

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

Complaint no. : 2108 of 2023  
Order pronounced on: 04.07.2024

**M/s Fabraw Textiles Private Limited.**

R/o: 6041, Block No. 2 Gali No. 4, Main Arya Samaj Road  
Gali No. 4, Main Arya Samaj Road, Dev Nagar, Karol Bagh,  
New Delhi- 110005

**Complainant**

**Versus**

**ATS Real Estate Builders Pvt. Ltd**

Regd. office: ATS Tower Plot no. 16, Sector 135, Noida- 201305

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Anuj Chauhan (Advocate)  
Shri Vinayak Gupta (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 there under or to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid

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by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"ATS Marigold" at Sector 89A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Unit No.	2181, 18 <sup>th</sup> floor, in Tower- 02 (Page no. 25 of complaint)
4.	Unit area admeasuring	1750 sq. ft. (page no. 25of complaint)
5.	Allotment letter	01.05.2015 (page no. 25 of complaint)
6.	Date of builder buyer agreement	01.05.2015 (page no. 26 of complaint)
7.	Possession Clause	6.2 <i>The Developer shall endeavour to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months i.e. ("Completion Date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).</i>  (Page no. 37 of the complaint)
8.	Due date of possession	01.05.2019 (Note: - due date of possession can be calculated from the date of agreement i.e., 01.05.2015)

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		6 months grace period is allowed being unconditional.
9.	Sale consideration	Rs.1,19,06,250/- (As alleged by the complainant at page no. 15 of complaint)
10.	Amount paid by the complainant	Rs.32,66,802/- (As per SOA at page no. 141 of reply)
11.	Reminder letter	19.11.2015, 03.02.2016, 03.05.2016, 22.08.2016, 26.09.2016, 02.01.2017, 30.06.2017, 04.12.2017, 04.03.2018, 04.04.2018, 17.05.2018, 17.06.2018, 05.07.2018, 14.12.2018, 11.01.2021, 27.07.2023
12.	Surrender request made by the complainant through E-mail	01.07.2016 (Page no. 119 of reply)
13.	Termination letter dated	07.02.2023 (Page no. 132 of reply)
14.	Occupation certificate	16.06.2023 (Page no. 136 of reply)
15.	Offer of possession	20.06.2023 (Page no. 139 of reply)

**B. Facts of the complaint:**

- In 2013, the respondent promoted a housing project named "ATS MARIGOLD" pursuant to license no. 87 of 2013 dated 11.10.2013 issued by "DGTCP" on land admeasuring 11.125 acres situated in sector 89A, Gurugram.
- The complainant believing the promises of the respondent as true applied for booking of a flat vide application dated 07.07.2013 in the said project namely

- namely 'ATS MARIGOLD". Rs. 10,00,000/- were also paid as booking amount.
5. The complainant also paid Rs. 21,50,000/- vide cheque bearing no. 043195 as part payment of the unit. Receipt dated 25.08.2014 acknowledging the payment was issued in favor the complainant.
  6. Pre-allotment letter dated 10.09.2014 allotting of flat no. 2181 on 18<sup>th</sup> floor in tower no. 2 to the complainant was issued.
  7. The complainant also paid Rs. 84,134/- vide cheque bearing no. 152252 as part payment of the unit. Receipt dated 30.03.2015 acknowledging the payment was issued in favor the complainant. The complainant also paid Rs. 32,668/- as part payment of the unit.
  8. In pursuant to the successful application, allotment of a unit in Tower No. 2, Unit no. 2181 on 18<sup>th</sup> Floor having super built up area of 163 square meter, equivalent to 1750 square feet, which includes a built-up area of 137.50 square meter, equivalent to 1480 square feet was made by the respondent in favor of the complainant. The allotment of unit was confirmed through a flat allotment letter by the respondent vide dated 10.09.2014.
  9. The flat buyer's agreement ('FBA') was executed on 01.05.2015 between the complainant and the respondent wherein total cost of the said unit was agreed at Rs. 1,19,06,250/-.
  10. The possession of the said unit was promised to be delivered within 42 months + 6 months grace period from the date of execution of the agreement as mentioned in clause 6.2 of the BBA. Therefore, as per the agreement, the possession date comes out to be 01.05.2019, but the respondent drastically failed to provide the possession on the promised date. It is pertinent to mention here that the respondent has failed to receive occupation certificate till date.
  11. The complainant in hope to get the timely possession of the flat made all the payments to the respondent without any delay. The complainant paid a total



sum of rs.32,66,802/- as per the customer ledger dated 21.02.2023 issued by the respondent.

12. The complainant made the payments of Rs. 10,00,000/- on date 07.07.2013, bearing cheque number 043178; Rs. 21,50,000/- dated 28.09.2013, bearing cheque number 043195 and Rs. 84,134/- dated 30.03.2015, bearing cheque number 152252 and Rs. 32,668/- on 31.03.2015.
13. After execution of BBA the respondent violated the law and disappointed the complainant in serving the timely possession of the flat. The respondent issued various irregular and illegal demand letters which were objected by the complainant but the respondent did not pay any heed to the requests and objections of the complainant. The respondent is abusing its dominant position and is pressurizing and harassing the complainant with a motive to extort more and more monies.
14. That the complainant was sure that having paid huge sum he would get the assured return on monthly basis and possession of the said unit as per the promised dates, but the hopes and confidence has been shattered beyond imagination and it has become a constant harassment and mental torture besides financial loss which he is suffering continuously.
15. It is pertinent to mention here that the respondent has wrongfully enriched itself by not providing the possession of the said unit to the complainant on due date and keeping the money deposited by the complainant with it.
16. The complainant wishes to get refund of the amount paid to the respondent and doesn't want to continue with the project. Hence, the present complaint.
17. It is stated that the present complaint is within the prescribed period of limitation. That the project is situated in Sector89A, Gurugram and is in territorial jurisdiction of this Hon'ble Authority.

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



18. The complainants have sought the following relief(s):

- i. Direct the respondent to return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.
- ii. Any other relief which this Hon'ble Authority deems fit and just.

19. 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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

20. The instant complaint has been filed only with an intent to undo the execution of Flat Buyer Agreement dated 01.05.2015. The complainant once had no financial capacity to buy the unit costing above Rs. 1 Crore and the same is evident from perusal of letter dated 01.07.2016 (Annexure R-13). Above that the ill motive and ill intention of the complainant is evident from the fact that the complainant has very mischievously approached this Ld. Authority by not only claiming paid amount of Rs. 32,66,802/- but also further delay possession interest on that amount of Rs. 33,60,170/- i.e., even more than the paid amount.
21. The respondent company started operations in NCR with ATS Greens. It quickly became the most sought-after address in Noida and Gurgaon and went on to become the benchmark of real estate development.
22. The ATS Marigold is developed over an area measuring 11.125 Acres, comprising of 287 residential units and 5 commercial units developed by Respondent company registered with interim RERA, Panchkula on 17.08.2017. The registration was valid till 6 years from the date of environment clearance on 02.03.2021 (including 6 months Covid - 19), which was further extended up to 1 year under Section 6 of the Act and valid till 02.03.2022.
23. That construction industry is one of the significant contributors to the economic growth and development of India, but there are major challenges





which are limiting the performance of the construction industry in India and same applies for ATS Marigold Project. Enumerated below are some unavoidable reasons for delay in project.

24. That project in question "ATS Marigold" is a stressed project which on basis of investment by "SWAMIH Investment Fund" is being completed and allowing the prayer of refund of amount paid along with interest on delayed possession upon the respondent company will further delay the completion of project. This will put huge additional burden on the investor - "SWAMIH Investment Fund" making it more difficult to complete the project.
25. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:
- Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. There have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to shortage of cash payments and construction and real estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour.
  - National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite



high for couple of years at the time of change in weather in November every year. The contractor of respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017.

- Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
- Deputy Commissioner, Gurugram vide order dated 09.11.2017 while complying with directions of Hon'ble National Green Tribunal, New Delhi appointed PWD, MCG, HUDA, NHAI, HSAMB, TCP, HSIIDC to prohibit construction activity of any kind in the entire NCR. In fact, only internal finishing and interior work was allowed to be undertaken where no construction material was to be used. Further direction was given to Haryana State Pollution Control Board to maintain due records of air quality in the areas falling under their jurisdiction being part of NCR.

26. The complaint is not maintainable for the reason that the buyer agreement dated 01.05.2015 contains an Arbitration clause which refers to the dispute



resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 21 of the buyer's agreement.

27. It was agreed that as per buyer's agreement, total sale consideration of the allotted unit/flat was Rs. 1,19,06,250/. The complainant has paid only amount of Rs. 32,66,802/- out of the total payable amount. This clearly shows that the complainant has only paid only minor amount against the total cost of the allotted unit/flat.
28. The possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 6.2 of the buyer's agreement the answering respondent was supposed to offer possession of the unit/flat within 42 months plus grace period of 6 months, suggesting therein that deem date of possession was 01.05.2019.
29. The complainant from the very beginning i.e. from the year 2015 itself has never followed the payment schedule and failed miserably to pay towards the allotted unit/flat. The answering respondent company has time and again through various written communications/letters sought payment of outstanding amounts qua the allotted unit/flat. Reminder letters sent by the answering respondent company to the respondent company dated 19.11.2015, 03.02.2016, 03.05.2016, 22.08.2016, 26.09.2016, 02.01.2017, 30.06.2017, 04.12.2017, 04.03.2018, 04.04.2018, 17.05.2018, 17.06.2018, 05.07.2018, 14.12.2018, 11.01.2021, 12.04.2023 & 27.07.2023. It is contended that on one hand the complainant has failed to follow the payment schedule towards the unit and on the other hand has levelled allegations upon the respondent company of threatening and pressurizing the complainants to extort money illegally and unlawfully.



30. Surprisingly, the complainant requested the respondent company for cancellation of the booked unit/flat and refund of entire paid amount vide due to their inability to pay vide letter dated 01.07.2016. Interestingly, the complainant sought refund of the amount paid till that time which is contrary to the agreed terms of conditions of flat buyer agreement dated 01.05.2015.
31. It is also brought to the kind notice of the Ld. Authority that number of final notices for termination of allotment of the booked unit/flat were issued to the complainant by the respondent company vide communications dated 02.02.2020, 11.08.2021, 07.01.2022 & 03.02.2022.
32. After waiting for number of years and after getting no response of numerous abovementioned reminder letters, the respondent company was left with no alternative but to cancel the allotment of the unit/flat vide communications dated 07.02.2022 & 06.04.2023 respectively.
33. Occupation Certificate qua tower no. 2 wherein the unit/flat in question is located issued by the Director, Town and Country Planning, Haryana on 16.06.2023. Despite cancellation of the unit/flat, the respondent as a goodwill gesture vide communication dated 20.06.2023 preferred to offer possession of the unit on payment of outstanding amount.
34. The instant complaint has been filed only with an intent to undo the execution of flat buyer agreement dated 01.05.2015. The complainant once had no financial capacity to buy the unit costing above Rs. 1 crore and the same is evident from perusal of letter dated 01.07.2016. Above that the ill motive and ill intention of the complainant is evident from the fact that the complainant has very mischievously approached this Ld. Authority by not only claiming paid amount of Rs. 32,66,802/- but also further delay possession interest on that amount of Rs. 33,60,170/- i.e. even more than the paid amount.



35. Despite the above-mentioned illegal conduct of the complainant the respondent company submits that the same is ready and willing to execute conveyance deed with the complainant.
36. The reliefs as sought by the complainant in the present complaint are absolutely incorrect, baseless and thus strongly opposed. The reliefs sought by the complainant on the basis of concocted facts are incorrect and the complainant is not entitled to any such relief from the Hon'ble Forum.
37. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the Authority:**

38. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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**

39. 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 the entire Gurugram District for all purposes 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**

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

**Section 11(4)(a)**

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*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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

39. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding agreement contains an arbitration clause which refers to the dispute resolution system mentioned in agreement**

40. The respondent has raised an objection that the complaint is not maintainable for the reason that the buyer agreement dated 01.05.2015 contains an Arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 21 of the buyer's agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

**"21.1 Arbitration**

*All or any dispute that may arise in respect to the terms of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the Parties shall be settled through mutual discussion and amicably settlement, failing which the same shall be settled through arbitration. The arbitration proceedings and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be appointed, then to be appointed by the court. The decision of the Arbitrator shall be final and binding on the parties.*

**21.2** *The venue shall be at Gurgaon and only the courts at Gurgaon shall have the jurisdiction in all the matters arising out of this agreement."*

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41. The respondents contended that as per the terms & conditions of the agreement to sell duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the agreement to sell as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.

42. In view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no





hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F.II Objections regarding Force Majeure.**

43. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT, Demonetization, Haryana State Pollution Control Board, and other Authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 6.2 of agreement dated 01.05.2015 executed between the parties, the due date of handing over of possession was provided as 01.05.2019 including grace period of 6 months which is allowed being unconditional.
44. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 01.05.2019. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.
45. The complainant had remitted a total sum of Rs. 32,66,802/- against the agreed sale consideration of Rs. 1,19,06,250/- to the respondent. Furthermore, the complainant had already submitted a surrender request dated 01.07.2016, well in advance of the stipulated possession date of 01.05.2019 that the complainant



do not want to proceed with the instant project due to financial loss in the business. The complainant, in the surrender request made vide email dated 01.07.2016 mentioned that despite of trying all possible sources, the financial situation is not allowing him to continue with the project.

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

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

46. The complainants were allotted a unit in the project of respondent "ATS Marigold" in at sector 89 A, Gurgaon vide allotment letter dated 01.05.2015 for a total sum of Rs.1,19,06,250/-. The buyer's agreement was executed on 01.05.2015 itself and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 32,66,802/-. It was pleaded by complainants that on 01.07.2016 vide an email they requested the respondent to cancel the allotted unit and refund the paid-up amount but no reply was given by the respondent to the said email.

47. Now when the complainants approached the Authority to seek refund, it is observed that under clause 10.4 (i) of BBA, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

*"The Developer shall, out of the entire amounts paid by the buyer to the Developer till cancellation date, forfeit the entire Earnest Money and any other dues payable by the Buyer including interest on delayed payments as specified in this Agreement"*

48. The above-mentioned clause provides that the promoter is entitled to forfeit the booking amount/earnest money paid for the allotment and interest component on delayed payment (payable by the allottee for breach of this agreement and non-payment). The Authority is of the view that the drafting of the aforesaid clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee. As per the aforesaid clause the builder is entitled to forfeit entire amount paid by the complainant and empowers to promoter to recover interest on delayed



payments along with other amount of non-refundable nature. It is unjust condition that exploits the allottee and can be termed as one sided. The clause on the face of it does not give equal bargaining power to the allottee. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

49. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)*** and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)*** and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is 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 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."*

50. 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 i.e., Rs. 32,66,802/- after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.95% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 01.07.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions issued by the Authority:**

51. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to refund the paid-up amount of Rs. 32,66,802/- after deducting the earnest money which shall not exceed the 10% of the sale consideration of Rs. 1,19,06,250/- along with the interest at the prescribed rate i.e., 10.95% on the such balance amount from date of surrender i.e., 01.07.2016 till actual date of realization.

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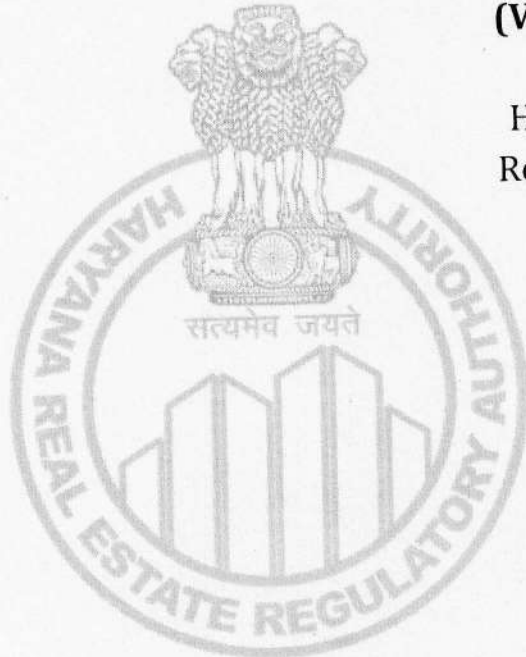
II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

52. Complaint stands disposed of.

53. File be consigned to the Registry.

Dated: 04.07.2024

*V.I - 3*  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**