

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

Complaint no.: 2534 of 2023
Date of filing: 28.06.2023
Date of first hearing: 15.11.2023
Date of decision: 16.04.2025

Rajinder Sethi and Abhishek Sethi
Both R/o: 3/20, Ground Floor, Old Rajinder
Nagar, New Delhi-110060

Complainants

Versus

S.S Group Pvt. Ltd.
Registered Office: 77, SS House, Sector-44,
Gurugram, Haryana -122003

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sumit Sharma, Advocate
Sh. Rahul Bhardwaj, Advocate

Complainants
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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	"The Leaf", Sector - 85 Gurugram.
2.	Project area	11.093 Acre
3.	Nature of the project	Group Housing complex
4.	DTCP license no. and validity status	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
5.	Name of licensee	Shiva Profins Pvt Ltd
6.	RERA Registered/ not registered	RERA registered 35 of 2021 dated 14.07.2021
7.	Unit no.	2B, 2 nd Floor, Building no. 5 (Page no.25 of complaint)
8.	Unit area admeasuring	2600 sq. ft. (Super Area) (Page no. 25 of complaint)
9.	Date of execution of buyer's agreement	17.10.2013 (Page no. 24 of complaint)
10.	Possession clause	8. Possession "8.1: Time of handing over the possession 8.1 (a) Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing

		<i>Complex."</i> <i>(Emphasis supplied)</i> (Page 31 and 32 of complaint)
11.	Due date of possession	17.10.2016 (Calculated to be 36 months from the date of execution of BBA)
12.	Notice for cancellation (Failure to pay amount of Rs. 73,41,762/-)	29.04.2021 <i>"By failure to make payments of due amount within the time as stipulated and further failure to take over the flat for occupation and use within the time stipulated, you have committed breach of the terms of the Flat Buyer's Agreement dated 17.10.2013 and the same shall be construed as default under Clause 15 of the said Flat Buyer's Agreement. Therefore the company has elected to cancel the aforesaid agreement. However, as per the terms of the said Flat Buyer's Agreement you are given an opportunity to cure/rectify aforesaid event of default(s) within a period of 30 days from the date of this notice, failing to which the said agreement and allotment shall automatically stand cancelled without any further notice."</i> (Page no. 123 of reply)
13.	Cancellation letter	13.09.2021 (Page no. 124 of reply)
14.	Basic sales price	Rs. 1,18,30,000 /- (Page no. 26 of complaint)
15.	Amount paid by the complainants	Rs. 41,63,000/- (As submitted by the complainant in relief sought and as per cancellation notice dated 13.09.2021 at page 125 of reply)
16.	Occupation certificate /Completion certificate	24.08.2021 (Page 130 of reply)

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint: -
- (a) That upon representation by the respondent and advertisement done on their behalf, the complainants made up their minds and for the purchasing residential unit bearing no. 2B (4BHK + PR + SR), admeasuring approx.2600 sq. ft. (219 sq. mtrs. super area) located in building no. 5 in

the project "THE LEAF" along with an exclusive use of 1 car parking, located at Sector-85, Gurugram, Haryana floated by respondent and on their inducement that the possession of the said unit purchased shall be handed over to the complainants within 3 years from the date of advance deposition and with all amenities as promised by the respondent. That the complainants had booked the said unit and deposited the advance payment to respondent on 03.08.2012 through account payee cheques.

- (b) That the complainants Jointly applied and deposit advance as booking amount of Rs.12,00,000/- to the respondent against the said unit in the year of 2012 and after around 1 month the respondent allotted a unit no. 2B, 4BHK+PR+SR, Building-5 in the project vide letter dated 10.09.2012 as allotment in the name of complainants. The complainants had paid more than 35% percent to the respondent before the execution of buyer's agreement.
- (c) That the complainants raised their request to the respondent with regard to the execution of buyer's agreement various times, and the respondent turned up after more than 14 months from the acceptance date of booking (03.08.2012) and proceed with the execution of buyer's agreement dated 17.10.2013.
- (d) That the complainants herein again raised their concerns verbally/telephonically before the respondent as the contents of the buyer's agreement dated 17.10.2013 with regard to possession under clause 8.1(a) described that the possession of allotted unit/residential flat would be handed over within 36 months along with 90 days as grace period from the signing date of buyer's agreement, which was poles apart from the promises/assurances made by the respondent at the time of booking (as the booked unit would be delivered within 3 years from the



booking). No satisfactory answers were provided to the complainants and they were left with no other option except to sign the buyer's agreement as the complainant had already deposited a huge amount of Rs. 41,63,000/- prior to the execution of the agreement which would be calculated as more than 35% of total cost of allotted flat and also in violation the Section 13 of the Act.

- (e) That the complainants paid a total of Rs. 41,63,000/- out of total consideration of Rs. 11830000/- against the said unit. The complainants visited the project site somewhere in Feb-March, 2014 to cross verify the construction/development and that time they got to know that the construction/development work was not running as per the demands raised and despite knowing the said fact the Respondent was keep on demanding the schedule payments. Thereafter upon presentation of said fact of delay in construction/development in the said project before the respondent, the officials of respondent again blew false assurances to the complainants qua possession and formality to add the name in allottees list in the future.
- (f) That the payment plan opted by the complainants was Construction linked plan however, the respondent never met the timelines of the construction. The respondent was under a contractual obligation to handover the possession of the allotted office space within 38 months i.e. 17.10.2016 as per the agreement dated 17.10.2013. However, to the dismay of the complainants, the respondent failed to handover the possession on the due date. It is submitted here that due to their own negligence the respondent was unable to fulfill the assurance and guaranties made by themselves to complainants at the time of booking as well as the time of signing the agreement dated 17.10.2013.

- (g) That as per the affidavit dated 26.09.2019 submitted by respondent into Hon'ble RERA Authority, Gurugram it is an admitted fact that the construction activities began only on 10.05.2015 for the said project and tentative date of completion of the said project was 31.07.2019. The respondent not only failed to complete the said project within the time frame as mentioned in the agreement dated 17.10.2013 but also did not start the construction work till May 2015 (the year in which the respondent was contractually liable to handover the peaceful possession of the allotted unit), however the respondent collected/accepted more than 35% of the total consideration from the complainants on the pretext of construction linked payment plan.
- (h) That the complainants have been left with no other option but to approach to the doors of this Authority to get refund of their legitimate money. As per Section 18 of the RERA, 2016, the complainants are legally entitled to get their refund along with the interest since the promoter fails to complete the project as promised by them and discontinued it without any force majeure or reasonable reasons. Thus, the Authority is requested to give necessary directions to the respondent to refund the money of the complainants along with interest due to their arbitrary and illegal actions against the allotted flat.

C. Relief sought by the complainant :-

4. The complainant has sought following relief.
 - I. Direct the respondent to refund Rs. 41,63,000/- paid by complainants along with interest.
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 respondent

6. The respondent has contested the complaint on the following grounds.
- (a) That the complainants vide advance registration form dated 07.08.2012 applied for an allotment of a unit in the respondent's project namely, "The Leaf". Pursuant to it, vide allotment letter dated 10.09.2012, the complainants were allotted a unit no. 2B, 2nd floor, building 5 admeasuring 2600 sq. ft. The complainant opted for a construction linked payment plan for remittance of the sale consideration for the subject unit.
- (b) That the allotment letter being the preliminary and the initial drafts contained the basic and primary understanding between both the parties, to be followed by the buyer's agreement to be executed between the parties. Thereafter, buyer's agreement dated 17.10.2013 was executed between parties which contained the final understandings between the parties stipulating all the rights and obligations.
- (c) That the basic sale consideration of the unit was Rs. 1,18,30,000/- exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stages. The complainants paid Rs.41,63,000/- including taxes.
- (d) That the complainants defaulted in making payments towards the agreed sale consideration of the unit from the very inception. Also, the complainants had failed to pay the remaining sale consideration amounting to Rs. 1,00,01,000/- without interest as on 23.04.2021. Therefore, the respondent sent numerous demand letters to the complainants on account of non-payment of the outstanding amount.
- (e) That the construction of the project was within the timeline as stipulated in the flat buyer's agreement and accordingly, the complainants was supposed to pay the instalments of the said unit by way of construction

linked-payment plan. However, the respondent had to run after the complainants to clear the outstanding dues from the very inception as is evident from demand notices which were sent from 2015 to 2020, i.e., before the cancellation of the unit, i.e., 27.06.2013, 28.01.2016, 06.04.2017, 01.05.2016, 20.01.2016 and 24.09.2015 in addition to e-mails dated 08.05.2019, 31.07.2018, 10.07.2018 and 23.10.2017.

- (f) That the complainants till the issuance of the final demand letter had paid only Rs.41,63,000/- towards the total sale consideration of Rs.1,41,64,000/- which accounts to approximately 28% of the total sale consideration. The complainants were very well aware of the continuous delays and were reminded on continuous basis through the demand letters. The last payment amounting of Rs.6,30,000/- was made on 10.08.2013 with respect to the subject unit and since then no further payment was made by the complainants.
- (g) That the complainants after being the willful defaulter in complying with the terms and condition of the flat buyer's agreement are trying to take a shelter under the garb of the Real Estate Regulation and development Act, 2016 and are shifting the burden on the part of the respondent whereas the respondent has suffered huge financial losses due to such willful defaulters.
- (h) That the respondent therefore as a last reminder sent a final notice for cancellation dated 29.04.2021 to the complainants followed by cancellation of allotment dated 13.09.2021. However, nothing was done by the complainant in this regard.
- (i) That it shall be the respondent who shall be entitled for the relief from the Authority for the breach in the terms and conditions of the flat buyer's agreement by the complainants. As per the clause 1.2(f) of the flat buyer's

agreement, the respondent is entitled to forfeit the earnest money as well as the brokerage along with the taxes and interest.

- (j) That the respondent had received the occupational certificate of the project from the competent Authority on 24.08.2021 and project stands completed.
- (k) That the complainant has no cause of action to file the present suit. As an investor complainant had booked a unit to yield gainful returns by selling the unit in question in open market. So, the complainant does not come under the scope of definition of an allottee. Furthermore, complainant has raised the issue at a belated stage, attempting to seek modifications in the agreement entered between the parties in order to acquire benefits. Thus, the complainant is not entitled to any relief.
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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is

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

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

F. Findings on the objections raised by the respondent

F.I Objection regarding complainant being an investor.

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

aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid Rs.25,54,500/- to the respondent towards the purchase of flat in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainant.

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

16. The complainants were allotted unit no. 2B on the 2nd floor, building 5 in the project "The Leaf", Sector 85, Gurugram, Haryana of the respondent/builder. The builder buyer agreement was executed between the parties on 17.10.2013. The complainant had paid an amount of Rs.41,63,000/- against the basic sale consideration of Rs.1,18,30,000/-. As per clause 8.1 of the builder buyer agreement the possession of the unit was to be offered within 36 months from the date of the execution of the buyer's agreement. Hence, the due date of possession comes out to be 17.10.2016. Thereafter, the respondent has issued various reminder/demand letters to the complainants, even by way of e-mail and requested to pay the outstanding dues. A cancellation notice dated

29.04.2021 was sent to the complainants giving an opportunity to make outstanding payments with interest within 30 days failing which the allotment will stand cancelled. But the complainants did not pay any heed to the notices. Thereafter, a final cancellation letter dated 13.09.2021 was issued cancelling the subject unit and forfeiting the entire amount paid by the complainants.

17. The authority has gone through the payment plan (Annexure I) of the buyer's agreement executed between the parties. Further, on considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainants have only paid an amount of Rs.41,63,000/- against the subject unit. The respondent has sent various reminder letters dated 27.06.2013, 20.01.2016, 28.01.2016, 06.04.2017 and several e-mails dated 23.10.2017, 10.07.2018, 31.07.2018 and 08.05.2019 to make payment of the outstanding amount. The authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties. However, the complainants continued with their default and again failed to make payment even after pre-termination letter dated 29.04.2021 leading to cancellation of unit vide letter dated 13.09.2021.

18. Further, as, per clause 1.2(f) of the buyer's agreement, the respondent had right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainants to make timely payments as per the agreed payment plan. Clause 1.2(f) of the application form is reproduced under for ready reference:

"f) Earnest Money

The Flat Buyer(s) has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her/them towards the SALE PRICE, the Developer shall treat 10% of the SALE PRICE as earnest

money (hereinafter referred to as the "Earnest Money") to ensure fulfilment, by the Flat Buyer(s) of the terms and conditions as contained in the application and this Agreement.

The Flat Buyer(s) hereby authorize the Developer to forfeit out of the amounts paid/payable by him/her, the EARNEST MONEY as aforementioned together with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature in the event of the failure of the Flat Buyer(s) to perform his/her/their obligations or fulfil all/any of the terms and conditions set out in this Agreement executed by the Flat Buyer(s) or in the event of failure of the Flat Buyer(s) to sign and return this Agreement in its original form to the Developer within thirty (30) days from the date of its dispatch by the Developer.

The Flat Buyer(s) agrees that the conditions for forfeiture of EARNEST MONEY shall remain valid and effective till the execution and registration of the conveyance deed for the said FLAT and that the Flat Buyer(s) hereby authorizes the Developer to effect such forfeiture without any notice to the Flat Buyer(s) and the Flat Buyer(s) has / have agreed to this condition to indicate his/her/their commitment to faithfully fulfil all the terms and conditions contained in his/her/their application and this Agreement."

19. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the application form is held to be valid.
20. The authority observes that on 13.09.2021, the respondent has cancelled the allotted unit on account of non-payment. The complainants have requested for refund subsequent to the said cancellation by filing the present complaint on 28.06.2023, as well as after the receipt of occupation certificate dated 24.08.2021.
21. The Authority observes that right under Section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If the allottee has not exercised the right to withdraw from the project after the due date of

possession is over till the occupation certificate was obtained by the respondent-promoter, it impliedly means that the allottee tacitly wished to continue with the project. The promoter has already invested in the project to complete it and occupation certificate w.r.t. the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money he has paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.*** observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

22. However, in case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give

possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then he impliedly agreed to continue with the project i.e. he do not intend to withdraw from the project and this proviso to Section 18(1) automatically comes into operation and the allottees shall be paid interest at the prescribed rate for every month of delay by the promoter.

23. In the instant case, the occupation certificate for the building in which unit of the complainants is situated was received on 24.08.2021. However, the complainant has surrendered the unit by filing the present complaint on 28.06.2023 i.e., after receipt of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions. Though, it is contended on behalf of respondents that they are liable to forfeit amount towards earnest money, statutory taxes, brokerage etc. However, the Authority is of view that the respondents cannot retain more than 10% of the sale consideration and is bound to return the remaining. Even the Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928***, ***Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136***, and followed by the National Consumer Dispute Redressal Commission, New Delhi in ***consumer case no. 2766/2017 titled as Jayant Singhal and Anr. Vs. M/s M3M India Ltd. decided on 26.07.2022*** took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party

so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above-mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, 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."

24. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondents-promoter is obligated to refund the amount paid by the complainants after deducting 10% of the sale consideration 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 on the refundable amount, from the date of surrender/withdrawal i.e., 28.06.2023 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondents, if

any within the timelines provided in Rule 16 of the Haryana Rules, 2017
ibid.

H. Directions of the authority

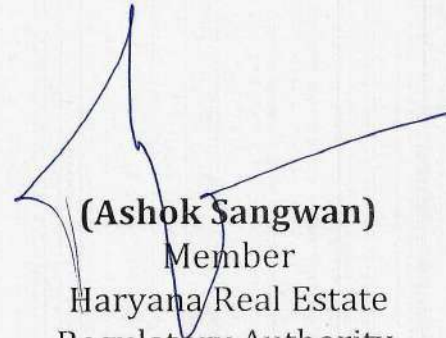
25. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent is directed to refund the paid-up amount to the complainants i.e. Rs.41,63,000/- after deducting 10% of the sale consideration being earnest money along with interest at the rate of 11.10% on such balance amount from the date cancellation letter dated 13.09.2021 till its realization.
- II. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.

26. The complaint stand disposed of.

27. File be consigned to registry.

Dated: 16.04.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram