BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**6050 of 2023**
Date of complaint	:	**05.01.2024**
Date of order	:	**13.11.2024**

Kulbhushan Gupta HUF
Through its Karta, Kulbhushan Gupta,
R/o: - H.No. 649, Near Market, Sector-4,
Panchkula-134112.

Complainant

Versus

M/s Manglam Multiplex Private Limited
Regd. Office at: - Cabin-1, LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase-1,
Gurugram-122002.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Riju Mani Talukdar (Advocate) — **Complainant**
Shriya Takkar (Advocate) — **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	M3M 65th Avenue, Sector-103, Gurugram
2.	Nature of the project	Commercial complex
3.	Area of the project	14.4125 acres
4.	Welcome letter dated	03.02.2020 (page 21 of complaint)
5.	Date of Allotment dated	03.02.2020 (page 22 of complaint)
6.	Unit no.	R4 UG 13, Upper Ground Floor (page 22 of complaint)
7.	Unit area	348.58 sq. ft. (carpet area) 701.61 sq. ft (super area) (page 22 of complaint) Increase in carpet area 410.11 sq. ft. Increase in super area 825.44 sq. ft. (page 37 of complaint)
8.	Builder buyer agreement executed on	Not executed
9.	Due date of possession	03.02.2023 [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
10.	Total sale consideration	Rs. 2,01,84,928/- (page 22 of complaint)
11.	Amount paid by the complainant	Rs.1,37,20,000/- (as per SOA on page 39 of complaint)
12.	Occupation certificate received on	30.09.2021 (page 116 of reply)
13.	Notice for offer of possession	25.10.2021 (Page 37 of complaint)

14.	Transfer/Adjustment request of funds from unit in question to outstandings against unit no. R01/G/29 of the same project at the time of offer of possession	21.11.2021, 01.12.2021, 07.12.2021 (page 73,75 and 76 of complaint)
15.	Pre-cancellation notice dated	25.11.2021 (page 74 of complaint)
16.	Cancellation letter dated	10.12.2021 (page 77 of complaint)
17.	Pre-handover amount	Rs.25,71,333/- (as per SOA on page 89 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint as well as written submissions:

I. That in the month of December 2017, the booked a commercial unit bearing no. R1 G 29 in the project of the respondent named 65th Avenue at Sector-65, Gurugram. The respondent has given a time linked payment plan for the payment of consideration of the said unit under which the complainant was required to pay 60% of the total consideration till the execution of the buyer's agreement and the balance 40% of the consideration on notice of possession.

II. That in the month of December 2019, the complainant booked another commercial unit bearing no. R4 UG 13 in the said project for an approximate total consideration value of Rs.2,01,84,928/- and the complainant was offered the same payment plan as given for the previous unit.

III. That during booking of the unit, the respondent promised that they will proceed with this unit like the previously booked unit and also assured that in the event anything happens, the respondent is bound

by the provisions of the Act and the Rules formed thereunder as the project is launched post enforcement of RERA Act, 2016 and if at any stage the:

a. Complainant is not satisfied with the unit and any acts and omissions of the respondent and
b. Respondent fail to obtain OC within prescribed time and offer possession of unit in habitable condition and
c. Complainant will find that it is impossible to carry out business from the unit,
d. There is any violation of the Act or the Rules thereunder;
e. Anything which is in contravention to the Rules and Regulations formed by this Authority

Then, the respondent shall refund the entire money paid by the complainant for this unit and shall transfer the same to the other unit i.e. R1 G 29 without any deduction and with interest in terms of provisions of the model agreement for sale as prescribed by the Authority under Haryana Real Estate (Regulation & Development) Rules, 2017.

IV. That after receiving Rs.60,00,000/- from the complainant for the unit, on 03.02.2020, the respondent issued a provisional allotment letter dated 01.02.2020 whereby the unit no. R4 UG 13 was provisionally allotted to the complainant. The respondent also issued a welcome letter dated 03.02.2020 along with the provisional allotment letter.

V. That by 20.03.2020, the complainant had made a payment of Rs.1,12,00,000/- to the respondent for the allotted unit as per the payment plan opted by/offered to them. However, neither any agreement for sale nor any buyer's agreement was executed with the

complainant for the said unit. Therefore, as per the allotment letter, the allotment of the unit to complainant was still provisional.

VI. That upon payment of Rs.1,12,00,000/- by March 2020, the complainant became eligible for receipt of monthly rebate of Rs.1,25,000/-. In this regard, on 08.08.2020, the respondent executed a letter agreeing to their liability of payment of monthly rebate and promising to pay the monthly rebate @Rs.1,25,000/-. It is submitted that in the letter dated 08.08.2020, the respondent fraudulently mentioned the date of execution of buyer's agreement as 04.03.2020 whereas in reality no buyer's agreement was executed by the respondent with the complainant for the said unit. That the respondent collected more than 55% of the total consideration value and even after that no buyer agreement was executed by them. The complainant visited the office of the respondent several times and requested them for execution of buyer agreement, but the respondent avoided execution of agreement on one pretext of other.

VII. That the respondent issued notice for offer of possession dated 25.10.2021 for the unit and in the offer of possession, the respondent increased the super area from 701.61 sq. ft. to 825.44 sq. ft. and the carpet area was increased from 348.58 sq. ft. to 410.11 sq. ft. i.e. increase by 17.65% of the original area. The respondent increased the consideration proportionate to increase in the area and the entire cost of the unit increased by around Rs.37,85,651/- including basic plus stamp duty etc. That the complainant objected to this arbitrary and unilateral increase in area of the unit.

VIII. That as per the clause 1.7 of the buyer's agreement (reference is taken from the buyer's agreement executed for the other unit of the complainant r1 G 29 in the same project), if the increase in carpet/

super area of the unit is more than 5% and the same is not acceptable to the allottee, then the developer shall refund the actual amounts received against the total price along with interest thereon.

IX. That apart from arbitrary increase in area beyond prescribed limit, upon receiving the offer of possession, the complainant visited the project site to verify if the construction work at site has completed and if the unit is habitable and complete and can the complainant carry out business if they take the possession. The complainant found that the constructions of the retail/ commercial segment is not complete yet and the constructions activities were carried out at large scale making the project dangerous for work and the unit was incomplete and inhabitable.

X. That in view of increase in area being arbitrary and beyond prescribed limited and increasing the overall cost of the unit beyond complainant's budget, the complainant approached the respondent requested them to allot an alternate unit either in the same block or other block of similar area as that of the originally allotted unit and in case they fail to allot alternate unit of similar area, then transfer the entire consideration paid for this unit to the other unit R1 G 29 of the complainant in the same project as per the assurance made at the time of the booking. However, no action was taken by the respondent and neither any alternate unit was allotted, nor the amount was transferred to the other unit despite repeated visit of the complainant to the respondent's office. In this regard, the complainant also sent an email on 21.11.2021 seeking transfer/adjustment of the consideration paid towards R4 UG 13 to R1 G 29. However, no response was received from the respondent.

XI. That instead of responding to the queries and email of the complainant, the respondent issued a pre-cancellation notice dated 25.11.2.2021 to the complainant asking them to clear the dues within 15 days failing which the respondent shall cancel their allotment.

XII. That upon receipt of the pre-cancellation notice, the complainant again sent emails on 01.12.2021 and 07.12.2021 to the respondent requesting them to transfer/adjust the consideration paid towards R4 UG 13 to R1 G 29.

XIII. That again instead of replying to the emails of the complainant and transfer/adjust the consideration, the respondent sent a cancellation notice dated 10.12.2021 to the complainant. The respondent mentioned in the cancellation notice that since the complainant has failed to make the payment within 15 days, therefore, in terms of the application form, allotment letter and buyer's agreement, the entire amounts paid by them stands forfeited on account of default. Pursuant to sending the cancellation notice on 10.12.2021, the respondent replied to the email of the complainant vide their email dated 12.12.2021 informing them that they will not be able to shift funds from one unit to another as their request has been declined by the management and their allotment is cancelled and the entire amount paid by them for the unit is forfeited. It is to be noted that the complainant had paid a total sum of Rs.1,37,20,000/- to the respondent for the unit R4 UG 13.

XIV. That the complainant regularly followed up the matter regarding transfer/adjustment of funds in the other unit with the respondent and finally the respondent adjusted an amount of Rs.1,02,86,415/- against the total payment of Rs.1,37,20,000/- (in R4 UG 13 i.e. present

unit) and deducted a sum of Rs.34,33,585/- without being entitled to do so.

XV. That the deduction of the amount by the respondent is illegal and invalid and is in contravention to the settled law and provisions of the model agreement for sale as formulated by the Authority and their own Buyer's Agreement. As mentioned above, as per Clause 1.7 of their agreement, if the increase in area is more than 5% and the same is not acceptable to the allottee, then respondent shall refund the entire amounts received from the Allottee against the unit along with prescribed rate of interest. Apart from the above, the respondent is guilty of violation of provisions of Section 13 of the RERA Act as the respondent has violated the provisions of the Act and not executed a buyer agreement despite receiving more than 60% of the total consideration. The respondent also violated the provisions of the Section 11(4)(b) as they have never made available the occupancy certificate granted by the authority to the complainant along with the offer of possession or even after that.

XVI. That the respondent has solely relied upon the letter dated 30.03.2022, undated indemnity bond, agreement for substitution of unit dated 30.03.2022 to justify the illegal deduction during transfer. The complainant was coerced to execute these documents under the threat of cancellation of the allotment, non-execution and registration of conveyance deed in case of unit R1 G29 and hence are invalid, illegal, inadmissible and are not bound by the terms of it.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Direct the respondent to refund the entire paid-up amount after deducting the amount already paid.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

6. The respondents have contested the complaint vide its reply dated 20.03.2024 on the following grounds: -

i. That the complainant was allotted a unit bearing no. R4 UG 13 on upper ground floor in retail shop admeasuring 348.58 sq. ft. carpet area vide allotment letter dated 01.02.2020. The cost of the unit in question is Rs.2,01,84,928/- plus other charges. The complainant had opted for a time linked payment plan on its own free will and volition.

ii. That the respondent vide cover letter dated 06.02.2020 sent the triplicate copies of the buyers agreement to the complainant for due execution at the complainant's end. However, for the reasons best known to them, they failed to return the execute copies of the buyer's agreement and did not come forward for the execution process.

iii. That the complainant had earlier booked a unit in the project of associate company i.e., M/s M3M India Pvt. Ltd. and paid an amount of Rs.21,30,000/-. Thereafter, the complainant requested for cancellation of the unit and transfer of funds to the unit in "M3M 65th Avenue" being developed by respondent. The respondent being a customer-oriented company acceded to the request of the complainant and transferred the amount of Rs.21,30,000/- into the account of the complainant without any deductions. Thereafter, the respondent raised all the demands in accordance with the payment plan opted by the complainant. That the respondent vide demand letter dated 03.02.2020 raised the demand due on or before

05.03.2020 and requested the complainant to make payment of Rs.52,00,000/- on or before 05.03.2020.

iv. That the respondent vide acknowledgment letter dated 08.08.2020 offered the complainant a monthly rebate to provide the complainant the comfort of the respondent's commitment to deliver the unit on time. It is submitted that as per the letter, the respondent was to pay the monthly rebate from 20.03.2020 till the date of filing of application for grant of OC of the unit and it was agreed between the complainant and respondent that the monthly rebate will be accumulated and shall be adjusted after the demand payable on offer of possession. In furtherance of the said commitment, the respondent provided a monthly rebate for an amount of Rs.1,25,000/- from 20.03.2020 till 30.09.2021, and hence the accumulated amount of Rs.25,71,333/- (inclusive of GST) was remitted in the account of the complainant in form of a credit note on 16.11.2021. It is submitted that the complainant had paid an amount of Rs.1,20,00,000/- towards the part consideration for the unit no. R4 UG 13 till 08.08.2020 to avail the benefits of rebate.

v. That despite the non-fulfilment of the obligation of making timely payment, the respondent fulfilled its promise and had constructed the said unit of the complainant, by investing its own funds. It is pertinent to mention that the respondent has completed the construction way before the agreed timeline and applied for the OC on 30.04.2021 and the occupation certificate was granted by the competent authorities on 30.09.2021 after due verification and inspection.

vi. That the unit was ready and the respondent vide letter dated 25.10.2021 offered possession to the complainant and requested him

to remit the outstanding dues towards the remaining basic sale price, taxes, cess, stamp duty charges etc.

vii. That the complainant was well aware of its obligation to take possession of the unit in accordance with Sec 19(10) of Act, 2016. The complainant was in violation of its agreed obligations failed to remit the amount towards the dues communicated vide the offer of possession, therefore the respondent was forced to issue a pre-cancellation notice dated 25.11.2021.

viii. That despite the issuance of the pre-cancellation notice, the complainant failed to remit any amount towards the said offer of possession and the respondent was forced to cancel the unit vide cancellation notice dated 10.12.2021 as per the terms of the application form/allotment. It is submitted that the complainant had deposited a sum of Rs.1,37,20,000/- against the unit no. R4 UG 13.

ix. That the complainant vide letter dated 30.03.2022 had requested the respondent for cancellation of unit bearing no. R4 UG 13 and adjustment of refund amount towards booking of unit no. R1 G 29. Post discussions and negotiations between the parties, it was agreed that an amount of Rs.1,02,86,415/- post necessary deductions (GST loss, Brokerage and admin charges) would be transferred from cancelled unit no. R4 UG 13 to retained unit being unit no. R1 G 29. Accordingly, the complainant on his own will executed an indemnity bond. Further, an agreement for substitution of units was also executed between the parties on 30.03.2022. Accordingly, the respondent as per the understanding between the parties transferred the amount of Rs.1,02,86,415/- from the cancelled unit into the account of the complainant towards the retained unit on 13.05.2022. It is submitted that the deductions were duly agreed to by the complainant as he had

also executed an indemnity bond and agreement for substitution of units. The above-mentioned facts have been concealed by the complainant. Thus, the complainant is now raising all these issues at this belated stage after about 1.5 years as an afterthought.

x. That the complainant never had the intention of taking possession of the cancelled unit bearing no. R4 UG 13 and the said fact is absolutely clear from a bare perusal of the alleged emails dated 21.11.2021, 01.12.2021 and 07.12.2021 annexed with the complaint. That as far as the contents of the above-mentioned emails qua commitment of adjustment of funds is concerned the same are denied and disputed. It is stated that at no point of time the respondent had made the commitment qua buy back of the units. It is submitted that the complainant was facing financial difficulties and only wanted the transfer of funds from cancelled unit to retained unit. The said fact is clear from point nos. 3 and 4 of email dated 01.12.2021 written by the complainant.

5. 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 submissions made by the parties.

E. Jurisdiction of the authority

6. The respondent has raised a preliminary submission/objection that 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

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

E.II Subject-matter jurisdiction

8. 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) 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.*

9. 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.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

10. The complainant was provisionally allotted a unit bearing no. R4 UG 13 in the project of the respondent named "M3M 65th Avenue" at Sector-65, Gurugram vide provisional allotment letter dated 03.02.2020 for a total sale consideration of Rs.2,01,84,928/- against which the complainant

has paid a sum of Rs.1,37,20,000/- in all. The respondent after receipt of occupation certificate from the competent authority on 30.09.2021 issued notice for offer of possession dated 25.10.2021 for the unit vide which the complainant was informed that on the basis of final measurements, the super area and carpet area of the unit has been increased from 701.61 sq. ft. to 825.44 sq. ft. and from 348.58 sq. ft. to 410.11 sq. ft. respectively. The complainant has submitted that the substantial amount of payment beyond 10% of the cost of consideration was taken by the respondent and no BBA has been executed till date. Further, the respondent had unilaterally and arbitrarily increased the super area and carpet area of the unit which was unjustified. In this regard, the complainant sent an email dated 21.11.2021 to the respondent seeking transfer/adjustment of the consideration paid towards R4 UG 13 to another unit of the complainant in the same project i.e. R1 G 29. However, the respondent instead of responding to the queries and email of the complainant, issued a pre-cancellation notice dated 25.11.2.2021 to the complainant asking them to clear the dues within 15 days failing which the respondent shall cancel their allotment. Thereafter, the respondent sent a cancellation notice dated 10.12.2021 to the complainant mentioning that since the complainant has failed to make the payment within 15 days, therefore, in terms of the application form, allotment letter and buyer's agreement, the entire amounts paid by them stands forfeited on account of default. Pursuant to sending the cancellation notice on 10.12.2021, the respondent replied to the email of the complainant vide their email dated 12.12.2021 informing them that they will not be able to shift funds from one unit to another as their request has been declined by the management and their allotment is cancelled and the entire amount paid by them for the unit is forfeited.

The complainant regularly followed up the matter regarding transfer/adjustment of funds in the other unit with the respondent and finally the respondent adjusted an amount of Rs.1,02,86,415/- from the unit in question in another unit of the complainant and deducted a sum of Rs.34,33,585/- without being entitled to do so. The respondent has submitted that vide cover letter dated 06.02.2020 it has sent the triplicate copies of the buyer's agreement to the complainant for due execution at the complainant's end. However, for the reasons best known to him, he failed to return the execute copies of the buyer's agreement and did not come forward for the execution process. The respondent has completed the construction and development of the project and got the occupation certificate on 30.09.2021 and thereafter vide letter dated 25.10.2021 offered possession of the unit to the complainant and requested him to remit the outstanding amount of Rs.89,46,784/- towards the remaining basic sale price, taxes, cess, stamp duty charges etc. However, the complainant defaulted in making payments and the respondent was to issue pre-cancellation notice dated 25.11.2021 requesting the complainant to comply with his obligation. Despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter, the complainant failed to act further and comply with his contractual obligations and therefore the allotment of the complainant was finally cancelled vide cancellation letter dated 10.12.2021. It is submitted that the complainant never had the intention of taking possession of the cancelled unit bearing no. R4 UG 13 and the said fact is absolutely clear from a bare perusal of the emails dated 21.11.2021, 01.12.2021 and 07.12.2021 annexed with the complaint wherein the complainant has himself admitted the fact that he was facing financial difficulties and only wanted the transfer of funds

from cancelled unit to retained unit. The said fact is clear from point nos. 3 and 4 of email dated 01.12.2021 written by the complainant. Moreover, post discussions and negotiations between the parties, it was agreed that an amount of Rs.1,02,86,415/- post necessary deductions (GST loss, Brokerage and admin charges) would be transferred from cancelled unit no. R4 UG 13 to retained unit being unit no. R1 G 29. Accordingly, the respondent as per the understanding between the parties transferred the amount of Rs.1,02,86,415/- from the cancelled unit into the account of the complainant towards the retained unit on 13.05.2022 and an amount of Rs.30,21,070/- was refunded back to the complainant vide RTGS. Now, the question before the authority is whether the cancellation issued vide letter dated 10.12.2021 is valid or not.

11. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid Rs.1,37,20,000/- against the total sale consideration of Rs.2,01,84,928/-. The complainant has submitted that the unit in question was booked through channel partner i.e. Elite Landbase Pvt. Ltd., with the commitment from respondent and one Sh. Robin Pahuja Ji from Elite Landbase Pvt. Ltd. that *"The amount received for the unit no. R04/UG/13 will be adjusted/transferred to the unit no. R01/G/29 at the time of offer of possession"*. Accordingly, the complainant after receipt of offer of possession of the unit in question on 25.10.2021, requested the respondent vide email dated 21.11.2021 to adjust/transfer funds from the unit in question to another unit of the complainant i.e. R01/G/29. However, there is not even a single document available on record to substantiate the claim of complainant. The complainant further

contended that the respondent has failed to execute a buyer's agreement w.r.t the unit in question till date, but as per record, the respondent vide letter dated 06.02.2020 has duly sent triplicate copies of the buyer's agreement to the complainant for its execution within thirty days of dispatch of the same. Hence, the said contention of the complainant cannot be relied upon. Furthermore, as per record, the respondent/builder has obtained occupation certificate on 30.09.2021 and thereafter offered possession of the unit to the complainant vide 'notice for offer of possession' letter dated 25.10.2021, subject to payment of outstanding dues of Rs.89,46,784/-. The complainant failed to make payment of the outstanding dues. Therefore, the respondent was constrained to issue pre-cancellation letter dated 25.11.2021, giving last and final opportunity to the complainant to comply with his obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 10.12.2021. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the allotment letter dated 03.02.2020 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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 reasonable amount to be forfeited in the name of "earnest money".* Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under:

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

12. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent/promoter is directed to refund the deposited amount of Rs.1,37,20,000/- after deducting 10% of the sale consideration i.e., Rs.2,01,84,928/- being earnest money along with an interest @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. The interest shall be paid on the amount adjusted from the date

of cancellation i.e. 10.12.2021 till its adjustment and on the remaining balance amount till its realization.

13. Out of the amount so assessed, the amount already credited by the respondent vide RTGS dated 17.10.2022 shall be adjusted from the refundable amount.

H. Directions of the Authority:

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

    i. The respondent/promoter is directed to refund the deposited amount of Rs.1,37,20,000/- after deducting 10% of the sale consideration i.e., Rs.2,01,84,928/- being earnest money along with an interest @11.10%. The interest shall be paid on the amount adjusted from the date of cancellation i.e. 10.12.2021 till its adjustment and on the remaining balance amount till its realization.

    ii. Out of the amount so assessed, the amount already credited by the respondent vide RTGS dated 17.10.2022 shall be adjusted from the refundable amount.

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

15. Complaint stands disposed of.

16. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.11.2024