

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

**Complaint no:** 3747 of 2020  
**Date of Filing:** 30.10.2020  
**Order reserved on:** 07.11.2024

1. Sangeeta Sharma
2. Kunal Vashisth
3. Rajinder Parsad Sharma

**All R/o** House No. 21, Defence Colony, Hisar, Haryana-125001.

**Complainants**

Versus

M/s Vatika Limited

**Office address:** Vatika Triangle 4<sup>th</sup> Floor, Sushant Lok-1, M.G. Road, Tehsil & District Gurugram, Haryana-122002.

**Respondent no.1**

M/s Vatika Seven Elements Private Limited

**Office address:** Flat no.621-A, 6<sup>th</sup> Floor, Devika Towers, Nehru Place, New Delhi-110019.

**Respondent no.2**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**Appearance:**

Shri Arun Kumar (Advocate)

**Complainants**

Shri Dhurv Dutt Sharma (Advocate)

**Respondents**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided

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under the provision of the Act or the rules and regulations made there under or to the allottees as per the memorandum of understanding executed *inter se*.

**A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Seven Elements (Phase-I)" at Sector-89A, Gurugram.
2.	Project area	14.30 Acres
3.	Nature of Project	Group Housing Colony
4.	DTCP license no. and validity status	40 of 2013 dated 06.06.2013 Valid upto 05.06.2029
5.	Name of Licensee	Strong Infrabuilt Pvt. Ltd., Sh. Shyoraj, Sh. Manoj Ss/o Rohtash C/o Vatika Limited
6.	Rera registered/ not registered and validity status	<b>Registered</b> 281 of 2017 dated 09.10.2017 Valid upto 31.01.2026
7.	Application cum allotment letter	09.04.2018 (as per page no. 69 of reply)
8.	Name of allottees	Kunal Vashisth and R.P. Sharma (as per application form at page no. 55-57 of reply)
9.	Unit no. and unit area	302, 3 <sup>rd</sup> floor, Tower-A2 (2BHK) 1605 sq. ft. (carpet area)
10.	Buyer's agreement	Not executed
11.	Possession clause	11. ... the promoter shall offer the possession of the unit to me/us on or before January, 2022.

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		(as per clause 11 of application cum allotment form at page no.63 of reply)
12.	Due date of possession	<b>31.07.2022</b> (31.01.2022 + 6 months) (Note: The due date of possession is calculated as per clause 11 of application cum allotment form + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020) (Page no.63 of reply)
13.	Sale consideration	Rs.1,12,97,679/- (as mentioned in application cum allotment form at page no.66 of reply)
14.	Amount paid	<b>Rs.33,63,603/-</b>  (Rs.1,00,000/- paid at the time of application form + Rs.15,16,900/- transferred from unit no.7 of Vatika INXT + Rs.17,46,703/- transferred from unit no.3 of Vatika INXT)  (as per SOA at page no.73 of reply)
15.	Deduction made during transfer of amount from unit no.3 of Vatika INXT	<b>Total deduction Rs.7,82,025/- out of total received Rs.25,28,727/-.</b> Service Tax Rs.4,53,693/- Service Tax on earnest money Rs.1,73,643/- Brokerage Rs.1,54,688/-
16.	Deduction made during transfer of amount from unit no.7 of Vatika INXT	<b>Total deduction Rs.7,13,867/- out of total received Rs.22,30,765/-.</b> Service Tax Rs.4,49,143/- Service Tax on earnest money Rs.1,7,911/- Brokerage Rs.92,813/-
17.	Letter, and reminders for execution of buyer's agreement	01.08.2018, 04.10.208 & 31.10.2018 (as per page no. 75-77 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

**B. Facts of the complaint:**


3. The complainants have made the following submissions in the complaint: -
- i. That the respondent is a company duly incorporated and registered under the provisions of the Companies Act, 1956 having its registered office at - Vatika Triangle 4 "Floor, Sushant Lok Phase-I, Block A, M.G. Road, Gurugram with effect from 09.03.2019. The respondent is engaged in the business of Group Housing Construction, commercial construction and other real estate activities. The company claims to have built a solid reputation for quality and a great value for money, also, claimed to have completed a series of Real Estate Projects in and around the NCR region over the years.
  - ii. That the complainants are law abiding citizen of India and residing above mentioned address. The complainants are represented by the General Power of Attorney holder Sh. R.P. Sharma for Kunal Vashisth and Sangeeta Sharma. That the complainants, Sangeeta Sharma and Kunal Vashisth are being represented before the respondent and the before this Hon'ble Authority by Sh. R.P. Sharma GPA from the complainant Kunal Vashisth.
  - iii. That the complainants, while looking for a flat for them, were approached by the representatives of the respondent company. They were informed that respondent company is coming up with a new project in the name of "Sovereign Park Sector 99 and Vatika INXT Floor sector 82 C situated at Gurugram. The project was developed by the developer under License No. 41 of 2013 received from Director General Town & Country Planning, Chandigarh Haryana. The project was promoted as Sovereign Park and INXT Floor India Next Gurugram.
  - iv. That the complainants were highly impressed by the highlights of the project and the promised on-time delivery of possession by the respondent company and the complainants-allottees of two properties in INXT Floor

Sector 82 C Gurugram bearing property no. 3 and 7. and paid an amount of Rs.6,71,000/- as booking amount by cheque no. 177402 dated 24.12.2012 and paid Rs.6,50,000/- on 23.01.2013.

- v. Further, the complainants paid Rs.9,00,000/- towards second installment vide 177525 dated 05.05.2013 towards property no 3 in sector 82 c against the property no3 and also paid Rs.9,00,000/- rupee vide cheque no 177410 dated 05.02.2013 towards property no7 as second installment in sector 82. at sector 82 C. booked in the project of respondent company.
- vi. When the compliment went to the respondent company for payment of second installment in INXT floor sector 82 C, the sale manager proposed that a new project in sector 99 sovereign park is coming up and stated that this project is batter then INXT floor sector 82C and advised informally, that you may book two properties in the new project and assured that the amount paid in the previous project in sector 82 C will be adjusted in the subsequent installment of the new project in sector 99 Sovereign Park.
- vii. Accordingly, the complainant booked two properties with respondent company i.e. M/s Vatika Limited in "Sovereign Park", sector-99, Gurguram and they were allotted property no. 75 and 76 in the name of Ms. Sangeeta Sharma and Mr. Kunal Vashisth against which they paid Rs.10, 00,000/- each as booking amount. Totally to Rs.20, 00,000/-, on the assurance given by the sales manager of the respondent company about adjustment of the amount paid towards the properties No. 3 and 7 in INXT Floor Sector 82 C Gurugram.
- viii. Thereafter, the complainant requested for adjustment of amount paid in INXT Floor against property no. 3 and 7 in the Sovereign Park project property No. 75 and 76. The respondent company declined to do so and conveyed that a 10% of basic sale price of INXT Floor 3 & 7 (which was

amounting Rs25 lacs approximately) will be deducted from the amount already paid for doing so. This event due to misguiding of Vatika's sales manager Vatika made the complainant very tense.

- ix. The complainant due to financial constraint, requested the respondent company to transfer the booking amount paid in respect of Plot no. 75 in sovereign Park and to merge in the plot no. 76 and allot a fresh property. On this Vatika charged Rs.75/- sq. ft. deduction and asked for Rs.1,00,000/- for transfer of funds of plot no.75 to another plot. This amount was also paid by the complainant on 09.07.2013.
- x. The complainant attended a meeting for allotment of apartment in "Sovereign Park" on 27.06.2013 and after discussion the complainant was allotted the apartment no. 302 in sector 89 A "Sovereign Park", Gurugram of the respondent. However, the complainant after inspection of the property found the said property too costly and proposed that the amount paid for the property no.75 and 76 sovereign park sector 99 may be transferred against the booking of property bearing plot number 3 and 7 in Vatika INXT floor sector 82 C Gurugram.
- xi. The respondent company agreed to this proposed transfer of funds in the respect of property no. 75 and 76 for which Rs.20,00,000/- were paid to the respondent company and deducted Rs.75/- per sq. ft. floor area of property 75& 76 (renamed as 302, Sovereign Park) before transferring to plot number 3 and 7 Vatika INXT Floors Sec 82C.
- xii. The respondent company transferred the amount of Rs.16,38,492/- against the paid-up amount of Rs.20,00,000/- in respect of Plot no., 75 and 76 Sovereign Park Sector 99 Gurugram. Out of Rs.16,38,492/- a sum of Rs.9,57,727/- was transferred against property no. 7 INXT Floor Sector 82 C and Rs.6,80,765/- has been transferred against the Floor no.3 in INXT

Floor Sector 82 C Gurugram making Rs.22,30,765/- have been paid against the property no. 3 and Rs.25, 28,727/- have been paid against the property no. 7 in INXT floor Gurugram totalling to Rs.47,69,492/-. This way, due to misguiding of sales manager of Vatika, the complainant not only lost Rs.3,61,508/- but undergone a huge mental stress.

- xiii. The respondent company after allotment of property no. 302 in sector 89A in Sovereign Park Gurugram of the respondent company after merging the property no. 75 and 76 in sovereign park inspected the property no. 302 and found the said property too costly and proposed that the amount paid for the property no. 75 and 76 in sovereign park sector 99 may be transferred against the booking the property in INXT floor sector 82 C Gurugram which was allotted to the complainant as property no. 3 and 7 Respectively in the said project.
- xiv. The respondent company forwarded letter for payment of the instalment as per schedule shown in the builder buyer agreement, they also issued the reminder for payment in respect of property no. 3 and 7 in INXT Floor Sector 89 C Gurugram. The respondent company forwarded notice for possession to the complainant vide their letter dated 19.01.2015 and for payment to balance amount of instalment.
- xv. After the receipt of the possession letter complainant went to inspect the completion of the construction and furnishing of the apartment no. 3 and 7 Sector 82 C Gurugram, and found that the construction was still going on, agriculture activity was going on in the field of near plot no. 3. Road work was incomplete; there was no market, no School, no club, no electricity, no water, etc. as promised at the time of booking which was brought in the notice of the company by the respondent. Thus, the act of the respondent company was just to garb the money before completion of the project

fraudulently from the complainant and as such, pseudo possession in such a condition was not accepted. It is also stated that the respondent company has told that construction will be completed in three to four years approximately. Whereas, the possession letter was issued within a short period of two years after booking.

- xvi. The respondent company forwarded payment reminder dated 14.07.2015 to the complainant for early payment. That due to the financial crisis the complainant submitted a proposal conveying that the respondent company has stated that presently they are selling these units at the rate of 71 crore 50 Lacs each, therefore the respondent company may consider retaining these two units for sale at their end, and refund our original booking amount and instalment without interest or merge the money paid against apartment no.3 in the account of Plot no. 7 of Mrs. Sangeeta Sharma without any deduction for any other charges, and thus allot one unit i.e. Apartment no.7. The complainant also requested for two months' time for arranging the balance fund, either loan from the bank or from the personal resources. The complainants requested, in case the above proposal is not acceptable, and then kindly arrange the meeting with managing director of Vatika Ltd.
- xvii. The respondent company suddenly vide their letter dated 10.11.2015 cancelled, of their own, the allotment of plot no. 3 and 7 sector 82 C, allotted to the complainants without giving any reply to the letter/ E-mail of the complainant seeking details of adjustment of funds paid by them. And remitted two cheques of Rs.5,60,390/- and Rs.2,88,960/- respectively against the considered payment of Rs.25,28,727/- and Rs.22,30,765/- respectively against Rs.52,21,000 paid by the complainant to the respondent company. These letters show that 10% of the earnest money, service Tax, admin charges, brokerage etc. etc. have been deducted from



- the amount paid by the complainant as per the terms and condition of the Agreement. However, said INXT Floors were never ready for possession.
- xviii. The complainant returned the two cheques received with cancellation letter, request to implement to the original approval during various discussions from 17.02.2015 to 17.04.2015 and particularly mail Dated 24.03.2015 to CRM Vatika.
- xix. Compelled by these events of the respondent company as mentioned above the complainant issued a legal notice dated 01.012.2015 to recall the termination notice daed 23.10.2015 and termination cum refund letter dated 10.11.2015 and not to cancel the floors of the complainant and adjust the amount of the One floor of Plot no. 3 in the plot no. 7 Sector 82 C, as assured and agreed by the respondent company or offer alternative property acceptable to my client by adjusting their total considered amount of Rs.47,59,492/- (Actually paid Rs.52,21,000/-)without any deduction or refund along with interest at the rate of 12% per annum.
- xx. The respondent company responded through their advocate to the legal notice issued to them by the advocate of the complainant denying all the averments and for withdrawal of the legal notice.
- xxi. Meanwhile, the CRM of Vatika called the advocate of the complainant and during discussion; the respondent company agreed merging of the property no. 3 and 7 in INXT Floor Sector 82 C and allottee property no. 7 and adjust the amount of property no. 3 against the property no. 7. The respondent company conveyed that complainant may visit the respondent company to discuss this matter. The complainant visited the CRM manager of Vatika Limited for merger of two properties no. 3 and 7 in INXT floor and allottee property no. 7 and transfer the funds paid on property no.3 against the property no. 7.

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- xxii. The real estate (Regulation and development Act 2016) came into force thereby making all the developer and builders liable to pay compensations in case of delay in handed over the possession of the project. The complainant vide his various letter reminded the respondent company for merging of two units in to one and it was told to him that it will take three to four days for approval and the complainant will be informed accordingly. But no communication has been received from the respondent company. The complainant made several visits and mail communications but respondent company never bothered to implement the decision.
- xxiii. That the complainant has been continuously requested the respondent company to cancel the allotment of apartment no.3 allotted to him and adjust the amount paid against the other apartments no.7 or give some fresh allotment of the lower category with deduction or kind of charge.
- xxiv. That the complainant further kept on following and requesting the respondent company to transfer the funds against the plot no.3 and 7 in INXT floor sector 82 C, which have been terminated into lower category 2BHK flat as fresh booking. The respondent company again asked for Rs.1,00,000/- which were also paid on 26.03.2018. The respondent company allotted the flat no. 302/Tower A in Sector 89 A, in Vatika Seven Element Project Gurugram and forwarded two copies of builder buyer agreement in respect of this flat 302 sector 89A through courier in a very casual manner and the requested to return the same duly signed within thirty days where the company knew that primary applicant of this residential unit is out of country for higher studies in Brisbane, Australia.
- xxv. The complainant e-mailed on 27.08.2018 that these papers were delivered in security office and have been received only yesterday. The complainant communicated the respondent that the documents cannot be signed



without clarification of certain terms and primary applicant i.e. his son is out of country for his higher studies in Griffith University, Brisbane, Australia and requested for deposition of these documents in October, 2018.

- xxvi. Surprisingly, the respondent company sent reminder call to deposit the documents i.e. BBA agreement within 30 days failing which the company reserve the right to terminate the booking which is very irresponsible behaviour on the part of the respondent company as the complainant has already informed that his son is studying in Australia and will be coming somewhere in October. Complainant responded that before the documents are signed by his son who is a primary applicant, please forward us the statement of account (to understand how the paid-up amount has been adjusted against this latest allotment i.e. A-302 Seven Elements) clearly specify, as to how you have adjusted our paid funds of property no.3 and 7 INXT Sector 82 C.
- xxvii. The complainant sent the e-mail reminder on 15.11.2018 and 18.11.2018 asking for statement of account showing the adjustment of funds in the new allotment in plot no. 302 sector 89 "Seven Elements" residential project.
- xxviii. The complainant forwarded letter to the managing director of the respondent company to intervene personally and help them to provide statement of account and justice for holding our money free of interest.
- xxix. The complainant again requested the meeting with managing director on 11.07.2019. The respondent company responded that they have recently provided and auto generated E-mail response to your enquiry vide query no. 00661509, but the complainant informed on the same day that no such mail has been received.



- xxx. The complainant conveyed that they have shifted to his native place in Hisar, house no.21, Defence Colony and requested for further communications or posts at Hisar address, which was also forwarded to them.
- xxxi. The complainant reminded the respondent company that the company needs to reverse the wrong tax invoices raised before 20.07.2019 for executing building buyer agreement. The statement of account is still awaited.
- xxxii. Mr. Sajid of respondent company through e-mail conveyed that milestone reversal is in process and we will share the updated statement of account soon and same was also confirmed by Mr. Yadav, a team member.
- xxxiii. The respondent company e-mail stated that attached is the SOA (Statement of Account) for your reference. Forwarded statement of account indicating that only Rs.33,63,603/- have been adjusted in the new property no. 302 sector 89 Seven Elements, out of the paid amount of Rs.47,59,592/- Plus Rs.1,00,000/- in respect of plot no. 3 and 7 in INXT Sector 82 C. The complainant again sent mail to the respondent company that unless you reverse the forced tax invoice for reoffered property, the execution of the builder buyer agreement will remain pending with all consequences on your part. The complainant e-mailed that he is still awaiting the statement of account.
- xxxiv. The complainant replied the e-mail dated 05.08.2019 stating that entire amount of Rs.52,21,000/- may be adjusted against the property no. A-302 sector 89 A Seven Elements project or returned of the whole amount of Rs.47,59,592/- (actual paid up amount is Rs.52,21,000) Plus Rs.1,00,000/- paid subsequently along with interest and conveyed that owing to this builder buyer agreement has not been executed, the 12 complainant also

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sent reminders to the respondent but the respondent never gave any response.

- xxxv. The complainant forwarded an e-mail 14.02.2020 seeking the adjustment of the amount paid against property No.3 and 7 In INXT Floor Sector 82 C Gurugram and adjust the same to one unit. The complainants have reviewed the statement of account and found that incorrect amount have been shown in adjusted amount by the respondent. The complainant also asked for license No. and date of license in respect of property no. A302 Sector 89 A Seven Element Project Gurugram present status of the construction of this property and conveyed that he will visit the site on 17.02.2020 and requested for verification from the respondent company but of no use as no reply from the respondents.
- xxxvi. Recently, the Hon'ble Apex Court has also taken cognizance of such one sided agreements made by the Developers and abuse of their dominant position in the case of "Pioneer Urban Land and Infrastructure Limited versus Govindan Raghavan" bearing Civil Appeal No. 12238/2018 and held that:-
- xxxvii. "6. 7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder."
- xxxviii. Also, the Law Commission of India in its 199 'Report, addressed the issue of 'Unfair (Procedural & Substantive) Terms in Contract'. The Law

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Commission inter-alia recommended that legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that: - "A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."

- xxxix. As per the provision of Real Estate (Regulation and Development Act, 2016) under chapter 1V - Right and duties of the allottee provide in para & that Obligations of the allottee under section 6 under liability towards interest under sub section 7 may be reduced when mutually agreed to between the promoter and such allottee.
- xl. Further, the terms interest has been defined in the Section 2 (za) of the RERA Act. The Section 2(za) states that if the promoter/ builder fails to offer the possession within stipulated/ promised time frame, they shall be liable to pay interest to the allottee at the rate which they have charged interest from the allottee on the late payment of installments or any other payment.
- xli. The interest payable by the promoter to the allottee shall from the date promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee default in payment to the promoter till the date it is paid.
- xlii. That the principal of parity and the definition of interest under RERA demands that the buyer be compensated in the same manner in which the respondent company has compensated itself in case of alleged delay in payment of instalment. It is only appropriate that the complainants be paid 24% p.a., interest on the total money paid for the period of delay. It is needless to state that the conduct of the respondent dearly falls within the

definition of the Unfair Practices as defined under The Real Estate (Regulation and Development) Act 2016.

- xliii. That in view of the above-mentioned facts and circumstances it is only appropriate that this Hon'ble Authority may be pleased to hold that the respondents have failed to deliver the statement of accounts showing the adjustment of deduction made from the total amount of Rs.47,59,592/- (Actually paid up Rs.52,21,000/-).
- xliv. That in view of the above-mentioned facts and circumstances it is only appropriate that this Hon'ble Authority may direct the respondents to adjust the entire amount of Rs.47,59,592/- (Actually paid Rs.52,21,000/-) against the fresh allotment of apartment No.302 Sector-89A, Seven Elements, Gurugram. The complainant has already conveyed to that he is ready to pay the balance amount after adjustment of entire paid amount. And they after handover the possession to the complainant failing which the complainants have no option but to seek refund of the entire amount of Rs.47,59,592/- (actually paid Rs.52,21,000/-) along with interest @12% p.a. from the date of deposition of amount till its realization.

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

4. The complainants have sought following relief(s)
- Direct the respondent to pay all the previously paid amount of Rs.52,21,000/- plus Rs.21,00,000/- along with interest @18% P.A. on the amount paid by the complainants from the date of deposition with the respondent company.
  - Hold the respondents guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation of Rs.5,00,000/- with interest as per rules from the actual promised date of allotment till realization; and

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- c. Award pendent lite interest as per rules from the date of payment of amounts till realization; and
  - d. Grant the cost of litigation of Rs.1,10,000/- in favor of the complainants and against the respondents; and
  - e. Pass any other order as this forum may deem fit and necessary in view of the above- mentioned facts in favour of complainants and against the respondents.
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 contested the complaint on the following grounds: -
- i. That the complaint filed by the complainants before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Hon'ble Authority as the reliefs being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Ld. Authority.
  - ii. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
  - iii. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.



- iv. That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainants.
- v. That initially the complainants namely Ms. Sangeeta Sharma and Mr. Kunal Vashisth booked two apartments i.e. Plot 7(FF) and Plot 3(FF) respectively, both measuring 1800 sq. ft. for a total sale consideration of Rs.1,22,79,375/- and Rs.1,24,03,125/- respectively in the respondent's project namely 'INXT FLOORS', located at Sector 82C. Thereafter, two builder buyer agreements dated 27.02.2013 were executed between the complainants and the respondent. It is pertinent to mention here that the payment plan opted by the complainants was time linked payment plan.
- vi. That vide letter dated 31.07.2013, the respondent raised a demand upon the complainant Mr. Kunal Vashisth towards milestone within 8 months from the date of booking' of Rs.9,57,727/- which was due from him. Since no payment was received from the complainant, the respondent issued a reminder letter dated 06.09.2013 demanding therein the outstanding amount of Rs. 10,06,580/- (including interest till 06.09.2013), due from the complainant as per the payment plan opted by him but the complainant did not pay the said outstanding amount.
- vii. That vide letter dated 23.08.2013, the respondent raised a demand upon the complainant Ms. Sangeeta Sharma towards milestone 'within 8 months from the date of booking of Rs.9,48,101/- which was due from her. Since only part payment was received from the complainant, the respondent again issued reminder letters dated 08.10.2013 and 08.11.2013, demanding therein the outstanding amount of Rs. 3,11,931/- (including

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- interest till 08.11.2013), due from the complainant as per the payment plan opted by her but the complainant did not pay the said outstanding amount.
- viii. That vide letter dated 04.12.2013, the respondent raised a demand upon the complainant Mr. Kunal Vashisth towards milestone 'within 12 months from the date of booking' which was due from him. Since no payment was received from the complainant, the respondent again issued reminder letters dated 08.01.2014 and 12.02.2014, demanding therein the outstanding amount of Rs.26,73,686/- (including interest till 12.02.2014), due from the complainant as per the payment plan opted by him but the complainant did not pay the said outstanding amount.
- ix. That vide letter dated 27.12.2013, the respondent raised a demand upon the complainant Ms. Sangeeta Sharma towards milestone 'within 12 months from the date of booking' which was due from her. Since no payment was received from the complainant, the respondent again issued reminder letters dated 12.02.2014 and 04.03.2014, demanding therein the outstanding amount of Rs.29,14,390/- (including interest till 04.03.2014), due from the complainant as per the payment plan opted by her but the complainant did not pay the said outstanding amount.
- x. That on 14.01.2015, the respondent had sent to the complainants, a mail apprising them of the outstanding amount of Rs.33,53,896/- and the amount due on possession of Rs.74,28,625/- and that further, the demand for the possession milestone would be issued shortly. The complainants in reply to the said mail reverted vide email dated 15.01.2015 and stated that they did not understand the calculation. Thereafter, the respondent tried to contact the complainants to address the grievance but was not able to contact him. The same was informed to the complainants vide email dated 19.01.2015. It was further informed to the complainants that the Letter of

Intimation would be issued shortly and that the offer of possession would be dispatched post receiving the possession payment along with the indemnity. That accordingly, a letter of intimation of possession was sent to both the complainants, both dated 19.01.2015, for plots 7(FF) and plot 3(FF), demanding the amounts of Rs.1,10,63,009/- and Rs.1,08,87,778/- respectively to be paid by 06.02.2015. The same were not paid by the complainants.

- xi. That on 23.01.2015, the complainants had sent to the respondent a mail stating that they could not pay the amounts demanded and requested the respondent to merge both the unit and transfer the paid amount to plot 7(FF). That the request of the complainants was denied vide email dated 27.01.2015, as the same was against the respondent company's policy. That in reference to the respondent's letter of intimation of possession dated 19.01.2015, the complainants had sent to the respondent a letter dated 30.01.2015, stating that he wanted to cancel the booking of plot No. 3(FF) and had requested the respondent to transfer the amount paid towards the said unit to the amounts due towards plot No.7(FF) and had further requested that he would require a further 2 months to repay the demanded amounts. That thereafter, the complainants had sent to the respondent an email dated 02.02.2015, outrightly denying to pay the demanded amounts. That the respondent responded to the said email vide email dated 02.02.2015 stating that the Units were ready for possession. That further, handover of the Unit could be done in 30-45 days post receiving the payment. It was further clarified that all the civic work would be completed prior to possession and that the Unit would be in a livable condition at the time of possession. That further, the complainant was categorically told that the respondent did not provide any commitment for completion of

school and other facilities. That further, all the basic facilities were available in the property. That the complainants were also requested to clear the dues at the earliest in order to handover the units and to avoid interest charges. It is pertinent to mention here that the actions of the complainants were only delaying tactics employed by them so as to avoid paying the sums due to the respondent. That the complainants were informed by the respondent vide email dated 17.03.2015 that transfer of the Units would be subject to certain deductions. That thereafter, the complainants vide email dated 20.03.2015 sought clarifications of the respondent's email dated 17.03.2015, which were responded to in detail and clarified that the Unit would be transferred and that the complainant would have the option of choosing which Unit he would like to retain. That it was further clarified that he could get in touch with Investor's Clinic for the details of the brokerage and that service tax would be levied on the administrative charges to transfer the funds and not on the brokerage. That further, the unit could be handed over in 30-45 days post clearance of dues and other documents and the complainants still had the option to retain both the Units provided all dues were cleared.

- xii. That thereafter, since no payments were received from the complainants, the respondent in reference to the Letter of Intimation for Possession dated 19.01.2015 sent to the complainant's reminder letters, both dated 14.07.2015, seeking payment of the outstanding amounts due. Since, no payments were received, the respondent had issued to the complainant Ms. Sangeeta Sharma and Mr. Kunal Vashisht, a final opportunity to take possession of the unit vide letter dated 29.07.2015 and 31.07.2015 respectively and to clear all the outstanding dues towards the respondent.



- xiii. That the respondent, having still not paid the outstanding dues, continued to employ delaying tactics and had sent to the respondent an email dated 30.09.2015, feeling ignorance as to the status of the units and alleging that the respondent had wrongfully retained the amounts paid by the complainant. That in response, the respondent replied to the said email vide email dated 01.10.2015 stating that the cancellation of the Unit was not accepted as the documents required for the same were incomplete and, therefore, the same had been returned to the complainant.
- xiv. That having provided reasonable opportunity to the complainants to clear the above-mentioned amounts, the respondent issued notice of termination to the complainants, both dated 23.10.2015 and demanded the outstanding amount of Rs.1,24,36,878/- for Plot 7(FF) and Rs.1,22,39,486/- for Plot 3(FF), failing which the allotment made in favor of the complainants would be terminated, as per the terms and conditions of the agreement entered into by the complainants.
- xv. That since the complainants, in complete disregard of their financial liabilities towards the respondent, failed to make the above-mentioned payments, the respondent was constrained to issue to the complainants termination cum refund letters, both dated 10.11.2015, terminating the allotment and refunding the amount of Rs.2,88,960/- for Plot 7(FF) and Rs.5,06,390/- for Plot 3(FF) after deducting all the charges as provided for in the agreement entered into by the complainants.
- xvi. That after several meetings the complainants requested to opt out from the earlier units and also undertook to apply for a fresh booking in another project namely Seven Elements to be developed by Vatika Seven Elements Pvt. Ltd. (a different entity from the present respondent) and further requested the respondent that the amount paid by the complainants earlier



shall be transferred in the new booking after certain deductions. That accordingly, Mr. Kunal Vashisth and Mr. R.P. Sharma jointly booked a Unit No. A2- 302 in the project Seven Elements and thereafter a builder buyer agreement was also sent for execution to aforesaid Mr. Kunal Vashisth and Mr. R.P. Sharma by Vatika Seven Elements Pvt. Ltd. However, Mr. Kunal Vashisth and Mr. R.P. Sharma failed to execute the buyer's agreement and the respondent was constrained to issue reminder letters including notice for termination dated 03.09.2020 for the present Unit i.e. 302, Tower-A2, Sector- 89A in Seven Elements.

- xvii. That the complainants have made several transfers from one unit to the other and therefore the respondent had deducted the administrative charges, service tax and brokerage from the amount deposited by the complainants. It is submitted that an amount of Rs.14,95,892/- was deducted on account of service tax and brokerage and the remaining amount of Rs.33,63,603/- was transferred to the new Unit booked by Mr. Kunal Vashisth and Mr. R.P. Sharma.
- xviii. That the present complaint is liable to be dismissed for mis-joinder of parties as the complainant namely Ms. Sangeeta Sharma has no locus standi to file the present complaint as the present Unit has been booked by Mr. Kunal Vashisth and Mr. R.P. Sharma.
- xix. That further the present complaint is liable to be dismissed for non-joinder of necessary party in as much as co-allottee namely Mr. R.P. Sharma has not been made a party.
- xx. That the present complaint is also liable to be dismissed for non-joinder of necessary party in as much as Vatika Seven Elements Private Ltd. has not been made a Party. It is pertinent to mention here that the booking in



respect of Unit No. A2- 302 was made by Mr. Kunal Vashisth and Mr. R.P. Sharma with Vatika Seven Elements Private Ltd. and not with Vatika Ltd.

- xxi. That as per the statement of account maintained by the Respondent, a sum of Rs.21,31,984/- is due from Mr. Kunal Vashisth and Mr. R.P. Sharma towards Vatika Seven Elements Private Limited. However, the respondent is still willing to offer the unit to the complainants subject to the payment of outstanding dues by the complainants, failing which the respondent shall be entitled to forfeit the amount paid by the complainants as per the terms and conditions of the allotment letter.
- xxii. That in view of the aforesaid circumstances, the present complaint cannot proceed in its present form and is liable to be dismissed.
7. 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 based on these undisputed documents and submission made by the parties.
8. The complainants on 05.04.2023 filed an application for impleading Mr. Rajinder Parsad Sharma as complainant no.3 and M/s Vatika Seven Elements Private Limited as respondent no.2, which is taken on record and thereafter, during proceedings of the day dated 10.08.2023, Sh. Dhruv Dutt Sharma Advocate put in appearance and filed power of attorney on behalf of respondent no.2 and requested to adopt the reply dated 02.11.2022 already filed by the respondent no.1 be adopted for respondent no.2.

**E. Written submission made by both the parties**

9. The respondents have submitted the copy of occupation certificate dated 06.06.2017 and 23.10.2018 issued by the competent authority



w.r.t plot no.3 and plot no. 7 in Vatika India Next (earlier booking of the complainant no.1 and 2).

#### **F. Jurisdiction of the Authority**

10. 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**

11. 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**

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. Section 11(4)(a) is reproduced as hereunder:

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

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

##### **Section 34-Functions of the Authority:**

*34(f) 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.*

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation



which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**G.I Direct the respondent to pay all the previously paid amount of Rs.52,21,000/- plus Rs.21,00,000/- along with interest @18% P.A. on the amount paid by the complainants from the date of deposition with the respondent company.**

**G.II Award pendent lite interest as per rules from the date of payment of amounts till realization; and**

**G.III Pass any other order as this Hon'ble Authority may deem fit and necessary in view of the above- mentioned facts in favor of complainants and against the respondents.**

14. On the above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. In the present complaint, the complainants intend to withdraw from the project and are seeking refund as provided under the proviso to section 18(1) of the Ac. Section 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

***18(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,***

***(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."***

16. On consideration of documents available on records and submissions made by both the parties, the Authority observes that in the year 2013, the complainant no.1 and 2 initially booked two separate independent floor, FF (First Floor) in plot no.3 and FF (First Floor) in plot no.7 both



having super area admeasuring 1800 sq. ft. in project "INXT Floors in Vatika India Next" being developed by M/s Vatika Limited (i.e., respondent no.1) and they have paid an amount of Rs.15,71,000/- and Rs.15,50,000/- respectively against the sale consideration of the allotted units in INXT Floors.

17. Thereafter, in the month of June, 2013, the complainants paid an amount of Rs.10,00,000/- each for booking of two separate units in project "Sovereign Park" being developed by M/s Vatika Limited, against which two priority no. S/075 has been issued to the complainant no. 2 & 3 and S/076 has been issued to the complainant no.1 & 2. Further, on 24.06.2013, the complainants requested for surrender of unit bearing priority no. S/075 and transfer of the amount into the unit bearing no. S/076. Upon the request from the complainants the respondent no.1 cancelled the priority booking no. S/075 and thereafter transferred an amount of Rs.8,69,246/- after certain deduction. Furthermore on 26.08.2013, the complainants again requested for surrender of unit bearing priority no. S/075 and S/076 and requested to transfer of the amount into the units in project "INXT Floors in Vatika India Next". Upon the request from the complainants, the respondent no.1 cancelled the priority booking no. S/075 and S/076 (unit no. A-302) and transferred an amount of Rs.16,38,492/- (Rs.9,57,727/- in FF, Plot no.3 of Vatika INXT and Rs.6,80,765/- in FF, Plot no.7 of Vatika INXT) after total deduction of Rs.3,61,508/- on account of service tax and cancellation charges (Rs.75/- per sq. ft.).
18. Therefore, the complainants have paid an amount of Rs.22,30,765/- against the total sale consideration of independent floor, FF (First Floor) in plot no.7 of INXT Floors in Vatika India Next [inclusive of

amount of Rs.6,80,765/- being transferred from unit booked in "Sovereign Park" on request of complainants-allottees] and Rs.25,28,727/- against the total sale consideration of independent floor, FF (First Floor) in plot no.3 of INXT Floors in Vatika India Next [inclusive of amount of Rs.9,57,727/- being transferred from unit booked in "Sovereign Park" on request of complainants-allottees].

19. Further on 19.01.2015, the respondent no.1 issued a letter for intimation for possession and demanded an amount of Rs.1,10,63,010/- against FF (First Floor) in plot no.7 of INXT Floors and Rs.1,08,87,779/- against FF (First Floor) in plot no.3 of INXT Floors respectively. After this, on 30.01.2015, the complainants again made a request to the respondent no.1 either to refund the total amount paid without any interest or merge the two unit into one. Furthermore, vide email dated 17.02.2015 respondent no.1, had provided a excel sheet in which the details of deduction were supposed to be made at the time of merging/transferring of paid-up amount from one unit into another. Thereafter, on 17.04.2015, the complainants submitted the original copies of the executed BBA and other documents issued by respondent no.1 and further requested for cancellation of both the units in order to acquire new property in another project.
20. However, instead of merging/transferring of paid-up amount from one unit into another as requested by the complainants-allottees, on 23.10.2015, the respondent no.1 issued a letter for notice for termination and on 10.11.2015, the respondent no.1 issued cancellation letter w.r.t the allotted units of the complainants-allottees in project "INXT Floors in Vatika India Next" along with two cheques of refundable amount of Rs.2,88,96/- against FF (First Floor) in plot no.7 of INXT

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Floors and Rs.5,06,390/- against FF (First Floor) in plot no.3 of INXT Floors respectively after certain deductions, which were not encashed by the complainants.

21. The complainants herein kept on chasing the respondent no.1 in respect of the cancellation done by it in respect of both the units allotted in "INXT Floors in Vatika India Next". The complainants further kept on following and requesting the respondent no.1 vide letter dated 22.03.2018 to transfer the fund received against the plot no.3 and plot no.7 in "INXT Floors in Vatika India Next" which have been terminated and requested for fresh allotment of a 2BHK unit. In respect of the aforesaid request made by the complainants, the respondents demanded Rs.1,00,000/- as booking amount against a fresh allotment in the project namely Seven Elements to be developed by M/s Vatika Seven Elements Private Limited i.e., respondent no.2. The said amount was paid by the complainants on 09.04.2018. Thereafter, on 09.04.2018, the complainant no.2 and 3 had submitted an application form-cum-allotment letter (annexure R/3 of reply) with respondent no.2 and were allotted a unit bearing no.302, 3<sup>rd</sup> Floor, in Tower-A2 having admeasuring 1605 sq. ft. carpet area for a sale consideration of Rs.1,12,97,679/- out of which the complainants have paid an amount of Rs.33,63,603/- (Rs.1,00,000/- vide Cheque/DD, Rs.15,16,900/- being transferred from unit no.7 of INXT Floors in Vatika India Next and Rs.17,46,706/- being transferred from unit no.3 of INXT Floors in Vatika India Next, and the respondent no.1 had forfeited an amount of Rs.14,95,986/- while transferring of amount paid by the complainants).
22. **Due date of handing over of possession:** As per the documents available on record, no BBA has been executed between the parties and



the due date of possession is taken from clause 11 of application cum allotment letter received by respondent no.2 on 09.04.2018. the relevant clause 11 is reproduced herein below:

*11. Upon issuance of occupation certificate by the concerned authorities, the promoter shall offer the possession of the unit to me/us. Subject to force majeure and fulfilment by me/us of all the terms and conditions of the agreement for sale including but not limited to timely payment of the total price and other amounts payable in accordance with payment plan, stamp duty, registration charges and other charges due and payable by me/us and also subject to me/us having complied with all formalities or documentation as prescribed by the promoter, **the promoter shall offer the possession of the unit to me/us on or before January, 2022.***

23. Accordingly, the due date of possession as per clause 11 of the application-cum-allotment letter has clearly mentioned in January, 2022. Therefore, the due date of handing over of the possession for the unit comes out to be 31.01.2022. Further, vide HARERA notification no. 9/3-2020 dated 26.05.2020, the extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 12.05.2021 i.e., after 25.03.2020. Thus, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 31.07.2022.
24. In the instant case, the complainant no.2 and 3 were allotted a unit bearing no.302, 3<sup>rd</sup> Floor, in Tower-A2 having admeasuring 1605 sq. ft. carpet area for a sale consideration of Rs.1,12,97,679/- out of which the complainants have paid an amount of Rs.33,63,603/- with respondent no.2 (i.e., M/s Vatika Seven Elements Private Limited) vide application-cum-allotment letter dated 09.04.2018, and the due date of possession

as per clause 11 of application-cum-allotment letter is 31.07.2022 (plus 6 months as per HARERA, Gurugram notification no. 9/3-2020 dated 26.05.2020). However, the complainants requested for refund via legal notice dated 15.06.2020 and intends to withdrawn from the project. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the builder) Regulations, 11(5) of 2018.

25. It is contended by the respondents that they are liable to forfeit amount towards earnest money, statutory charges, brokerage etc. However, 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 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."*

26. The Authority observes that the respondent no.1 and respondent no.2 both are different entity and have separate accounts of business. Therefore, the respondent no.2 cannot be held liable for any act done by respondent no.1 w.r.t earliest units.
27. Further observes that the respondent no.1 instead of forfeiting earnest money as agreed in buyer's agreement of earliest units, only forfeited service tax, service tax on earnest money and brokerage against the earliest unit and transferred the remaining amount to respondent no.2. and also, instead of making payment after issuance of demand by the respondent no.1, the complainants-allottees, repeatedly shifting/merging their unit from one to another.
28. It is pertinent to mention here that it is the responsibility of the allottees to arrange funds in respect of the units purchased by them and the Act also obligates the allottee(s) to make timely payments as per the payment plan opted by the allottee(s) and in terms of the agreement executed inter se parties.

29. 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 respondents can't retain more than 10% of sale consideration as earnest money. So, the respondent no.2 is hereby directed to refund the amount received by it from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest on such balance amount 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 request of withdrawn/surrender i.e., 15.06.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.IV Direct the respondents to pay compensation of Rs.5,00,000/- on account of unfair practices and providing deficient services to the complainants and interest as per rules from the actual promised date of allotment till realization; and**

**G.V Direct the respondent to pay an amount of Rs.1,10,000/- on account of litigation expenses and harassment.**

30. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

31. The complainants are seeking above mentioned relief w.r.t. compensation and litigation expenses. 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.

#### **H. Directions of the authority**

32. 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 no.2 is directed to refund the paid-up amount of Rs.33,63,603/- after deduction of 10% of the sale consideration as earnest money along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of request of withdrawn/surrender i.e., 15.06.2020 till its realization.
- ii. The respondent no.2 is further directed not to create any third party right against the subject unit before full realization of the above-mentioned amount to the complainants and even if any, transfer is imitated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.
- iii. A period of 90 days is given to the respondent no.2 to comply with the directions given in this order and failing which legal consequences would follow.

33. Complaint stands disposed off.

34. Pending applications, if any, also stands disposed off.

35. File be consigned to registry.

Dated: 07.11.2024

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