came forward to execute the regular builder buyer agreement of the allotted unit with the complainant even after receiving huge amount as part sale consideration despite making repeated request to execute builder buyer agreement.
12. That however the respondent miserably failed to complete the unit within the agreed time and also failed to handover the possession of the same causing tremendous pressure upon the complainant and instead of performing its part of the obligations illegally and unauthorizedly pressurized the complainant to make further payment even without execution of the regular builder buyer agreement.
13. That looking into the fact that there was no development on the spot and even no construction work has started yet, the complainant lost in trust in the project. Hence, the complainant is requesting for refund of the amount paid by him.

C. Relief sought by the complainant: -

14. The complainant has sought following relief(s):
 - I. Direct the respondent to refund an amount paid by the complainant to the respondent i.e., Rs.8,93,017/- along with interest @ 18% p.a. from the date of payment till actual realization of the said amount.
15. 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.

16. That the present complaint is not maintainable before this Hon'ble Authority under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) and the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules").
17. That the complainant is also liable for the concealment of material fact from the Hon'ble Authority, as it has failed to disclose that it is the complainant who has not fulfilled his obligations and duties as an allottee as defined under the Act and has not paid the sale consideration as promised by him at the time of booking of the said unit. Therefore the present complaint is liable to be dismissed on this ground alone.
18. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
19. That evidently the booking of the said unit was done by the complainant in the year 2012 i.e. much prior to the enactment of RERA Act, 2016 and also much prior to the constitution of this Hon'ble Authority and therefore the present transaction as alleged in the present complaint was initiated and closed prior to the enactment of RERA Act, 2016 and therefore, this Hon'ble Authority cannot legally apply the provisions of the RERA Act, 2016 on the present transaction as the same shall amount the transgressions of its judicial powers into the field of legislature. It is to be noted here that the cancellation letter of the unit involved in the present complaint was already issued on 02.07.2016 i.e. prior to the enactment and enforcement of RERA Act, 2016, hence adjudication of the present complaint by this Hon'ble



Authority shall amount to the retrospective application of the substantive law, which otherwise is not allowed in the eyes of law and will not sustain the scrutiny of courts as well as principle of natural justice.

20. That respondent had requested the complainant to make the further payment after the booking amount towards the sale consideration of said unit on 16.04.2014, 07.04.2016 and 08.06.2016 by sending the demand letter to the complainant. However, the complainant failed to comply with the said demand letters by making the payment towards the sale consideration of said unit. Therefore, the complainant is now estopped as per the principal of estoppel from filing the present complaint being himself in default in the present complaint is liable to be dismissed.
21. That as per the settled law, the booking amount towards the said unit is liable to be forfeited by the respondent due to the continuous and persistent default committed by the complainant in adherence to the schedule of payment of the sale consideration towards the said unit as agreed by the complainant and therefore the complainant is now barred by law to claim any refund of the said amount which has already been forfeited by the respondent after giving due notice and opportunity to the complainant for the payment of sale consideration. Hence, the present complaint is liable to be dismissed on the sole ground only.
22. That the present complaint is also liable to be dismissed on the ground that prior to the filing of this complaint, the complainant never raised or made any demand for the refund of the said amount, which is the mandatory requirement before filing the present complaint for the refund of booking amount.
23. That the complainant does not come and fall in the category of the allottee



as defined section 2 (d) of RERA Act, as the complainant did not make the booking of said unit for his own use or for his personal purpose, but just invested the booking amount, in the said project, only four making profit in the commercial site by using the brand name of the respondent by selling it further for the margins. However, looking at the economic slowdown in the country at that particular point of time, it was the complainant who decided not to go ahead with the said project of the respondent by not making any further payment towards the sale consideration.

24. That the complainant be treated as 'Co-Promoter' and not as an 'Allottee', as the complainant has invested in the project just to earn profits from re-selling the commercial units. The sole motive of the complainant was to make profits from the project by the way of assured returns scheme.
25. It was the complainant who defaulted and endangered the entire project of the respondent by not making further payment for the said unit using the excuse of delay in construction and it is the complainant who has caused severe monetary loss and damage to the respondent as the respondent was forced to find out the alternate buyers of the said units in urgency on less market price and rates due to such breach committed by the complainant.
26. that the complainant booked 23 units in one go only with an intent to earn huge profits considering the opportunity of the future and in fact never had the intention to be the "allottee" in the said project by using this said 23 units for his own use and therefore, it was never the intention of complainant to took the physical possession of the completed units and it was always his plan just to invest the booking amount and earn margins by re-selling it further, even before the completion of the project as per market situation. However, the plans of the complainant failed due to the



slowdown in the market and the complainant finally decided to run away from the project.

27. That the present complaint is barred by limitation. The complainant has alleged that the booking of the said unit was done in the 16.07.2012 and the alleged possession of the unit was to be given not later than October, 2015 and therefore cause of action, if any, accrued in favour of the complainants in October 2012 and any alleged refund that was to be claimed by the complainant, that was legally allowed within the prescribed period of limitation of up to 3 years i.e. maximum till 2015. Therefore the prescribed limitation period for filing the legal proceeding has already been expired even before the constitution of this Hon'ble Authority.
28. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

29. 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

30. 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

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

Section 11

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

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

Section 34-Functions of the Authority:

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

32. 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.

33. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been

laid down as under:

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

34. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to refund an amount paid by the complainant to the respondent i.e., Rs.8,93,017/- along with interest @ 18% p.a. from the date of payment till actual realization of the said amount.

35. The complainant submits that he has paid an amount of Rs. 8,93,017/- for which receipt was issued by the respondent/builder on 02.04.2013. Thereafter no allotment letter was issued and no builder buyer agreement was executed between the parties. The complainant stopped making further payment to the respondent leading to the cancellation by the builder.

36. According to the respondent/builder, they assert that the complainant did indeed book a unit by paying Rs. 8,93,017/- on 02.04.2013, and a receipt was issued for this transaction. However, they claim that they never provided an allotment application form to the complainant. Instead, they sent several letters requesting payment of the remaining balance. Subsequently, after a prolonged period of waiting, they cancelled the unit on 02.07.2016 and forfeited the entire booking amount.
37. Upon perusal of the documents on record, the authority observes that the complainant paid Rs. 8,93,017/- for which the respondent/builder issued a receipt for this payment on 02.04.2013. However, despite this payment and issuance of a receipt, no allotment letter was provided, nor was a builder-buyer agreement executed between the parties. The respondent has failed to state any reason as to why an allotment letter was not issued by respondent despite receiving the said amount from the complainant. The complainant fulfilled their part of the agreement by making the initial payment, but the builder failed to provide the necessary documentation and formalize the transaction through an allotment letter or builder-buyer agreement. Without these crucial documents, the complainant may have been justified in withholding further payments.
38. Secondly, the respondent issued a cancellation letter dated 02.07.2016, stating that the commercial unit was cancelled due to the complainant's non-compliance with timely payment of allotment money and subsequent installments. However, the authority observes that no terms and conditions regarding payment plans were agreed upon between the parties.
39. This presents a discrepancy in the situation. If there were no agreed-upon terms and conditions regarding payment plans between the parties, then



the cancellation of the unit based on non-payment is unjustified. In the absence of a formal agreement outlining payment schedules and deadlines, the respondent may not have had grounds to cancel the unit solely due to non-payment.

40. The authority seems perplexed as to why the respondent forfeited the booking amount paid by the complainant without fulfilling their obligations and in the absence of any application form, allotment letter, or builder-buyer agreement (BBA). Forfeiting the booking amount without fulfilling obligations or providing essential documentation seems unjust.
41. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as ***Mr. Dinesh R. Humane and anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021***, the following has been observed:
- i. "In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction

in the instant case is not governed by Section 18 of RERA. **In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."**


42. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainant. Thus, the complainant is entitled to get refund of the entire amount paid by him along with interest at the prescribed rate.
43. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 8,93,017/- with interest at the rate of 11.10% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

H. Directions of the authority

44. 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):
- The respondent/promoter is directed to refund the amount received by it from the complainant in all 23 cases along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- 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.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. The complaints stand disposed of.
47. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2024

HARERA
GURUGRAM