

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

Complaint no. :	5042 of 2022
First date of hearing:	20.09.2022
Date of Order:	21.11.2024

1. Sh. Naveen
2. Smt. Preety

Complainants

Both R/o: House no.-395, Pol no. 47,
Gaal Pana, Malik Pur Village, South West
Delhi, Delhi-110073

Versus

Roshni Builders Private Limited
Regd. Office at: Sushant Shopping Arcade
LGF, F-22, Sushant Lok Phase-I, Gurugram-
122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Mukul Kumar Sanwariya(Advocate)

Complainants

Ms. Shriya Takkar and Ms. Smriti Srivastava
(Advocates)

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

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and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	1. Roshni Builders Pvt. Ltd. 2. Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Unit no.	R- 4 K216, Second Floor, Food Court & Block-4 (As per page no. 36 of the complaint)
8.	Area admeasuring	82.99 sq. ft. (Carpet area) and 505.66 sq. ft. (Super Area) (As per page no. 36 of the complaint)
9.	Allotment letter	15.07.2020 (As per page no. 16 of the complaint)
10.	Date of execution of	24.02.2021

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	agreement for sale	(As per page no. 31 of the complaint)
11.	Possession clause	7. POSSESSION OF THE UNIT 7.1 Schedule for possession of the said Unit: - The Developer agrees and understands that timely delivery of possession of the Unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement. (As per page no. 53 of the complaint)
12.	Due date of possession	31.10.2023 [as per mentioned in the RERA registration]
13.	Payment Plan	Construction linked plan
14.	Total sale consideration	Rs.71,68,157/- (As per payment plan on page no. 21 of the complaint)
15.	Amount paid by the complainants	Rs.23,14,285/- (As per receipt's information on page no. 12-15 of the complaint)
16.	Pre-handed over amount paid to the complainants	Rs.2,42,088/- (As per application placed on record by the respondent on 21.03.2024)
17.	Occupation certificate /Completion certificate	13.12.2021 (As per page no. 133 of the reply)
18.	Offer of possession	16.12.2021 (As per page no. 135 of the reply)
19.	Pre cancellation notice	17.01.2022

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		(As per page no. 141 of the reply)
20.	Cancellation letter	01.02.2022 (As per page no. 142 of the reply)
21.	Creation of third-party rights	01.02.2022
22.	Amount refunded to the complainants	Rs.11,66,095/- (As per page no. 19 of the application of respondent on bring additional facts on record)

B. Facts of the complaint:

3. That the complainants have made following submissions:
- I. That booking with regard to the commercial unit no. R4 K216 having carpet area 82.99 sq. ft. and super area 505.66 sq. ft., type food court, situated on 2nd floor corner shop, block-4 and allotment was made on 01.08.2020. The buyer's agreement was executed on 24.02.2021.
 - II. That total sale consideration was Rs.71,68,157/- on payment linked plan and the complainants paid Rs.5,00,000/- within 5 days of booking vide clause No. 1.16 of the buyer's agreement.
 - III. That as per payment plan, the payment which need to be done within 5 days of booking i.e., Rs.5,00,000/- and remaining 22.67% of total sale consideration i.e., Rs.16,25,001/- was paid by the complainants(s) within 30 days of booking (subject to signing the builder buyer's agreement) which is also paid by the complainants as demanded by the respondent/builder. Rest 70.36% of sale consideration was due once on notice of offer of possession i.e., Rs.50,43,156/-.

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- IV. That the complainants filed a complaint for a sum of Rs.23,14,285/- but on going through the account statement recently found that they have paid a total sum of Rs.25,00,000/- to the respondents instead of Rs.21,25,201/- as per payment schedule.
- V. That the complainants got notice for offer of possession from the respondent on 16.12.2021. The complainants went to the site/shop to verify in actual shop got ready for possession of not. The complainants were astonished to see that the shop was incomplete and lots of work was pending at the end of respondent like garbage was there, raw material was lying on ground, no flooring work was made by the respondent, No electricity wiring was made by the respondent, roof was incomplete, no whitewash was made by the respondent. The complainants went with their family members and meet CRM Mr. Gaurav Jain and Ms. Preety Sharma and asked them that without completion construction work how could we take the possession. Then the complainants were assured that the shop will be completed within 1 month and once the shop will be ready for possession, the complainants can make the remaining payment.
- VI. That unfortunately the respondent has made false promises to the complainants by stating that shop will be ready soon and the complainants can take the possession and on the other hand the respondent cheated by selling this shop on premium price to another person(s) than the complainants.
- VII. That the respondent already refunded an amount of Rs.11,66,095/- to the complainants on 21.11.2023.
- VIII. That the complainants after receiving offer of possession dated 16.12.2021 when inspected the site was shocked to find that the unit was nowhere near to completion as per agreement for sale dated

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24.02.2021. The details of specifications amenities and facilities not provided by the respondent.

- IX. That apart from the above inside the unit flooring was not also completed and pipes were visible at the bottom of the walls. Further the unit was filled with the building material and ceiling work, construction work was also not complete in any manner even on 15.02.2022.
- X. That the unit was not in any manner was complete as agreed even till September 2022 and was almost in same condition as was on 15.02.2022.
- XI. That the respondent wrongly stated about Rs.3,80,000/- has been paid on 31.01.2019 as pre-handover amount rather the said amount was refunded on the request to deposit same in another account and as per the directions of the respondent the said amount of Rs.3, 80, 000/- was deposited on 01.02.2019.
- XII. That the complainants are requested that the present complaint may be allowed and the respondent be directed to refund the balance amount from the total payment of Rs.25,00,000/-to the complainants at the prescribed rate of interest.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the amount i.e., Rs.23,14,285/- paid by the complainants at the prescribed rate of interest.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

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- i. That at the very outset, the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of the law. Therefore, the complaint deserves to be dismissed at the threshold.
- ii. **The complainants are not entitled to any relief whatsoever:**
 - a. That after making independent enquiries and only after being fully satisfied about the project "M3M Broadway" , a commercial project being developed in a planned and phased manner consisting of modern office spaces, entertainment, food and beverage outlets, upscale efficient lofts situated in Sector-71, Gurugram, Haryana, India. The complainants in 2018 approached the respondent company through their broker M/s Chahat Homes Infratech Pvt Ltd.' and submitted an application form along with booking amount for booking of a unit. The respondent herein allotted food court unit bearing no. R4 K216 on 2nd floor in Block-4 vide allotment letter dated 22.01.2019. Since, the complainants failed to make payment and also did not come forward to execute the buyer's agreement therefore the respondent was constrained to cancel the allotment of the complainants vide cancellation letter dated 31.08.2019 and forfeit the amount deposited by the complainants i.e., Rs.5,00,000/-.
 - b. That thereafter the complainants approached and requested for the revival of the food court unit. Acceding to the request of the complainants the respondent being a customer oriented company revived the allotment subject to the complainants making timely payments. Accordingly, a fresh allotment letter dated 15.07.2020 was issued by the respondent on the same terms for food court unit no. R4 K216 for sale consideration of

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- Rs.71,68,157/- plus other charges. The Complainants on their own free will and after fully understanding their obligations opted for possession linked payment plan.
- c. That the complainants herein had earlier applied for booking of a ready to move in unit in one of the OC received projects of associate company M/s. M3M India Pvt. Ltd. On the request of the complainants an amount of Rs. 89,286/- and Rs.20,24,999/- were transferred towards the unit in question.
 - d. That the respondent company vide demand letter dated 16.07.2020 raised the demand for the second instalment. Since, the complainant failed to make payments therefore the respondent issued reminder letter dated 27.08.2020.
 - e. That the copies of buyer's agreement were sent to the complainants and the same was executed and registered between the parties on 24.02.2021. The buyer's agreement duly covers all the right and liabilities for both the parties.
 - f. That in view of the booking and commitment to make timely payments, the respondent company vide acknowledgement letter offered the complainants a monthly pre-handover amount to provide the complainants the comfort of the respondent company's commitment to deliver the unit on time. It is submitted that as per the acknowledgement letter, the respondent shall pay the pre-handover amount of Rs.15,569/- to the complainants per month from the date of completion of amount of Rs. 21,25,000/- till the date of notice of offer of possession. It is submitted that an amount of Rs. 21,25,000/- was completely paid by the complainants till July, 2020 including the fund transfer and the respondent company

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- in compliance of the said letter duly paid the pre-handover amount to the complainants for an amount of Rs.2,42,088/- from 15.07.2020 till 01.11.2021.
- g. That the respondent company completed the construction and development of the retail component of the complex well within time and the applied to the competent Authority for the grant of occupation certificate on 31.08.2021 after complying with all the requisite formalities.
- h. That after due inspection and verification of each and every aspect occupation certificate was granted by the Competent Authority on 13.12.2021. The respondent company fulfilled its promise and had constructed the said food court unit of the complainant way before the agreed timeline i.e. 31.10.2023 by investing its own funds. The respondent company vide notice for offer of possession dated 16.12.2021 requested the complainants to clear outstanding dues amounting to Rs.54,33,090/- on or before 15.01.2022 and take possession of the food court unit which is ready and complete and also requested to pay other charges. It is submitted that as per the opted payment plan the complainants were under an obligation to pay balance amount at the time of notice for offer of possession.
- i. That even after continuous reminders the complainants failed to come forward to clear their outstanding dues and take over the possession of the food court unit, therefore the respondent was constrained to issue a pre-cancellation notice dated 17.01.2022. However, the complainants failed to adhere to this

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- opportunity and continued to breach the terms of buyer's agreement.
- j. That on account of wilful breach of the terms of the buyer's agreement by failing to clear outstanding dues despite repeated requests, The respondent company was constrained to terminate the allotment of the said food court unit vide cancellation notice dated 01.02.2022. The cancellation letter was delivered to the complainants on 03.02.2022. The default of the complainants in making timely payments and complying with other obligations is duly covered under the buyer's agreement, and the cancellation and forfeiture of the earnest money along with other refundable amounts has been in accordance with the terms of the buyer's agreement.
- k. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by the respondent. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement by the complainants, which the complainants are liable to pay as per the terms of the agreement. The complainants had paid an amount of Rs.21,24,999/- against the total dues of Rs.71,68,157/- plus other charges.
- l. That the total loss calculated comes to Rs.23,62,201/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 7,16,816/-, taxes to the tune of Rs. 2,27,680/, pre-handover amount to the tune of Rs.2,42,088/-, statutory dues of Rs. 2,27,680/- , further sum of Rs. 27,937/- was the interest payable by the complainants for the delayed

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payments and opportunity loss of Rs.9,20,000/-. It is submitted that the complainants are raising these frivolous issues as an afterthought in order to unjustly enrich themselves.

iii. The project was completed much before the agreed time limit:

- a. That the due date of possession as per the terms of buyer's agreement was 31.10.2023 or as may be further revised/approved by the authorities. Despite adverse circumstances like NGT orders, COVID 19 pandemic, the respondent has completed the construction of the project and applied for the grant of Occupation Certificate on 31.08.2021. The Occupation Certificate was granted by the Competent Authorities on 13.12.2021 after due verification and inspection. The respondent company offered possession to the complainants vide letter for offer of possession dated 16.12.2021 and requested the complainants to take possession of the unit which is ready and complete. There is no delay in offering possession of the unit to the complainants. Thus, no case is made out under Section 18 of the Act of 2016.
- b. That the complainants are not liable for refund along with interest as the possession has been offered prior to the possession timeline as stipulated under the buyer's agreement and the complainants are not entitled for benefit of their own wrongs as they failed to come forward to clear outstanding dues for the said demands raised in accordance with the payment plan being well aware that time is essence of the agreement.

iv. The complainants are not genuine consumers:

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- a) That the complainants are not genuine consumers and an end user since they have booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainants have invested in many projects of different companies which prove that the complainants are not consumers but only investors. Thus, it is clear that the complainants had invested in the unit in question for commercial gains, i.e., to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainants are not consumers / end users. The complaint is liable to be dismissed on this ground alone. Under these circumstances, it is all the more necessary for the complainants, on whom the burden lies, to show how the complainants are consumers.
- b) The complainants have not disclosed their financial position and the statement of income and assets for the last 5 (five) years prior to the date of booking of the above unit. It is necessary for the complainants to file copies of its income tax returns for the 5 (five) years prior to the date of booking.
- c) Details of the total assets both moveable and immovable together with the value of each asset in the name of the complainants should also be disclosed, which would indicate whether the aforesaid booking was done, like other properties, for investment purposes.
- v. That the complainants have defaulted in making payment on time contrary to the agreed terms. It is submitted that various reminders

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were issued and follow-ups were made with the complainants for complying with their obligations under the buyer's agreement, and to make further payments. Even after repeated reminders, complainants did not come forward and comply with their obligations to make payments. Hence, complainants are not entitled to get any reliefs from the Hon'ble Authority.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground 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

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

E.II Subject matter jurisdiction



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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

8. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding the complainants being investors.

9. The respondent has taken a stand that the complainants are investors and not consumers. Therefore, they are not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to

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note that any aggrieved person can file a complaint against the promoter if the promoter 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 documents placed on record, it is revealed that the complainants are buyers and paid a price of Rs.23,14,825/- to the promoter towards purchase of a unit 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;"

10. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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". The concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to refund the amount i.e., Rs.23,14,285/- paid by the complainants at the prescribed rate of interest.

11. The complainants were allotted a unit in the project of respondent "M3M Broadway" in Sector-71, Gurgram vide allotment letter dated 15.07.2020 for a total sum of Rs.71,68,157/-. The agreement for sale was executed on 24.02.2021 itself and the complainants started paying

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the amount due against the allotted unit and paid a total sum of Rs.23,14,285/-.

12. The respondent has cancelled the unit vide cancellation letter dated 01.02.2022 before the due date of handing over of possession i.e., 31.10.2023 on account of outstanding dues after issuing pre-cancellation notice dated 17.01.2022. The complainants have paid an amount of Rs.23,14,285/- i.e., 35% of the sale consideration of Rs.71,68,157/-. The payment plan opted by the complainants is instalment linked and as per the payment plan, the 30% of the total sale consideration is to be paid within 35 days of booking (subject to signing of builder buyer's agreement) and remaining 70% amount has to be paid on notice of offer of possession. The respondent has received the occupation certificate on 13.12.2021 and offered the possession of the unit on 16.12.2021 but the complainants have paid just 35% of the total sale consideration till date. The respondent has cancelled the unit on 01.02.2022 before the due date on account of non-payment as the complainants are supposed to pay the total sale consideration on notice of offer of possession but only 35% has been paid till date. Thus, in view of the aforementioned facts, the cancellation of the unit stands valid and the respondent is entitled for deduction of earnest money.
13. The counsel for the respondent vide proceedings of the day dated 26.09.2024 brought to the notice of the Authority that the complainants have paid only an amount of Rs.21,24,999/- as per the SOA placed on record at page no. 137 of the reply and not an amount of Rs.23,14,285/- as claimed by the complainants. The complainants has duly attached the receipts issued by the respondent of the amount of Rs.23,14,285/-. Further, the counsel for the complainants has filed written submissions on 24.10.2024 in which it was mentioned that the amount paid by the

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complainants till date is Rs.25,00,000/- but the same was objected by the respondent in its written submissions dated 12.11.2024 and stated that amount paid by the complainants till date is Rs.21,24,999/- only.

14. The counsel for the respondent vide proceedings of the day dated 21.11.2024 stated the amount paid against the instant unit is Rs.21,24,999/- only which has been transferred against the above unit i.e., R4 K216 after cancellation of the earlier unit against which an amount of Rs.23,14,285/- was deposited. However, the unit no. mentioned in the copies of receipts issued by the complainants consists the same unit no. regarding which the complainants have filed the present complaint i.e., R4 K216. Therefore, the Authority observes that the amount paid against the instant unit is Rs.23,14,285/- only.
15. It is evident from the documents placed on record that the complainants have opted for instalment linked payment plan and they have paid a sum of Rs.23,14,285/- against sale consideration of Rs.71,68,157/- of the unit allotted to them. As per the payment plan opted by the complainants, they were required to make payment of the total sale consideration on notice of offer of possession. The respondent has obtained the occupation certificate on 13.12.2021 from the competent Authority and thereafter offered the possession of the unit on 16.12.2021 along with demand of payment of outstanding dues but the complainants have failed to pay the same. The respondent has issued various reminder letters and thereafter pre-cancellation letter and cancellation letter dated 17.01.2022 and 01.02.2022 respectively.
16. Now when the complainants approached the Authority to seek refund, it is observed that under clause 1.16 of the agreement to sale, the respondent-builder is entitled to forfeit the 10% of the total sale

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consideration. The relevant portion of the clause is reproduced herein below:

“Provided that if the allottee defaults/delays in payment towards any amount which is payable, the allottee shall be liable to pay interest for the delayed period to RBPL, at the interest rate as prescribed in the Rule 15 of Rules computed on and from the due date. “Earnest Money” will be 10% (Ten Percent) of the total sale consideration.”

17. 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

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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."

18. 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.23,14,285/- after deducting 10% of the sale consideration and also the amount already paid to the complainants 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 cancellation i.e., 01.02.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

Directions of the Authority:

19. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e., **Rs.23,14,285/-** received by him from the complainants after deduction of 10% of sale consideration of Rs.71,68,157/- as earnest money and amount already refunded/pre-handover amount paid





to the complainants-allottees along with interest at the rate of 11.10% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 01.02.2022 till the actual date of refund of the amount.

- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to the registry.



(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2024