

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

Complaint no. :	4477 of 2023
Date of complaint :	17.10.2023
Order pronounced on:	22.08.2024

Shakuntala Devi Golyan R/o: 34, Western Avenue, (Earlier known as 171-A, Sainik Farms), Sainik Farms, New Delhi-110062.	<b>Complainant</b>
Versus	
M/s Vatika Limited Registered office: Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase 1, Block -A, Mehrauli - Gurugram Road, Gurugram - 122002.	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Nitin Grover, CS	Complainant
Shri Venket Rao, 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Sovereign Next", Sector 82A, Gurugram
2.	Project area	34519.201 sq. mtr.
3.	Nature of project	Group Housing Colony
4.	DTCP license	62 of 2011 dated 02.07.2011 Valid upto
5.	License	M/s Vatika Limited
6.	RERA Registration	Registered Vide no. 280 of 2017 dated 09.10.2017 Valid upto
7.	Unit no.	902, 9th Floor, Tower-A (page no. 27 of reply)
8.	Unit admeasuring (super area)	3250 sq. ft. (page no. 27 of reply)
9.	Allotment letter	01.04.2013 (page no. 34 of reply)
10.	Date of execution of Buyer's agreement	31.05.2013 (page no. 25 of compliant)
11.	Possession clause	14 Schedule for possession of the said unit "The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said unit within four years Six months from the date of execution of this agreement, unless there shall be delay on account of non-receipt...: <b>(Empasis Supplied)</b>
12.	Due date of delivery of possession	31.11.2017 {Note: due date of possession is calculated from the date of execution of BBA}

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13.	Total Sale Consideration	Rs.2,07,25,500/- (page no. 27 of complaint)
14.	Amount Paid by allottee	Rs.80,59,974/- (as per SOA dated 20.03.2015 at page no.224 of complaint) (Note: This amount is exclusive of amount of Rs.29,50,000/- paid in cash as alleged by the complainant but failed to provide any document w.r.t to its payment.)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Request for refund (Through notice date 29.03.2017, received by the respondent on 22.04.2017)	22.04.2017 (As submitted in para 9 of list of dates at page 10 of complainant and also stated by both the counsels during the proceedings date 22.08.2024).

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint: -
- i. That the Complainant is a law-abiding citizen, and allottee, who has been cheated by the malpractices adopted by the respondent which is stated to be a builder and is allegedly carrying out a residential real estate Project.
  - ii. That the respondent is a company registered under Companies Act, 1956 having its registered office at Unit No. - A-002, INXT City Centre, Ground Floor, Block -A, Sector - 83, Vatika India Next Gurugram Haryana 122012 being promoter of the Project titled as The Sovereign Next ("Project").
  - iii. That in the April, 2013, the representative of the respondent approached the complainant and allured her to invest in the upcoming residential project (The Sovereign Next) upon the land at apartment no 902, 9th floor, Tower A, super area 3250 sq. ft., Sector 82-A, Gurgaon-122002. The representatives made lucrative offers of assured return and promised to deliver the possession of the unit in upcoming project of the respondent within 4 years and 6 months from the date of signing of the builder buyer agreement.

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- iv. That believing on the assurances and representations given by the representatives of the respondent the complainant booked apartment no 902 having super area admeasuring 3250q. ft, on 9thFloor in Tower A (said flat) in "The Sovereign Next" the project for basic sales consideration of Rs.2,07,25,500/-.
- v. That, as per "The Sovereign Next", the complainant paid the booking amount of Rs.20,10,255/- to the respondent vide cheque no.636656 dated 28.03.2013 along with the application form for allotment of Unit in the project.
- vi. That the complainant paid Rs.28,95,750/- to the respondent as the first instalment along with interest taxes and other charges vide cheque no.636689 dated 28.09.2013.
- vii. That the complainant further paid Rs.1,08,459/- vide cheque no.636690 dated 28.09.2013, Rs.12,051/- vide cheque no.898126 dated 06.03.2014, Rs.29,250/- vide challan no.02010 dated 06.03.2014, Rs.28,95,750/- vide cheque no.898142 dated 04.06.2014 and Rs.1,08,459/- vide cheque no.898144 dated 04.06.2014 towards the instalment along with interest taxes and other charges.
- viii. That the complainant also paid Rs.29,50,000/- in cash to be adjusted instead of the issue of receipts for PLC and parking of two cars.
- ix. The complaint paid total amount of Rs.1,10,09,974/- to respondent approx. more than 50% of sales consideration of the apartment no 902, 9th floor, Tower-A, The Sovereign Next, Sector 82A, Gurgaon, Haryana-122002 booked by the complainant in the project.
- x. That in term of the BBA, it is specifically mentioned that the company shall complete the construction of the project within 4 Years and 6 months from the date of the signing of builder buyer agreement.



- xi. The complainant has also filed a suit against respondent before the Hon'ble District Court, Delhi under section 156(3) of The Code Criminal Procedure, 1973 regarding criminal cases for misappropriation of funds, frauds and cheating etc.
- xii. That notice is served to the opposite party for refund dated 22.04.2017 as the current situation of the project is still very bad, The Complainant's Grandson has visited the site too many times but the construction is not yet completed and the occupation certificate is also pending even after completion of (6) six years from the promised date of the delivery of the project by the builder (as per the clause 14 of the builder buyer agreement). The complainant was shocked to see the construction progress which is very far from the completion.
- xiii. That One-sided buyer's agreement has been one of the core concerns of the buyers in the real estate project. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the builder imposes unfair and discriminatory terms and conditions. **Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs UOI and Ors** (W.P 2737 of 2017) Wherein the Bombay HC bench held that: Para 181...

*"Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements"*

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- xiv. The complainant was allured by a scheme of "The Sovereign Next" wherein complainant was informed that the basic sale price for the space in the apartment no. 902, on 9<sup>th</sup> floor would be Rs.2,07,25,500/- and the complainant would be entitled for this scheme which turned to be a hoax and fraud. Believing the plain words of respondent in utter good faith, the complainant was duped of their hard-earned monies which they saved from bonafide resources.
- xv. From the above it is abundantly clear that the respondent has shown the rosy picture about project and committed to refund the amount paid towards booked apartment under The Sovereign Next, extracted the amount of Rs.1,10,09,974/- from innocent buyer by giving false milestone and commitment and wish to do by executing illegal, unilateral, one-sided BBA agreement (unregistered).

**C. Relief sought by the complainants: -**

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

- a. Direct and order the respondent to immediately refund hard earned money of the complainant paid to the respondent amounting to Rs.1,10,09,974/-.
  - b. Direct and order the opposite party to pay Rs.1,59,71,684/- as an interest calculated @15% p.a.
  - c. The complainant is 80 years old super senior citizen who was cheated of her life's and hard-earned savings by the opposite party therefore we pray before you to take fast-track action against the opposite party.
  - d. Any other relief as decided by the hon'ble Authority.
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.

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**D. Reply by the respondent.**

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

- i. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed.
- ii. That the complainant had filed the present complaint with oblique motive of harassing the respondent and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
- iii. That the complainant herein has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter.
- iv. That the complainant has not approached the Ld. Haryana Real Estate Regulatory Authority, with clean hands and has suppressed the relevant material facts. That the complaint under reply is devoid of merits and the same should be dismissed with cost.
- v. That the complainant has concealed the true and correct fact from the Ld. Authority by giving wrong statement on oath that the complainant has not filed any case or is pending before any court of law or any other tribunal or authority. That the complainant had filed a consumer case before National Consumer Disputes Redressal Commission (NCDRC) bearing no. CC No. 868 of 2018 titled as "Shakuntala Devi Golyan Vs M/s. Vatika Limited & Anr." on the same facts, material and prayer, which was later on dismissed by the Hon'ble NCDRC vide order dated 02.03.2023 for non-prosecution. Also, the complainant had filed a criminal complaint bearing no. C.C. No. 5444/2020 title as "Shakuntala Devi Golyan vs. M/s. Vatika Ltd. & Anr." before Ld. M.M, South East District, Saket District Court, New Delhi, wherein the Ld. M.M had summoned the respondent vide order dated 23.10.2021.

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- vi. That filing of numerous cases for same subject unit with same facts, material, cause of action, prayer before different forum and not pursuing the said cases, clearly shows that the complainant is a habitual litigant and is guilty of forum shopping.
- vii. That the principle of res sub-judice restricts a court from proceeding with the trial of any suit, in which the subject matter, is directly or substantially same as the previously instituted suit between the same parties, in a competent court.
- viii. The complainant herein has already instituted a suit with the same subject matter against the same party before the National Consumer Disputes Redressal Commission and Hon'ble District Court, Saket, New Delhi and has also filed the present complaint before the Ld. Authority. The complainant herein is trying to get two different reliefs on the same subject matter against the same parties, therefore the present complaint shall be dismissed as infructuous.
- ix. That as per the provision of section 10 of the Civil Procedure Code, 1908, the complainant cannot proceed with the present complaint as the same is pending before the Hon'ble District Court, Delhi and is yet to be adjudicated by the Hon'ble District Court, Delhi on the merits. Hence, the objective of the legislation is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine the complainant to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.
- x. The Hon'ble Supreme Court through various judgments has observed that if an aggrieved individual initiates the civil and criminal proceedings

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simultaneously, then the criminal proceedings shall be given precedence over the civil proceedings. Moreover, the civil and criminal proceedings can only be initiated simultaneously, if the aggrieved has different reliefs or purposes for filing them, which is not the case herein.

- xi. That around the year 2013, the complainant learned about the group housing colony launched by the respondent, titled as "Sovereign Next", which is part of the integrated township 'Vatika India Next', situated at Sector 82A, Gurugram, and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the project and were satisfied with every proposal demanded necessary for the development.
- xii. That after having keen interest in the project being developed by the respondent and post being satisfied with the specifications of the project, the complainant decided to book a unit vide application form dated 01.04.2013.
- xiii. Thereafter, the respondent on the same day, vide allotment letter dated 01.04.2013, allotted a unit bearing no. 902, 9th floor, Tower A, admeasuring super area of 3250 sq. ft., in the aforesaid project.
- xiv. That on 31.05.2013, builder buyer agreement, was executed between the both the parties, for the subject unit having basic sale consideration of Rs.2,07,25,500/-. That as per clause 11 of the agreement, time is the essence for payment of installment due by the complainant against the unit as per the agreed payment schedule in the agreement.
- xv. That as per clause 14 of the agreement, the possession was proposed to be handed over within a period of 4 years and 6 months from the date of execution of the agreement unless there shall be delay or there shall be failure due to reasons beyond the control of developer or due to

government rules, orders etc. or due to failure of allottee(s) to pay in time the price of the unit along with all other charges and dues in accordance with the schedule of the payment.

- xvi. That the date of offering possession was to be calculated from the date of execution of the agreement and the respondent herein shall be entitled for extension for such period of delay caused due to force majeure circumstances, which were beyond the control of developer and also due to default in payments by the complainant. The same is explained herein below in detail.
- xvii. That the complainant is defaulting in making timely payments from initial stages of booking. Therefore, the delay in handing over of possession was also due to the delayed payments of the complainant and other allottees who booked the villa in the project.
- xviii. That despite the above-mentioned delay in payments by the complainant, the respondent was determined to complete the project within the estimated time period. During the construction of the project, respondent on 22.04.2017, received a legal notice dated 29.03.2017 by the complainant, demanding the respondent to refund a voluntarily determined amount of Rs.2,51,90,257/-. That the complainant had approached the respondent for the refund of the amount before the estimated date of possession as per the agreement, by stating non-evidentiary statements against the respondent.
- xix. It is pertinent to bring into the attention of the Ld. Authority that the complainant herein had already wanted to exit from the project in question at pre-mature stage and had requested for cancellation of the unit in question.
- xx. It is a settled law that when the refund is claimed before the estimated date of possession as per the agreement by the allottee, then refund, if allowed,

shall be after necessary deductions i.e., earnest money, brokerage paid, taxes, interest accrued on delay payment and other non-refundable charges and without any interest. The Ld. Authority, while allowing refund in the similar case in the complaint case no. CR/2233/2019 and CR/3866/2021 titled as 'Neo Developers Pvt Ltd vs. Vikas Choudhary', allowed refund after deduction of earnest money along with interest on delayed payment. Even this Ld. Authority while passing regulations pertaining to the deductions of the earnest money has rightly upheld that the respondent herein is entitled to deduct the earnest money and refund after making necessary deductions.

- xxi. That during the long ongoing litigations, the respondent on various occasions have requested the complainant to meet the respondent in office to reach a mutual settlement, to which the complainant promised to be available but never fulfilled the said promise.
- xxii. As the complainant remained unresponsive to the respondent, the respondent was compelled to issue invoice dated 13.02.2018, as per the agreed payment schedule, for the payment of Rs.21,84,000/-, on casting of 10th floor roof slab by 10.03.2018, which the complainant failed to pay. After numerous verbal reminders, the respondent was constrained to issue reminder letter dated 02.04.2018, requesting the complainant to pay the outstanding due amount of Rs.23,44,329/- against the subject unit, within 7 days of receipt of the letter, which remains unpaid till date.
- xxiii. Further, on 14.11.2018, the respondent issued invoice for the payment of Rs.32,76,000/- by 01.12.2018, which the complainant failed to do so. The respondent then after non-payment of dues, sent a reminder letter dated 24.06.2019, requesting the complainant to clear the pending dues of Rs.88,51,551.36/-, which remains unpaid till date.

- xxiv. That the complainant stopped responding to the respondent and his last payment was made on 20.06.2014. The complainant has till now paid an amount of Rs.80,59,974/- to the respondent against the total sale consideration.
- xxv. That the respondent was committed to complete the development of the project and handover the possession with the proposed timelines. It is pertinent to apprise the Ld. Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
- xxvi. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That it is pertinent to mention herein that such delay was not intentional. That the respondent was bound to adhere with the order and notifications of the Courts and the Government.

S. NO	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 - 16.11.2016 [8 days]
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 - Ban was lifted after 10 days [10 days]
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC),	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)



	Department of Environment, Government of NCT of Delhi /14.06.2018		
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr.Bhure Lal, Chairman	Complete Ban	01.11.2019 - 05.11.2019 (5 days)
9.	Supreme Court - 04.11.2019	M. C. Mehta Vs. Union of India W.P. (c) 13029/1985	04.11.2019 - 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India - Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021	3 months
<b>TOTAL</b>			<b>1.7years (approx.)</b>

xxvii. That as per the table shown hereinabove, the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date to offer possession to the complainant. That after considering the above delay, the date to offer possession has to be extended by approximately 1.7 years.

xxviii. Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress

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of the completion of the project. Despite facing shortage in workforce, materials and transportation, the respondent managed to complete the construction work. That the respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.

- xxix. That all these factors being force majeure may be taken into consideration for the calculation of the period of the construction of the project. It may also be noted that the respondent had carried out its obligations in agreement with utmost diligence.
- xxx. That it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld. Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true color of intention of the complainant.
- xxxi. That the complainant herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Ld. Authority for the reasons stated above. That none of the reliefs as prayed for by the complainant are sustainable before this Ld. Authority and in the interest of justice.
- xxxii. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
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.1 Objection regarding delay in project due to force majeure circumstances.**

13. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, demonetization, GST, adverse effects of Covid-19 etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR on account of the environmental conditions, are for short duration, and thus, cannot be said to impact the respondent leading to such a delay in the completion. Secondly, the events of demonetization and implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid on merits. Thirdly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was much prior to the event of outbreak of a pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Lastly, due to default by some allottees for not being regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/ respondent cannot be



given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

**G. Findings on the relief sought by the complainants.**

**G.I Direct the respondent to refund the paid amount along with interest at the rate of MCLR+2% per annum.**

**G.II Any other relief as Hon'ble Authority may deems fit.**

14. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. 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. Section 18(1) proviso reads as under.

***“Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot or building,*

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

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

*he shall be liable on demand 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”*

16. 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 notice dated 29.03.2017 received by the respondent-promoter on 22.04.2017 (as submitted by both the parties), the respondent-promoter failed to refund the amount paid by the complainant, failing which the complainant-allottee filed the

present complaint and hence the complainant-allottee is entitle for the refund.

17. The complainant was allotted a unit bearing no. 902, 9<sup>th</sup> floor, Tower-A, having super area 3250 sq. ft., under construction linked payment plan and a builder buyer's agreement was executed between the parties on 31.05.2013, on the above-mentioned unit. The complainant-allottee had paid an amount of Rs.80,59,974/- as per SOA dated 20.03.2015 and Rs.29,50,000/- paid in cash to the respondent as alleged by the complainant, against the total sale consideration of Rs.2,07,25,500/-. However, the complainant has failed to provide any proof with respect to the payment of Rs.29,50,000/- made in cash to the respondent and thus, the authority cannot consider that the said amount was ever paid by the complainant-allottee to the respondent-promoter. As per clause 14 of the agreement, the respondent was required to complete the construction of the residential floor within a period of 4 years and 6 months from the date of execution of this agreement. Therefore, the due date of possession comes out to be 31.11.2017. However, In the complaint the complainant has submitted in para 9 of list of dates at page 10 of complainant and also stated by both the counsels during the proceedings date 22.08.2024 that the complainant has already sought refund of the paid-up amount with interest vide notice date 29.03.2017 served to the respondent-promoter on 22.04.2017 i.e., before the due date of possession.
18. 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.

19. 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 fulfilment, 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."*

20. 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/438/2019 Ramesh Malhotra VS. Emaar MGF Land Limited**

(decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**

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

21. 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 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 request for withdrawal/surrender i.e., 22.04.2017 till the actual date of refund of the

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

**H. Directions of the authority**

22. 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 i.e. Rs.80,59,974/- to the complainant after deduction of 10% of the sale consideration as earnest money along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Rules, 2017, from the date of surrender i.e., 22.04.2017 till its actual realization.
- ii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the above-mentioned amount to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.
- iii. 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.

23. Complaints stand disposed of.

24. File be consigned to registry.

Dated: 22.08.2024

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