

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

Date of decision: 22.08.2024

NAME OF THE BUILDER		ST. PATRICKS REALITY PVT. LTD	
PROJECT NAME		CENTRAL PARK FLOWER VALLEY	
S. No.	Case No.	Case title	Appearance
1.	CR/694/2023	Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. & ors.	Shri Pradeep K Khatana (Advocate for complainant) Shri Rohan Gupta (Advocate for respondent)
2.	CR/695/2023	Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. & ors.	
3.	CR/696/2023	Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. & ors.	
4.	CR/697/2023	Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. & ors.	

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

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

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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 is allottee of the project namely, **Central Park Flower Valley** being developed by the same respondent/promoter i.e., **ST. PATRICKS REALITY PVT. LTD.** The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to refund the paid-up amount of the complainant paid against the subject units therefore seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply, status, unit numbers, date of agreements, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Central Park Flower Valley", Village Dhunela, Sector - 32, Sohna and District Gurugram
Nature of Project	Group Housing Colony
Project area	10.0925 acres
DTCP License No. and validity	84 of 2014 dated 09.08.2014 Valid up to 08.08.2024
HRERA Registered	Registered Vide 150 of 2017 dated 28.08.2017 valid up to 31.07.2022.
Possession Clause	<p>7.1 Possession</p> <p><i>The Company shall endeavor to offer the possession of the said Apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of this Agreement subject to timely payment of sale price, other charges as per Details of Payment (Annexure-1), Payment Plan (Annexure-2) and all other payments as per terms of this Agreement including payment of interest by the Allottee(s). In case of default in aforesaid payments by the Allottee(s) or violation or noncompliance of any term of this Agreement, the Allottee(s) shall not</i></p>



Complaint no. 694 of 2023 and 3 others

be entitled to claim and the Company shall not be bound to give the possession of the said Apartment as per this clause. Further the handover of the possession of the said Apartment in accordance of this clause shall be subject to Force Majeure circumstances as defined in clause 19 of this Agreement or directions of Government/ statutory authorities or any change in the laws, rules and regulations which are beyond the control of the Company.

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Basic Sale Consideration / Total Amount paid by the complainant	Cancellation letter
1.	CR/694/2023 Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. D.O.F: 15.02.2023 Reply: 23.08.2023	201, tower-C, 2 nd floor 1590 sq. ft.	10.06.2017 (as per stamp paper on BBA page 50 of reply)	T.S.: Rs. 94,67,330/- (as per BBA page 61 of reply) A.P: Rs.11,47,300/- (as per the cancellation letter page 15 of reply)	29.10.2018 (page 14 of reply)
2.	CR/695/2023 Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. D.O.F: 15.02.2023 Reply: 23.08.2023	202, tower-C, 2 nd floor 1590 sq. ft.	14.07.2017 (page 20 of complaint)	T.S.: Rs.94,67,330/- (as per BBA page 45 of reply) A.P: Rs.21,47,300/- (as per the cancellation letter page 20 of reply)	29.10.2018 (page 17 of reply)
3.	CR/696/2023 Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd.	203, tower-C, 2 nd floor 1590 sq. ft.	Not executed	T.S.: Rs.94,67,330/- (as per SOA submitted by respondent on	29.10.2018 (as pleaded by respondent page 03 of reply- not

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	D.O.F: 15.02.2023 Reply: 23.08.2023			13.03.2024) A.P: Rs.15,47,300/- (as per SOA submitted by respondent on 13.03.2024)	objected by the complainant during the course of proceedings or through additional submissions)
4.	CR/697/2023 Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd. D.O.F: 15.02.2023 Reply: 23.08.2023	204, tower- C, 2 nd floor 1590 sq. ft.	27.07.2017 (page 48 of reply)	T.S.: Rs.89,96,690/- (as per payment plan page 70 of reply) A.P: Rs.7,47,300/- (as per SOA submitted by respondent on 13.03.2024)	15.05.2018 (page 15 of reply)

The complainant has sought following relief(s):

1. Direct the respondent to refund the paid-up amount along with interest.
2. Direct the respondent to pay Rs.25,000/- as cost of litigation

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
TS	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not refunding the paid-up amount along with interest, seeking relief of refund of the entire amount along with interest and compensation.

5. 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

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in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant/allottee are similar. Out of the above-mentioned case, the particulars of complaint case bearing no. **694/2023 titled as Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd.** is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details.

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

694/2023 titled as Mahtab Alam V/s ST. Patricks Reality Pvt. Ltd.

S. N.	Particulars	Details
1.	Name and location of the project	Central Park Flower Valley
2.	Project area	10.925 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	84 of 2014 dated 09.08.2014 valid up to 08.08.2024
5.	Name of the Licensee	Ravinder Singh-Balkaran-Vijay Raghav
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 150 of 2017 dated 28.08.2017 Valid upto 31.07.2022
7.	Unit no.	201, tower-C, 2 nd floor (as per BBA page 51 of reply)

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8.	Unit area admeasuring	1590 sq. ft. (as per BBA page 51 of reply)
9.	Expression of interest	01.06.2016 (page 19 of complaint)
10.	Builder buyer agreement	10.06.2017 (as per stamp paper on BBA page 50 of reply)
11.	Possession Clause	<p>7.1 Possession <i>The Company shall endeavor to offer the possession of the said Apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of this Agreement subject to timely payment of sale price, other charges as per Details of Payment (Annexure-1), Payment Plan (Annexure-2) and all other payments as per terms of this Agreement including payment of interest by the Allottee(s). In case of default in aforesaid payments by the Allottee(s) or violation or noncompliance of any term of this Agreement, the Allottee(s) shall not be entitled to claim and the Company shall not be bound to give the possession of the said Apartment as per this clause. Further the handover of the possession of the said Apartment in accordance of this clause shall be subject to Force Majeure circumstances as defined in clause 19 of this Agreement or directions of Government/ statutory authorities or any change in the laws, rules and regulations which are beyond the control of the Company.</i></p>
12.	Due date of possession	10.12.2020 (calculated from the date of stamp page on BBA including grace period of 6 months being unqualified and unconditional)
13.	Total Sale Consideration	Rs. 94,67,330/- (as per BBA page 61 of reply)
14.	Amount paid by complainant	Rs.11,47,300/- (as per the cancellation letter page 15 of reply)
15.	Demand notices for due payments	01.05.2017 (page 13 of reply)
16.	Cancellation notice	29.10.2018 (page 14 of reply)

17.	Occupation certificate	13.01.2023 (taken from CR/2583/2023 D.O.D.28.03.2024)
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B. Facts of the complaint.

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

- i. That the complainant booked a unit no. 201, Tower-C 2nd, floor admeasuring approximately 1590 square feet (147.72 sq. mts.) in a respondent project for a total consideration of Rs.74,73,000/-. The complainant made an initial payment of Rs.18,94,600/- towards the booking of the subject unit. However, due to unforeseen financial issues, the complainant was unable to make further payments. Further, the complainant requested the respondent to provide the additional payment plan but there was no response from the respondent.
- ii. That the complainant has booked several flats, in which against some flats allotment letter/agreement to sell/builder buyer agreement was provided but receipts were given in few. Subsequently, the complainant came to know that the unit had been cancelled.
- iii. That the respondent's actions, including making false representations and failing to provide a revised payment plan, constitute deficiency in service and unfair trade practices. These actions have led to financial losses for the complainant, who is seeking reimbursement of the entire amount paid, along with interest, compensation, and damages for the losses incurred.
- iv. That the cause of action arose in 2022 when the respondent agreed to refund the booking amount but failed to do so. This cause of action continues, as the cancellation notice issued by the respondent is invalid due to the non-refunding of the amount. Therefore, the complainant seeks redressal through this complaint.

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C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- I. Direct the respondent to refund the paid-up amount along with interest.
 - II. Direct the respondent to pay Rs.25,000/- as cost of litigation.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondents

11. The respondent has contested the complaint on the following grounds.
- i. That the respondent is a reputed builder having very good reputation and goodwill in the real estate market and had delivered various landmarks in Delhi NCR. The complainant is an investor who had made multiple bookings in several projects of the respondent Company in the hope that the complainant could make a huge-returns from the bookings so made.
 - ii. That initially the complainant made two bookings in the residential plotted colony in the project "Mikasa Plot" being developed by the respondent and thereafter, four bookings were made in the residential group housing project "Aqua Front Towers" in Central Park Flower Valley, Village Dhunela, Sector - 32, Sohna, District Gurugram, Haryana.
 - iii. That the complainant booked the abovementioned units and knowingly undertook the obligation to make the payment of all the instalments against the aforesaid bookings. The complainant had completely failed to make the payment of the due amounts against any of the booked units and hence, the respondent was compelled to cancel the bookings/allotments of residential apartment made against each of the bookings. In spite of the respondent giving several reminders and opportunities to the complainant, he never

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- came forward to make the complete payment of the due instalments for any of the booked units.
- iv. That the complaint has been filed by the complainant with respect to unit bearing no. C - 201 of the project "Central Park Flower Valley" Village Dhunela, Sector - 32, Sohna and District Gurugram, Haryana having Customer ID no. CP-3/GH/40. The complainant had made the payment of only a sum of Rs.11,47,300/- towards the subject unit.
- v. That the respondent had sent demand letter dated 01.05.2017 and various verbal reminders to the complainant seeking payment of the outstanding instalments but the complainant never came forward for making the payment of the outstanding dues. Due to the continuous failure of the complainant to make the payment of due instalments, the respondent was compelled to cancel the allotment vide cancellation letter dated 29.10.2018 wherein the respondent asked the complainant to submit the original documents as well as execute the necessary documentation to enable the respondent company to issue refund of the balance amount left with the respondent after deduction as per the agreed terms of provisional allotment of the said apartment further also intimated that the complainant has left with no rights, title, claim or interests in the said apartment and respondent is free to deal with the said apartment as it may deem fit.
- vi. That upon the complainant request, the respondent provided a statement of account for all cancelled units booked by the complainant via email dated 25.04.2019. The respondent had several times approached the complainant for a period of almost two years from the date of sending the above mention cancellation letter to come forward and to submit the original documents as well as to execute the necessary documentation to enable the respondent to issue refund of the balance amount left with the company after deduction,

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- as per the agreed terms before sending refund cheque of Rs.1,61,354/- to the complainant vide letter dated 18.09.2020. However, same got returned to respondent with remarks "LEFT". Subsequently, the respondent sent another refund cheque along with a letter dated 14.10.2020, but same was also returned to the respondent.
- vii. Furthermore, the complainant has not informed the respondent of any alternative or updated communication address. Consequently, all correspondence has been sent to the address on record provided by the complainant.
- viii. That the complainant has not made the payment of Rs.18,94,600/- as claimed in the complaint and has failed to provide any receipts or proof of the alleged payment.
- ix. Moreover, the Authority does not have the jurisdiction to entertain and adjudicate the present complaint as the provisions of the Act, 2016 as well as the reliefs claimed herein in the present complaint cannot be sought from the Authority.
- x. Furthermore, the complaint is barred by limitation as the provisional allotment of a unit in the project of respondent was cancelled by the respondent vide letter dated 29.10.2018 and the complaint is filed on 11.02.2023 that is more than five years eight months from the date of cancellation of allotment made by the respondent and hence the present complaint is barred by limitation and cannot be adjudicated by the Authority.
- xi. That the complainant is not a bonafide customer as it is clearly evident from the fact that the complainant is an investor who had made multiple bookings in the several projects of the respondent. The complainant had failed to abide by the payment plan agreed by him and did not make the

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payment of the due instalments against any of the bookings made. The complainant is trying to take benefit of his own wrongs by claiming the interest along with the refund of the principal amounts deposited in each of the bookings. Any reliefs granted to the complainant would amount to giving reward to the complainant for defaulting and blocking the provisional allotted units for more than two years and thus causing loss of revenue to the respondent, by not making the payment of the due instalments as agreed by the complainant in terms of the agreed payment plans.

- xii. That the complainant duly signed and submitted an application form as well as accepted the terms and conditions by executing the buyer agreement dated 10.06.2017 governing the allotment of the unit.
- xiii. That as per the terms and conditions of the buyer agreement dated 10.06.2017 the complainant had accepted the deduction of 10% of the BSP along with other charges of non-refundable nature in the event of cancellation of the allotment of the unit. In view of the fact that the respondent had cancelled the allotment, hence the respondent had deducted the earnest money along with deductible charges as well as the cost of the gold coin which was given to the complainant at the time of making the booking from the amounts paid by the complainant and is ready, willing to make the refund of the balance amount of Rs.1,61,354/-.
12. All other averments made in the complaint were denied in toto.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Written submissions by complainant.

14. The complainant submitted written submissions during proceedings dated 22.08.2024 and made following submissions:

- i. The present complaint is being filed within the limitation and respondent has not deducted the earnest amount to the tune of 10% against the amount paid by the complainant towards the unit. Instead, no appropriate refund was made by the respondent, hence the present complaint. That complainant could not file the complaints since he was having the continuous medical condition.
- ii. That the cancellation is not PRE-RERA as the cancellation was done on 29.10.2018 and the same was post RERA.
- iii. That the respondent may kindly be directed to refund to the complainant paid-up amount of Rs.18,94,600/- as booking amount of the aforesaid unit and the sub-total amount of Rs.55,89,200/- (Total of all four complainants) after deducting 10% as earnest money of the basic sale consideration with interest on the balance amount, from the date of cancellation i.e. 29.10.2018 till the date of actual refund.

F. Jurisdiction of the authority

15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

16. As per notification no. *1/92/2017-1TCP dated 14.12.2017* issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction.

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

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

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

G. Objection raised by the respondent.

G.I Objections regarding the complaint being barred by limitation.

21. The respondent further contends that the complaint is not maintainable as it is barred by limitation, citing that the complainant filed after the expiry of 5 years from the date of cancellation letter. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as *M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others* which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder.

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A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

22. Thus, the contention of promoter that the complaint is time barred by provisions of Limitation Act stands rejected.

G.II Objections regarding the complainant being investor.

23. The respondent took a stand that the complainants are investor and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer and they had paid in total a price of Rs.55,89,200/- to the promoter towards purchase of all four units in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale,

transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

24. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act stands rejected.

H. Findings on the relief sought by the complainant.

H.I Direct the respondent to refund the paid-up amount along with interest.

25. In the present complaints the complainant is seeking relief w.r.t to refund of the paid-up amount along with interest. A common issue has emerged involving multiple complaints wherein complainant booked four different apartments i.e. unit no. 201, 202, 203 and 204 in tower no. C within the respondent's project "Central Park Flower Valley".
26. Upon perusal of documents on record and submissions made by both the parties the Authority observes that the complainant made several bookings i.e. unit no. C-201, 202, 203 and 204 in the respondent's project. Thereafter, the respondent sent several demand letters to the complainant to make payment of outstanding dues. However, the complainant failed to make the outstanding payments. Further, the complainant in his complaint admitted his financial difficulty to make full and final payment as per the opted payment plan. Subsequently, the respondent cancelled the complainant's booking on account of non-payment on 15.05.2018 in CR/697/2023 and on 29.10.2018 in the remaining above captioned complaints.



27. Firstly, the Authority would deliberate upon cancellation made by the respondent in CR/696/2023. Perusal of case file reveals that neither of the parties had placed on record any application form/allotment letter/builder buyer agreement to establish a certainty of allotment of unit no. C-203 in favor of the complainant. However, the complainant as well as respondent had pleaded in the complainant and reply respectively that unit no. C-203 was allotted by the respondent to the complainant. The respondent apprised the Authority that the complainant had made initial bookings of two plots in the project "Mikasa plot", Village Dhunela, Sector-32, Sohna by making a payment of Rs.3,60,000/- against each. Thereafter, complainant approached the respondent and requested to cancel the booking of these plots and to adjust the total sum of Rs.,7,20,000/- paid by him towards an apartment i.e. C-203 in another project of the respondent namely "Aqua Front Towers". The said request was accepted by the respondent. However, the complainant made the payment only to the tune of Rs.15,47,300/- against the sale consideration of the said unit. Various demand letters were issued to the complainant to make payment of outstanding dues but to no avail. Herein, the complainant also admitted his financial difficulty to make full and final payment as per the opted payment plan in his complaint and further the requested the Authority vide his written submissions dated 22.08.2024 to direct the respondent to refund the entire paid amount by him i.e. Rs.55,89,200/- subject to deduction of 10% earnest money.

28. Further, the Authority is of the view that as per clause 3.1 of the buyer's agreement executed between the parties in CR/694/2023, CR/695/2023 and CR/697/2023 the respondent/promoter was well within its right to cancel the unit and forfeit the earnest money wherein the allotment of the units was cancelled due to default of complainant to make timely payments as per the

payment plan opted by the complainant/allottee. Clause 3.1 of the buyer's agreement is reproduced herein for ready reference:

3.1

CANCELLATION UPON FAILURE/DELAY IN PAYMENT AND MISREPRESENTATION:

The Allottee(s) agrees that, timely payment of all amount as per the Payment Plan and other charges such as applicable stamp duty, registration fee etc. on or before the due date is the essence of this Agreement. In case of any default or delay in making the payments by the Allottee(s) in accordance with the terms of this Agreement or to perform or observe any of its obligations by the Allottee(s) under this Agreement, the allotment of the said Apartment shall, at the discretion of the Company, be cancelled by the Company: After such cancellation, the Allottee(s) shall be refunded his/her paid amount after deduction of the EMD, any interest paid or due or payable by the Allottee(s), other charges including holding charges, brokerage, cost of any incentive or scheme given and any other amount of a non-refundable nature. The Company shall not be liable to pay any interest upon failure of the Allottee(s) to collect the refund from the office of the Company. The Allottee(s) further agrees that after cancellation of the allotment of the said Apartment to the Allottee(s) in accordance of the terms of this Agreement, the Allottee(S) shall not have any right, interest, title and / or claim in the allotment of the said Apartment or in the said Apartment itself on any account irrespective of the fact whether or not the refund cheque has not been dispatched by the Company or if dispatched has been received by the Allottee(s) or if received such refund cheque is not encashed by the Allottee.

29. Now, as far as the issue with regard to deduction of earnest money on cancellation of a contract is concerned, the same 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*, 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 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."

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, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration of each specific unit 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.
31. Now, the question arises regarding the period for which the respondent is liable to pay interest on the amount already paid by the complainant, after deductions. The respondent has stated that it repeatedly contacted the complainant over a two-year period following the cancellation letter, requesting the original documents and necessary paperwork to process a refund of the remaining amount. Despite sending a refund cheque for Rs.1,61,354/- on 18.09.2020, it was returned marked "LEFT." A subsequent cheque sent on 14.10.2020 was also returned undelivered.
32. In the present case, although the respondent issued a cheque refunding the amount paid by the complainant after deductions. However, these deductions were not in accordance with Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018. Further, the amount paid by the complainant for the specific unit has remained with the respondent since the cancellation of the unit. Thus, interest should be calculated from the date of cancellation of each specific unit until the amount is fully realized. The rationale behind this is that the complainant's funds have been effectively held by the respondent thereby depriving the complainant to put to it in his own use. Thus, it is fair and just for the respondent to bear the financial responsibility for the interest during this period based upon the principle of unjust enrichment which provides that no one should benefit at the expense of another in a way that the law considers unjust.
33. Therefore, in view of the above finding, the respondent is liable to refund the amount paid by the complainant after deducting 10% of the sale consideration of the respective units along with interest on such balance amount from the

date of cancellation letter being issued by respondent towards each specific unit as described in para 3 of this order till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay Rs.25,000/- as cost of litigation.

34. The complainant is seeking above mentioned relief w.r.t. litigation cost. 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.

I. Directions of the authority.


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 respondents are directed to refund the paid-up amount i.e., Rs.55,89,200/- to complainant after deducting 10% of the sale consideration of each specific unit being earnest money along with interest at the rate of 11.10% on such balance amount from the date of cancellation letter issued by respondent towards each specific unit as described in para 3 of this order with interest till its realization.

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- b) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
37. Files be consigned to registry.

Dated: 22.08.2024


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