BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision:	24.09.2024

NAME OF THE BUILDER		TATA HOUSING DEVELOPMENT COMPANY LTD.	
PROJECT NAME		TATA PRIMANTI	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5248/2022	Pranab Pal & Prabir Kundu V/s TATA Housing Development Company Limited.	Ms. Ritu Kapoor Sh. Sumesh Malhotra
2.	CR/5250/2022	Pranab Pal & Prabir Kundu V/s TATA Housing Development Company Limited	Ms. Ritu Kapoor Sh. Sumesh Malhotra

CORAM:	
Shri. Arun Kumar	**Chairperson**
Shri. Vijay Kumar Goyal	**Member**
Shri. Ashok Sangwan	**Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA 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.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'TATA PRIMANTI' being developed by the same respondent promoters i.e., M/s TATA Housing Development Company Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	**"TATA PRIMANTI", Sector 72, Gurugram, Haryana.**	
Possession Clause: 4.2 Possession Time and Compensation THDCL shall endeavour to give possession of the said premises to the Purchaser(s) ***on or before October 2017*** and after providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and reasons beyond the control of THDCL. (Page no. 48 of the written submission filed by the complainant)		
Occupation Certificate: Not annexed		
Comp no.	**CR/5248/2022**	**CR/5250/2022**
Original unit allotted	T6-1401, 13th floor, tower-6 admeasuring 2550 sq. ft. [pg. 30 of complaint]	T5-1401, 13th floor, tower-5 admeasuring 2550 sq. ft. [pg. 30 of complaint]
Date of allotment w.r.t. original unit	31.03.2013 [pg. 24 of complaint]	31.03.2013 [pg. 20 of complaint]
Date of BBA w.r.t. original unit	21.01.2014	21.01.2014 [it is alleged by the complainant at pg. 7 of the complaint that the

	[pg. 28 of complaint]	BBA was taken back by the respondent while executing the new BBA w.r.t. the new allotted unit]
Sale consideration of original unit	₹ 2,45,88,500/- [pg. 33 of complaint]	₹ 2,45,88,500/- [pg. 5 of reply]
Request of complainant for change of unit in another tower	The complainants on 15.04.2015 mailed to the respondent for cancellation of the said unit without deduction and adjust the amount paid for the said unit against the unit in Tower 5.	Earlier to the request of the complainants to adjust the amount paid by them for the unit in T6 against unit in T5 they requested the respondent to upgrade the unit in T5 to unit no. 2304 in T7 in order to avail the change of payment plan from construction link to possession link.
New unit allotted	T7-1004, 10th floor, tower 7 admeasuring 3320 sq. ft. [pg. 97 of complaint]	T7-2304, 23rd floor, tower 7 admeasuring 3320 sq. ft. [pg. 46 of reply]
Basic sale price	₹ 2,72,24,000/- [pg. 113 of complaint as per the payment plan sent by the respondent annexed with mail dated 11.02.2019]	₹ 3,24,86,200/- [as per BBA at exhibit 1 of written arguments filed by the complainants]
Total Sale consideration of new unit	₹ 2,83,22,920 [pg. 113 of complaint as per the payment plan sent by the respondent	₹ 3,59,88,800/-

	annexed with mail dated 11.02.2019]	[as per BBA at exhibit 1 of written arguments filed by the complainants]
Amount paid by the complainants	₹ 1,14,42,308/- [as per the SOA dated 09.02.2016 at pg. 104 of complaint]	₹ 1,31,68,219/- [as per the SOA dated 02.11.2017 at pg. 71 of complaint]
Allotment letter w.r.t. the new allotted unit	07.01.2016 [pg. 97 of complaint]	16.01.2015 [pg. 46 of reply]
BBA w.r.t. new unit	02.03.2015 [alleged by the respondent at pg. 8 of reply]	05.05.2018 [exhibit 1 of written arguments filed by the complainants]
Offer of possession w.r.t. new unit	19.03.2018 [pg. 100 of complaint]	19.03.2018 [pg. 41 of complaint]
Reminders	06.08.2018, 21.08.2018, 11.09.2018	06.08.2018, 21.08.2018, 11.09.2018
Legal notice for refund	09.04.2020 [pg. 122 of complaint]	09.04.2020 [pg. 55 of complaint]
Cancellation letter	16.10.2020 [pg. 137 of complaint]	16.10.2020 [pg. 67 of complaint]
Third party rights created	30.09.2020 [pg. 11 of reply]	25.09.2020 [pg. 10 of reply]
Brokerage Charges	₹ 5,78,136/- [pg. 140 of complaint]	₹ 8,36,345/- [pg. 47 of complaint]
1. Direct the respondent to refund the amount paid by the complainant against the subject unit along with interest. **2. Direct the respondent to pay an amount of ₹ 1,50,000/- as litigation cost.**		

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 allottees 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 complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/5248/2022 titled as Pranab Pal & Praveen Kundu V/s TATA Housing Development Company Limited.*** are being taken into consideration for determining the rights of the allottees qua refund of the paid up amount.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/5248/2022 titled as Pranab Pal & Praveen Kundu V/s TATA Housing Development Company Limited.

S. N.	Particulars	Details
1.	Name of the project	Tata Primanti, Sector- 72, Gurugram
2.	Nature of the project	Residential group housing colony
3.	RERA Registered/ not registered	Registered vide no. 98 of 2017 dated 28.08.2017
4.	RERA registration valid up to	30.06.2020
5.	Unit no.	T6-1401, 13th Floor in Tower- T6 (Page no. 30 of the complaint)
6.	Unit area admeasuring	2550 sq. ft.
7.	Date of allotment letter in respect of unit no. T6-1401	31.03.2013 (Page no. 24 of the complaint)

8.	Date of execution of BBA	21.01.2014 (Page no. 28 of the complaint)
9.	Possession clause	**4.2 Possession, Time, and Compensation** **(a)** THDCL shall endeavour to give possession of the said premises to the purchaser(s) on or before **October 2017** and after providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and reasons beyond the control of THDCL. [Page 39 of complaint]
10.	Due date of possession	31.10.2017+ 6 months grace period allowed = 30.04.2018 (As mentioned in the buyer's agreement)
11.	The complainant informed the respondent that due to financial and medical distress, cancel the allotment in tower 6 and hold another unit in tower 5	Email dated 15.04.2015 [Page 92 of complaint]
12.	**Note:** The respondent instead of acceding to the request of the complainant, offered "Possession linked plan" and agreed to shift to bigger sized apartments in the same project.	

13.	Allotment letter in respect of the **new residential unit bearing no. 04, 10th floor, tower 7** (Unit no. 7-1004) measuring 3320 sq. ft.	07.01.2016 [Page 97 of complaint]
14.	Apartment buyer's agreement with respect to the new unit T7-1004	02.03.2015 [Page 8 of reply]
15.	Possession	Due on or before October 2017 subject to force majeure events [Admitted by the respondent on page 8 of reply]
16.	Occupation certificate /Completion certificate	Not annexed
17.	Offer of possession in respect of unit no. "7-1004" admeasuring 3320 sq. ft. in the project 'Primanti'	19.03.2018 (Page no. 100 of the complaint)
18.	**Note**: Upon intimation by one of the friends, the complainant got to know that the respondent is selling identical unit to someone else @ Rs.2.70 Cr., the complainant sent an **email dated 11.04.2019** seeking refund of the complete amount or to reduce the price of the unit and to cancel one unit (Unit no. 2304) out of the two units and credit the full amount towards the other unit. [Page 109 of complaint]	

19.	The respondent cancelled unit bearing no. 1004 vide email dated	23.03.2020 [Page 121 of complaint]
20.	Legal notice send by the complainant seeking refund of the entire amount of Rs.1,26,97,249/- along with interest @ 18%	09.04.2020 (Page no. 122 of the complaint)
21.	Cancellation letter & refund letter dated	16.10.2020 [Page 137 of complaint] **Note:** The respondent sent a DD amounting to Rs.64,72,710/- dated 28.09.2020 for unit no. T7-1004 which has **not been encashed by the complainants.**
22.	Total sale consideration of as per payment plan annexed with mail dated 11.02.2019	₹ 2,83,22,920/- [Page no. 113 of the complaint]
23.	Amount paid by the complainant	₹ 1,14,42,308/- [as per SOA dated 09.02.2016 at pg. 104 of complaint]
24.	Third party rights created by issuing allotment letter dated	30.09.2020 [Admitted by the respondent on page 11 of reply]

B. Facts of the complaint

7. The complainants have submitted as under:

a. That in 2012, the complainants initiated the discussions for real-estate opportunities in Tata Housing Development Company Ltd. (Haryana) through a real estate agent for Residential Purpose, Real-estate consultant shared information for an upcoming real-estate project by M/S Tata Housing Development Company Ltd the promoter/developer of the Real Estate Project namely "TATA PRIMANTI' in Sector-72, Gurgaon (Haryana).

b. That the Complainants initiated the booking process on 06.11.2012 with sum of Rs. 20 Lakhs through cheque No. 62026 of ICICI Bank, 20245 of Allahabad Bank, 467457 of Standard Charted Bank, 132967 of HDFC Bank. After the payment of booking amount the Complainants were allotted Unit No-1401 in Tower No. 6 having an Area of 2550 Sq. Yds., 3-BHK Flat, in the project namely "TATA PRIMANTI" in Sector- 72 under "Construction Linked Plan". This is pertinent to mention here that the one of the complainant in the present complaint, Mr. Pranab Pal had also purchased one more apartment in the same residential accommodation at the same time, jointly with his wife i.e. Unit No-1401 in Tower No.5 having an Area of 2550 Sq. Yds., 3-BHK Flat, in the project namely TATA PRIMANTI in Sector- 72 under Construction Linked Plan.

c. That after the payments were made by the Complainants, Builder Buyer's Agreement was executed on 21* January 2014, between Tata Housing Development Company Ltd. (Respondent) through authorized representative of the Respondent and Complainants (Pranab Kumar Pal & Prabir Kundu) for Unit No-1401 in Tower-6 having an Area of 2550 Sq. Yds., 3-BHK Flat, was allotted to the

Complainants. The Total Consideration for the Unit was Rs. 2,45,88,500/- including BSP (Rs. 8550), PLC (Rs. 295), EDC & IDC (Rs. 325), IBMS (Rs. 100) and Two Car Parking slots (9.50 Lacs).

d. That payment of sum of Rs. 1,26,97,249/- was made by the Complainants up to 31 October, 2014, for the Unit-1401 in Tower-6 which was 50.7% of the Total Consideration of Rs.2,45,88,500/-.

e. That after the last payment of Rs. 37,90,175/- for Unit No.-1401 in Tower-6 by the Complainants, suddenly the Respondent started floating an advertisement with the "Possession Linked Plan" wherein 25% is to be paid at the time of booking or execution of agreement to sale and the balance 75% will be payable at the time of possession. On this the Complainants approached the Respondent and asked for the same offer, to which the respondent refused and stated that this offer is only for the new buyers. By this time the complainants had already paid over 50% of the total consideration for each unit. The complainants again tried to make a request to the respondent to which he offered new proposal according to which the existing unit of Tower 6 will be transferred into bigger unit in the same project and then only the complainants will fall under a new scheme which is for new buyers. In that case the complainants will be able to avail the scheme of 25:75. But at the time of this particular shifting the respondent changed his stand and asked for 35:65 ratio, higher tate and asked the complainants to pay for the parking camouflaged under the BSP rate since the Hon'ble Supreme Court had directed that Parking cannot be charged extra. It is also pertinent to mention that the complainant had bought the said flats

@ 8550/- per square feet (BSP) instead of Rs. 10,000/- and but now the respondent asked/ offered to purchase the bigger unit @ 10,628/- instead of 10,000/- which ultimately costed 2078/- extra per sq. feet to the complainants just because of this shifting process.

f. That during this time in 2014, when the discussions for shifting was ongoing, the Complainant suffered two successive heart attacks and had to undergo several cardiac procedures. This had put severe financial stress on the family and therefore the Complainants requested by email dated 15th Apr 2015 to cancel the Unit-1401 in Tower-6 with zero penalty on humanitarian grounds and continue to hold the Unit-1401 in Tower-S. A part of the refund from the cancellation of Unit-1401 in Tower-6 may be utilized towards balance payment for Unit-1401 in Tower-S and the balance may please be refunded since it would help the Complainants to pay for the medical expenses.

g. This was not accepted by the Respondent and instead they offered to execute the aforementioned "Possession Linked Plan" at a much higher rate. The Complainants had no option but to accept the said offer and agreed for this shift to bigger sized apartments in the same project but at a much higher rate.

h. That the Complainants signed the new agreement for sale (Apartment Buyers' Agreement) dated 02/03/2015 (Stamp paper date) for the unit No.1004 in Tower-7 and sent it to THDCL for them to countersign and return one original copy for records. Which is still not received with the countersigned Agreement for sale (Apartment Buyers' Agreement) for unit no. 1004 in Tower-7 till date.

i. That the date of possession in the Agreement for sale (Apartment Buyers' Agreement) for the above-mentioned unit was October, 2017 but the same was not delivered on the committed date. That THDCL sent an email dated 22/03/2018 informing that the offer of possession dated 19/03/2018 has been dispatched, even before the date of Agreement for sale (Apartment Buyers' Agreement) for each unit was countersigned and returned in original to the complainants shows the malafide and wrongful intention of THDCL.

j. That THDCL as per their account statement dated gi February 2016 did not update one of the payments made for apartment No. 1004 in Tower -1 i.., Rs. 12,54,941/- which was made by the complainant through cheque No. 363546 of Royal Bank of Scotland, New Delhi dated 28th September, 2014 against Unit No.1401 in Tower-6 in 2014.

k. That the Complainants were subsequently made aware by his friends that THDCL is selling identical Unit in the same Tower for an all-inclusive price of Rs. 2.70 Crores against Rs. 3,30,48,940/- for units No. 1004 in Tower-7, which made the complainant feel cheated then the Complainant requested THDCL through Mail dated 11th April, 2019 to cancel the Agreement for Sale (Apartment Buyers' Agreement) and refund the complete amount paid by the complainants or else requesting to reduce the price to an all-inclusive price of Rs. 2.70 crores per unit & also cancel one unit (unit no. 2304) out of the two units and credit the full amount towards the other unit (Unit no. 1004).

l. That to his utter shock the complainant received a cancellation letter dated 06/03/2020 which was received on 11.03.2020, and immediately upon receipt of the said letters on 11.03.2020, the Complainant met officials of THDCL on 14.03.2020 to discuss the mail sent by the complainant on 11.04.2019 and other issues like non receipt of Agreement for Sale (Apartment Buyers' Agreement) for Unit 1004 and wrong dates on the other non-credit of amounts already paid and refund of the amount. That during the meeting THDCL agreed to the request made to THDCL by the complainant on 11th April, 2019 that they would cancel 2304 unit in Tower - 7 and credit and adjust the refund amount in unit no. 1004 of Tower -7.

m. That THDCL in an arbitrary manner sent a mail dated 23.03.2020, to cancel Unit No. 2304 with 7.5% cancellation charges/fee plus other charges like GST, Sales expenses, brokerage etc. on forfeited amount, taxes billed including HVAT and Brokerage Paid including GST etc and adjust the balance refund in favour of Unit No 1004, Tower-7. The forfeited amount for Unit 2304 was Rs. 46,66,612/- as per email dated 20.03.2020. The Complainant sent an email on 23.03.2020 that in view of the country wide lockdown owing to outbreak of COVID-19, he is not a position to action the matter.

n. That the Complainant sent a legal notice to THDCL dated 09.04.2020 by email which was responded on 22.07.2020 regarding the above-mentioned issues he was facing in even after putting his hard-earned money is fake projects which were sold at a very lower rate after the cheating done with the complainant.

o. That thereafter the Complainant received cancellation Letter & refund letter dated 16.10.2020 for both units wherein 10% cancellation charges /fee plus other charges like GST on Forfeited Amount, Taxes billed including HV AT and Brokerage Paid Including GST ete. have been levied illegally and has forfeited Rs. 49,35,841/- (38.87%) for Unit-1004 against payment of Rs. 1,26,97,249/- which has been shown as Rs. 1,14,08,550/- by THDCL in their statement of account. To cover up his own mistakes the Respondent sent DD of Rs. 64,72,710/- dated 28th Sep 2020 for Unit 1004 in Tower-7, which has not been encashed by the Complainants.

p. That the Complainant again wrote an email dated 29th July 2021 to Mr. Banamali Agarwala, President of THDCL requesting his intervention and condonation fees & charges imposed by THDCL. That in response to this mail dated 29th July 2021, Mr. Rajan Kapoor - Asstt. Vice President of THDCL responded on 12th Aug 2021 requesting for 1-weeks time. Again, Mr. Rajan Kapoor wrote another mail dated 27 Aug 2021 requesting for more time to address the issues raised by the Complainants. Finally, a reply was sent on 15 Sep 2021 by Mr. Rajan Kapoor regretting any further consideration.

q. The complainant visited the office of the respondent several times for further discussion with the Respondent, but no response was received from the Respondent, after feeling helpless and going through mental, physical and financial harassment the Complainant decided to file the said case. The Complainant felt helpless as he had invested all his hard-earned money in the fraudulent project, and there was no chance that he could recover his invested money from

the Respondent so out of this helplessness the Complainant decided to approach the Hon'ble Court.

r. That it is also pertinent to mention that already the complainants had adjusted a lot while accepting this offer to buy bigger units to such an extent that he only had to bear the loss.

s. That in this way from last ten years the Complainant's hard-earned money of Rs. 1,26,97,249/- is stuck with the Respondent since 2012 and in return the Complainants has neither receive the house nor money till now. Statement of account is already attached.

t. That the Complainant has suffered great hardship and mental agony due to the acts of the Respondent. Respondent have used the money collected from the Complainant for the purposes other than the construction of the Project. The Complainant is seeking adequate relief for being deprived of the money by the Respondents, which was paid for the residential unit.

u. That the cause of action accrued in favour of the Complainants who booked these two units based on the representations of the Respondent and possession of the said flat was due on Oct. 2017. And the Refund of money has not been given to the Complainant till date, the cause of action is still continuing.

C. Relief sought by the complainant:

8. The complainants have sought following relief(s):

a. Direct the respondent to refund the amount paid by the complainant against the subject unit along with interest.

b. Direct the respondent to pay an amount of ₹ 1,50,000/- as litigation cost.

9. On the date of hearing, the authority explained to the respondent /promoters 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.

10. The respondent has contested the complaint on the following grounds:

a. That the Respondent – Tata Housing Development Company Limited, is filing the instant written statement. The Complainants have filed the captioned complaint replete with misleading statements, false and concocted averments and submissions with a clear intent to abuse the process of law and exploit the benevolence of the Hon'ble Authority by dragging the Respondent before present forum without any just cause of action or right. Nevertheless, the instant written statement, to avoid any liability, is being filed as an abundant precaution on behalf of the Respondent through its duly Authorized Representative even though the Complainants have no right against the Respondent.

b. That the Tata Housing Development Company (Respondent) is a law-abiding, compliant, and ethical company and has been honoring all its obligations as well as conforming to all or any directions by any government or local or other authority, as the case may be, from time to time. The Respondent while submitting its reply/Written statement as herein, reposes its confidence in and affirms its commitment to the justice of this Hon'ble forum and at the same time undertakes that it shall not let the Complainants abuse or undermine the sanctity, benevolence, and judicial wisdom of the Hon'ble

Authority. The present written statement for and on behalf of the Respondent is being filed through Sanjana Mago, who has been duly authorized by the Respondent vide its Letter of Authority dated 10.11.2021, to inter-alia sign and verify the present written statement and to do all such acts ancillary thereto.

c. At the outset, the Respondent denies each and every statement, submissions, averment and contentions set forth in the Complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the Respondent in the present written statement. The Respondent further humbly submits that the averments and contentions, as stated in the Complaint under reply, may not be deemed to have been admitted by the Respondent, save and except what are expressly and specifically admitted, and the rest may be read as travesty of facts and expressly denied. The Complainants may be put to strict proof in respect thereof.

d. It is further stated and submitted that the purported Complaint filed by the Complainants is not maintainable and the Hon'ble forum ought not to entertain the same for the following amongst other preliminary objections and submissions, which are urged in the alternative and without prejudice to one another, before replying on merits to the Complaint of the Complainants.

e. At the outset it is stated that the present Complaint filed by the Complainants is not maintainable, wholly misconceived, erroneous, unjustified, devoid of merit, untenable in law and suffers from concealment of facts, besides being extraneous and irrelevant having

regard to the facts and circumstances of the case under reference and is thus, liable to be dismissed at the very threshold.

f. That it is most respectfully submitted here that the Complainants have approached the Hon'ble Forum with unclean hands and have tried to mislead the Hon'ble Forum by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of "suppression very and suggestio falsi". The Complainant has suppressed and/or mis-stated the facts and, as such, the Complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the Complaint is liable to be rejected/dismissed. The correct facts are set out in the succeeding paras of the present reply. It is settled law as held by the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1) that non-disclosure of material facts and documents amounts to a fraud on not only the Opposite Parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in Dilip Singh Vs State of UP 2010-2-SCC-114 and Amar Singh Vs Union of India 2011-7-SCC-69 which have also been followed by this Hon'ble National Commission in the case of Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013. Given the same, the Complaint is liable to be dismissed on this ground alone.

g. It has been admitted position of the Complainants that they had booked an Apartment unit bearing no. T-6 (1401) on 13th Floor, admeasuring 2550 sq. ft. (hereinafter referred to as the said 'Unit') for total sale consideration of INR 2,45,88,500/- in the project 'Primanti'

and the said unit was allotted to the Complainants vide allotment letter dated 31.03.2013. One of the complainants namely Mr. Pranab Pal had also booked another unit bearing no. T-5 (1401) in the same project jointly with Mrs. Sriparna Pal under construction-linked plan. It is apparent from the pleadings of the Complaint that they are speculative buyers and had invested in the booming real estate market of the time, to make quick gain from their investment however, due to slump in the prices of the property and overall downturn in the real estate market, the Complainants unable to realize anticipated gains from the real estate market, kept on avoiding the demands being raised by the Respondent in terms of the Apartment Buyer's Agreement and despite several reminders did not come forward to fructify the sale transaction and remained a silent spectator, as the Respondent cancelled the allotment of the unit to the Complainants, in terms of the Buyers Agreement. Hence it is self-evident and clearly shows that the Complainants did not intend and book the Apartment Unit for their own personal use, and admittedly purchased the same for earning profits.

h. In the year 2015, the Complainants owing to their financial exigency requested the Respondent to cancel the booking of Unit - T-6 (1401) without any cancellation charges and to change their payment plan from construction linked to possession linked plan. However, the change of payment plan after the allotment and cancellation without cancellation charges were against the internal policy of the Respondent. Therefore, after due deliberations the Complainants opted for an upgrade of the unit no. T-6 (1401) to Unit no. T-7 (1004)

in order to avail change of payment plan. The Complainants had opted for up gradation of the unit in order to shift from construction-linked plan to possession linked plan due to their financial constraints, whereby the substantial amount of installment is to be paid upon offer of possession of the unit. The special possession linked scheme was purely developer sponsored subvention scheme solely for the benefit and convenience of the Allottees whereby the developer proceeds to complete the construction of the unit and towers by using its own resources. Considering the request of the Complainants, the Respondent benevolently upgraded the units under possession scheme, and it is pertinent to highlight here that the Respondent as an exception had accommodated the Complainants with up-gradation and change of payment plan. The Respondent accommodated the Complainants as per their request and vide its email dated 23.04.2015 (Annexure C-6) had communicated its decision to the Complainants. Accordingly, the Complainants submitted an Application Form on 17th December 2015 towards booking of the new unit No. T7 -1004 for basic sale price of Rs. 2,98,80,000/- excluding taxes, EDC and other charges under possession scheme and the Respondent vide allotment letter dated 07.01.2016 allotted unit No. T7 1004 in lieu of unit No. T6 -1401 and consequently Apartment Buyer Agreement was executed on 02.03.2015 between the parties. As per the agreed terms of the Apartment Buyer Agreement possession of the unit was due on or before October 2017 subject of force majeure events and having regard to the same the Respondent offered possession on 19.03.2018. Despite that the Complainants had failed to fulfill their contractual

obligations and did not pay outstanding balance upon offer of possession.

i. The Complainants are chronic defaulters and have filed the instant complaint before the Hon'ble Authority with mala fide intent. As stated above, the Respondent had offered possession of the Unit no. T-7 (1004) to the Complainants vide letter dated 19.03.2018 (Annexure C-8 appended with complaint at Page 100), after receipt of Occupation Certificate which is well within grace period as duly mentioned and agreed in the Application Form / Apartment Buyer Agreement and as per the agreed terms of payment plan the Complainants were under contractual obligation to make payment of outstanding balance which is the substantial component of the total sale consideration. After the receipt of offer of possession, the Complainants were not forthcoming with outstanding payments to take possession of the unit no. T-7 (1004) instead the complainants started re-negotiating the terms of sale. It was in the explicit knowledge of the complainants that at the time of surrender or cancellation of unit, cancellation charges shall be applicable. Previously also when the Complainants negotiated their terms owing to their financial difficulty, the complainants opted for up gradation of units to avoid making payments till offer of possession and to avoid cancellations charges. The malafide intention of the Complainants is truly captured in the email dated 11.04.20119 (Annexure C-11 appended with the complaint at Page no. 109), whereby the complainants have offered the Respondent to either reduce all inclusive price payable per unit to 2.70 Crore or to cancel one unit and

credit its full payment (without any cancellations) towards another unit. The Complainants have sent email dated 11.04.2019 with preconceived mindset after offer of possession and various demand and reminder letters inter alia dated 19.03.2018, 06.08.2018, 21.08.2018, and 11.09.2018 in order to avoid making payments of the outstanding balance and take possession of the units. Interestingly at one hand the complainants were seeking reduction in sale consideration to INR 2.7 Crore by citing various purported reasons and on the other hand complainants were agreeable with the agreed sale consideration provided they were allowed to retain only one unit and the Respondent shall not impose any deductions and cancellations charges upon the cancellation of second allotted unit. This shows that the complainants had malafide intentions since the beginning and they never intended to purchase the units but to gain profits.

j. The Complainants despite several requests and reminder letters did not pay the outstanding balance sale consideration. Pertinently, the Respondent completed the construction from its own money and capital for most part of the project and accordingly completed the project within estimated timelines. Despite all that, the Complainants completely failed to make payment and take possession of the Unit and chose to file the instant complaint after unexplainable delay of almost two years from the alleged date of cancellation of the allotment, which was occasioned due to their deliberate and continuous defaults. The terms of payment plan are fair and consumer friendly and were in the explicit knowledge of the

Complainants. Despite such fairness and consumer friendly terms, the Complainants filed the present complaint against the forfeiture with sole intention to cause loss to the Respondent, which the Respondent had every right to exercise.

k. It is pertinent to mention here that due to complainant's refusal to make outstanding payments and accept possession, Respondent was constrained to cancel the allotment vide cancellation letter 06.03.2020 (Annexure C-12 appended at page 114 of the complaint). After the receipt of the cancellation letter the Complainants again started negotiations with the Respondent. Considering the request of the Complainants, the Respondent addressed an email dated 20.03.2020 wherein it was mentioned that incase the complainants opt to retain the Unit bearing no. T-7-1004 and proceed with cancellation of unit T-7-2304 in the project then the Respondent might take into consideration to reduce forfeiture charges from 10% of sale value to 7.5% subject to management's approval. The Complainants did not acknowledge the benevolent conduct of the Respondent instead issued a legal notice dated 09.04.2020 thereby seeking refund of entire amount paid against Unit No. T-7 (1004) along with interest. The complainants have adopted arbitrary and whimsical conduct since the beginning and Respondent has suffered losses due to the mala fide intentions of the Complainants.

l. That due to the Complainant's refusal to accept possession, the Respondent was constrained to sell the Apartment to a third party at a basic sale price of INR 2,76,85,480/- (Rupees Two Crores Seventy Six Lakhs Eighty Five Thousands Four Hundred and Eighty Rupees

Only) including floor rise and EDC charges), thereby incurring a whopping loss of about INR 40,00,000/- (Rupees Forty Lakhs Only). The Respondent issued the allotment letter dated 30.09.2020 to new buyer. The Respondent reserves its right to produce the copies of the allotment letter as required during the proceedings of the present case. Given the aforesaid facts, the captioned Complaint is liable to be dismissed with exemplary costs. The judgment of the Hon'ble Supreme Court in Maula Bux v. Union of India, [1969 (2) SCC 554] wherein it was held that actual losses suffered ought to be considered in computing the quantum of forfeiture. Hence the cancellation of the unit is justified, reasonable and due to defaults of the Complainants itself.

m. That the Complainants have failed to justify the inordinate delay in filing in the instant complaint. As per the Complainants themselves the alleged cause of action has arisen when the Respondent had sent cancellation letter dated 16.10.2020 to the Complainants, whereas the instant complaint has been filed in 2022 without any reasonable justification. Apposite to submit here that after several reminders and opportunities granted to the Complainants by the Respondent, the Complainants again defaulted in making the payment of outstanding balance sale consideration, the Respondent was compelled to cancel the allotment of the Unit with reasonable forfeiture as per the terms of the Application Form / Buyer's Agreement. The Respondent has duly informed the Complainants about the amount of forfeiture by annexing the statement of forfeiture with the letter of cancellation. Thereafter acting upon the said cancellation letter the Respondent

has processed the refund of the remaining amount of Rs. 64,72,710/- via Demand Draft bearing no. 004924 dated 28.09.2020 after forfeiture of Rs. 64,72,710/- as per the terms and condition of the Application Form / Apartment Buyer Agreement. The said Demand Draft was duly received by the Complainants as admitted in para 15 at page 11 of the Complaint. However, it is alleged in the Complaint that the Complainant did not en-cash the same. It is pertinent to note here that the Complainant had never returned the said demand draft nor ever informed the Respondent about not encashing the same. As per the alleged contention of the Complainants, the said demand draft remains unclaimed despite the fact that the amount of refund has been already debited from the bank account of the Respondent Company at the time when the demand draft was issued on 28.09.2020. The Respondent is not liable and responsible for willful and negligence act on the part of the Complainants for not claiming and encashing the refund amount of Rs. 64,72,710/- which was duly received by the Complainant via Demand Draft. It is pertinent to mentioned here that the Complainant at no point of time disclose that they did not en-cash the said demand draft nor they returned the same. Hence, the Respondent is not responsible for not claiming the refund of the said amount Interestingly, the Complainants arose from their deep slumber after issuance of cancellation letter and addressed legal notice dated 09.04.2020 to the Respondent seeking refund of the entire amount paid and thereafter the instant complaint is being filed in year 2022. This clearly shows that the instant complaint is

motivated and has been filed with malafide intent to cause loss and injury to the Respondent.

n. The Complainants had mala fide intention at the very inception of the booking. The Complainants had deliberately and with preconceived mindset requested for change of payment plan from construction linked to possession linked payment plan knowing that the substantial payment has to be made at the time of offer of possession. Hence the Complainants intended to earn profits by selling the unit in resale market before the offer of possession, with meager payment of 35% of the sale consideration, however, due to slump in the real estate sector the Complainants were unable to achieve their objective and are now coming after the Respondent with false, frivolous and vexatious complaint and allegations to fulfill their ulterior motives. Since the Complainants were unable to fetch profits by further selling the Unit, the Complainants have diabolically withheld the payment of outstanding balance sale consideration on offer of possession and have filed the instant Complaint to achieve their devious purpose.

o. Further it is germane to highlight here that there is not an iota of evidence in the complainant corroborating with the pleadings of the Complainants. The Complainants never requested the Respondent for possession of the unit. It is when the offer of possession was made by the Respondent and payment of substantial amount was due on the parts of the Complainants, they have come up with the frivolous and vexatious allegations to cover up their own defaults and malafide intentions. The sole objective behind filing of the instant complaint is to extort money from the Respondent. The Complainants are trying to

wriggle out of their contractual obligations by making false allegations against the Respondent. Hence, the instant complaint is liable to be dismissed being an afterthought filed and motivated to cause grave prejudice and injury to the Respondent. Further the Respondent has deducted and forfeited reasonable amount as per the terms of the Application Form / Buyer's Agreement and as allowed by various courts and tribunals in catena of Judgments. The Hon'ble Haryana Real Estate Regulatory Authority, Gurugram vide its order dated 19.12.2018 in case titled as 'Prem John versus M/s Ocus Skyscrapers Realty Ltd.' In complaint bearing no, 814 of 2018 has categorically held that, "Alternatively, option may be given to the complainant in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government."

p. Further, same observation was made by the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram vide its order dated 23.01.2019 in case titled as 'Radha Vasudevan and another versus M/s Ocus Skyscrapers Realty Ltd.' In complaint bearing no, 938 of 2018 has categorically held that, "Alternatively, option may be given to the complainant in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government."

q. Furthermore, at various occasions Tribunals, Courts and Commissions have permitted developers to make reasonable deductions according to the cost of property to cover their own losses incurred or accrued due to unjustified exit or prayer for refund by the

Buyers from the real estate projects. Further, the Complainant did not take possession of the Unit. Resultantly, the Respondent was constrained to sell the Unit to a third-party while incurring a loss of about INR 40,00,000/- (Rupees Forty Lakhs Only) approximately.

r. It is pertinent to highlight here that the Complainants have concealed material fact from the Hon'ble Commission that the Respondent has sent offer of possession dated 19.03.2018 along with demand letter within grace period of 6 months. It is also admitted by the Complainant that the Respondent Company was under obligation to handover the possession by October 2017 as mentioned in the Agreement. However, the same is subject to grace period of 6 months. The Respondent Company had sent several reminder letters dated 06.08.2018 & 21.08.2018 and final and last reminder letter dated 11.09.2018 calling the Complainants to make outstanding balance payment and complete all formalities towards the possession of the said Apartment whereas, the Complainants did not make any payment and under compelling circumstances the Respondent had to cancel the Unit subject to reasonable and just deductions as per ABA and applicable laws. Moreover, the Complainants have filed the instant complaint after inordinate delay and after securing their legitimate amount as per the Application Form / Agreement with sole intention to extort more money from the Respondent. However, as the Complainants breached the terms and conditions of the Application Form / Agreements, and accordingly their unit was cancelled and further sold to third party, therefore they cannot be said to have any claim of any kind including compensation. It is an old

and established principle of equity that he who seeks equity must do equity. It is therefore most vehemently and emphatically denied that the Complainants are entitled to possession, any interest or compensation or for that matter any relief whatsoever and given the submissions made herein, the Complaint is liable to be dismissed with hefty cost.

s. That the complaint has been filed without any cause of action and the same is devoid of merits, hence the same is liable to be dismissed. That the complaint has been filed on the basis of vague, bogus, baseless and concocted facts, hence the same is liable to be dismissed.

t. That the Respondent has always provided the best of its services to the Complainants and had never committed any deficiency in service or unfair trade practice to the complainants. Hence, the Complaint of the Complainants is liable to be dismissed, for want of true facts and merit.

11. 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 those undisputed documents and submissions made by the parties.

12. Written submissions filed by the complainant and respondent are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

13. 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

15. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*
> ***Section 34-Functions of the Authority:***
> ***34(f)*** *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.*

16. 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 relief sought by the complainant.

F.I. Direct the respondent to refund the amount paid by the complainant against the subject unit along with interest

17. In the present matters the complainants jointly booked two units in the project "TATA PRIMANTI" being developed by the respondent, situated in sector 72, Gurugram. After the payment of booking amount the complainants were allotted unit no-1401 in tower no. 6 & unit no-1401 in tower no.5 both having an area of 2550 Sq. Yds., vide allotment letter dated 31.03.2013. Thereafter the BBA was executed between the parties w.r.t. both the units on 21.01.2014 under construction linked payment plan for total sale consideration of ₹ 2,45,88,500/- each. (Though the copy of BBA is not on record in complaint no. 5250 of 2022 but the complainants are alleging the said fact and the respondent has not refuted the same in its reply.) The complainants had paid an amount of ₹1,14,42,308/- against the unit in tower 6 and an amount of ₹1,31,68,219/- against the unit in tower 5.

18. After payment of almost 50% of the total sale consideration w.r.t. both the units the complainants came across an advertisement released by the respondent regarding "Possession Linked Plan" being offered by the respondent in the same project wherein 25% is to be paid at the time of booking or execution of agreement to sale and the balance 75% will be payable at the time of possession. The complainants requested the respondent for upgrading the said payment plan for their units as well. The respondent acting upon the said request of the complainants proposed that the existing units will be transferred into bigger units in the same project and then only the complainants will fall under a new scheme which is for new buyers. In that case the complainants will be able to avail the scheme of 25:75.

19. However, when the discussions for shifting was ongoing, the complainants on 15.04.2015 requested the respondent to cancel the unit in Tower-6 with zero penalty on humanitarian grounds as the complainant suffered from heart attack and continue to hold the unit in Tower-5. The same was not accepted by the respondent and instead they offered to execute the aforementioned "Possession Linked Plan". Thereafter, the complainants executed the new buyers' agreements dated 02.03.2015 for the unit no.1004 in Tower-7 and 05.05.2018 for the unit no. 2304 in tower 7. As per the possession clause no. 4.2 of the BBA the possession was to be delivered on or before October 2017 plus 6 months grace period on account of force majeure as per clause 4.4 of the said agreement. Accordingly, the due date of possession comes out to be 30 April 2018.
20. The respondent on 19.03.2018 offered the possession of the said units to the complainants after receipt of OC from the competent authority. Upon failure on part of complainants to clear the dues and take the possession the respondent sent various reminder letters dated 06.08.2018, 21.08.2018 & 11.09.2018 for clearing the outstanding amount w.r.t. both the units.
21. That the complainants instead of clearing the said dues wrote an email dated 11.04.2019 to the respondent requesting to cancel the Agreement for Sale (Apartment Buyers' Agreement) and refund the complete amount paid by the complainants or else to reduce the price to an all-inclusive price of Rs. 2.70 crores per unit & also cancel one unit (unit no. 2304) out of the two units and credit the full amount towards the other unit (Unit no. 1004) as they were made aware by their friends that the

respondent is selling identical unit in the same tower for an all-inclusive price of Rs. 2.70 crores.

22. Further, the respondent after much patience and co-operation with all the requests made by the complainants, cancelled both the units on account of non-payment on 23.03.2020 via an email. The complainants then sent a legal notice seeking full refund of the amount paid for both the units along with interest on 09.04.2020. Finally, on 16.10.2020 the respondent sent cancellation letter along with DD dated 28.09.2020 of the refundable amount to the complainants.

23. Now, the question before the authority is whether this cancellation is valid or not?

24. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

Payment plan annexed with BBA of new unit (complaint no. 5250/2022)			
Particular	**% Due**	**Installment due**	**Due date**
On Booking		₹ 1,15,06,550/-	16.01.2015
Within 30 days from the date of booking	35%	₹ 16,15,981/-	02.03.2019
On offer of possession	65%	₹ 2,45,79,242/-	

25. It is matter of record that the complainant booked the aforesaid units under the above-mentioned payment plan and paid an amount of ₹1,14,42,308/- for unit 1004 in tower 7 & ₹1,31,68,219/- for unit 2304 in tower 7 towards total consideration of ₹2,72,24,000/- & ₹3,24,86,200/- each which constitutes 42.03% & 40.53% of the total sale consideration. The respondent offered the possession of the units on 19.03.2018 raising

the demand of amount due to be paid on offer of possession as per the agreed plan.

26. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per buyers' agreement. The respondent after giving reminders dated 06.08.2018, 21.08.2018 and 11.09.2018 for making payment for outstanding dues as per payment plan, has cancelled the subject unit on 23.03.2020 via email. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clear the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of the allotted unit. Thereafter, the respondent issued final cancellation notice dated 16.10.2020, and the relevant proportion of the said notice is reproduced as under:

> *"Under the present circumstances, we are constrained to cancel the allotment of the said Apartment and terminate the aforesaid Application Form dated 15-Dec-15. In terms of the Application Form / Agreement for Sale, we are entitled to forfeit the amounts as per Annexure A and the balance, if any, shall be refunded to you. No taxes, cess, charges, levies etc. of any nature whatsoever shall be refunded to you"*

27. As per clause 3.6 of the floor buyer's agreement, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 3.6 of the agreement to sell is reproduced as under for a ready reference:

> *"However, if the installments/payments are not received within forty five (45) days from the due date or in the event of breach of any of the terms and conditions of this*

Agreement and/or Conveyance Deed by the Purchaser (S), the booking will be cancelled at the sole discretion of THDCL and THDCL shall refund the monies paid by the Purchaser without interest subject to forfeiture of following sums:

(i) Application money or the actual amount paid whichever is higher subject to a maximum of 15% of the Sales Price and

(ii) Interest due upon such default, calculated till date of receipt of cancellation intimation and

(iii) *All taxes paid / payable"*

28. The above-mentioned clause provides that the promoter has the right to terminate the allotment in respect of the unit upon default under the said agreement. Further, the respondent company has already obtained the offered the possession on 19.03.2018 after receipt of OC. Despite the said fact, the complainant has failed to take possession of the subject unit and clear the outstanding dues.

29. 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 Ors. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020) and* ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is a reasonable amount to

be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under:-

> *"5. AMOUNT OF EARNEST MONEY*
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

30. So, keeping in view 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, 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 complainants after deducting 10% of the sale consideration and return the remaining amount along 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

termination/cancellation 16.10.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount already paid by the respondent vide bank draft dated 28.09.2020 to the complainant shall be adjusted in amount to be refunded.

31. Vide proceedings dated 24.09.2024 the authority allowed the deduction of brokerage up to 0.5% in the refundable amount subject to furnishing of proof of having paid the same to the broker. No such proof is attached by the respondent in its reply. However, as per statement of forfeiture attached with cancellation letter dated 16.10.2020, the respondent has forfeited the amount of ₹5,78,136/- under the head of brokerage which is 2.12% in complaint no. 5248/2022 & an amount of ₹8,36,345/- under the head of brokerage which is 2.57% in complaint no. 5250/2022. But no proof of it having been paid to the broker is placed on record by the respondent. Accordingly, the respondent can only deduct brokerage charges up to 0.5% of the sale consideration i.e., ₹ 1,36,120/- in complaint no. 5248/2022 & ₹ 1,62,431/- in complaint no. 5250/2022 only, subject to furnishing of the proof of actual payments by the respondent.

F.II. Direct the respondent to pay ₹ 1,00,000/- as litigation cost.

32. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.

G. Directions of the authority:

33. 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):

a. The respondent is directed to refund the paid-up amount of ₹1,14,42,308/- w.r.t. unit no. 1004 & ₹1,31,68,219/- w.r.t. unit no. 2304 after deducting 10% of the sale consideration of being earnest money along 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 termination/cancellation 16.10.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount already paid by the respondent vide bank draft dated 28.09.2020 to the complainant shall be adjusted in amount to be refunded.

b. 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.

34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. True certified copies of this order be placed on the case file of each matter.
36. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2024