

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

Order reserved on: 20.12.2024
Date of pronouncement of order: 04.04.2025

1. Ekta Krishnani

2. Kaushal Krishnani

Address: - A-1/602, HIG Flays, Pitampura,
New Delhi-110034

Complainants

Versus

Clarion Properties Limited

Address: - 129, Munish Plaza 20, Ansari Road,
Darya Ganj New Delhi-110002

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Abhijeet Gupta

Shri Arul Prakash

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 25.10.2023 has been filed by the complainants under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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. 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. No.	Heads	Information
1.	Project name and location	"Element One", Sector-47/49, Gurugram
2.	Nature of the project	Commercial project
3.	Area of the project	2.7625 acres
4.	DTCP license no. and validity status	86 of 2011 dated 20.09.2011 valid up to 10.09.2017
5.	Name of licensee	Sh. Narender Kumar
6.	RERA registered/ not registered	Not Registered
7.	Unit no.	B-426, admeasuring 703 sq. ft. decreased to 689 sq. ft. (2.1 approx.) [Page no. 19 of complaint]
8.	Date of execution of buyers' agreement	10.05.2014 [Page no. 17 of complaint]
9.	Possession Clause	5.1 <i>That the company shall under normal circumstances complete the construction of tower in which the said unit is to be located within a period of 3 years in addition to 6 months extension (grace period) and subject to force majeure from the date of execution or start of construction of the tower wherein the said unit located (whichever is later.</i> (Page 24 of complaint)
10.	Due date of delivery of possession	10.11.2017 [calculated from the date of execution of agreement plus 6 months grace period]

11.	Basic sale consideration Total sale consideration	Rs. 72,76,050/- (As per BBA at page 20 of complaint) Rs. 79,87,538/-
12.	Total amount paid by the complainants	Rs. 44,04,448/- (As per SOA dated 03.04.2024 page 62 of the reply)
13.	Occupation certificate	03.11.2017 (page 53 of reply)
14.	Offer of possession	17.04.2019 (page 55 of reply) along with a demand of Rs. 48,29,594/- towards the final payment
15.	Reminder letter	05.06.2019, 08.07.2019, 22.07.2019, 10.08.2019 12.09.2019 (Page 65 -74 of reply)
16.	Pre cancellation letter	12.11.2019 (Page 77 and 78 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - i. That the complainants booked an apartment in Project Element One", Sector-47/49, Gurugram. The complainants and respondent executed Builder buyers agreement on 10.05.2014 in respect of unit bearing no. B-426 on fourth Floor Block- B tentatively super area admeasuring 703 Sq. ft. for a sale value of Rs 79,87,538/-.
 - ii. The complainants have already paid the amount of Rs. 44,04,448/- as per payment plan mentioned in the BBA.
 - iii. That as per clause 5.1 of the BBA, the respondent undertook to complete the construction work of the tower in which the unit of the

complainants is situated within a period of 3 years from the date of execution of agreement and thereafter 6-month grace period in case of force majeure events happened which halts or slow down the stage of construction.

- iv. That one-sided development agreement has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the builder imposes unfair and discriminatory terms and conditions.
- v. That respondent vide letter dated 17.04.2019 a letter of intimation of possession of unit booked by the complainant informed that the construction work of the unit is complete. However, at this point the respondent had not obtained OC from the competent Authority.
- vi. That vide letter the respondent further demanded the amount of Rs. 48,29,594/- which is more than the agreed total sale consideration values of the unit booked by the complainants.
- vii. That the complainants after losing all the hope from the respondent after being mentally tortured and also losing consideration amount as constrained to approach this authority for redressal of his grievance.

C. Relief Sought by the complainant

- 4. The complainants are seeking the following relief:
 - (i) Direct the respondent to refund the entire amount paid by the complainants to the respondent along with prescribed rate of interest.

D. Reply filed by the respondent

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



- i. That the present complaint is not maintainable. Further from the conduct of the complainants it is outrightly clear that the complainants are frequent litigators and their motive is to simply misuse the process of the law and extort monies from the respondent.
- ii. That the present complaint has been filed on the premise that the respondent-company has delayed handing over possession of the unit. However, respondent-company has never promised that the possession will be given in 42 months (36+6 months) but promised only to complete the construction and that's under normal circumstances only.
- iii. That as the instant complaint has been preferred by the complainants on frivolous and unsustainable grounds against the respondent and the complainants has not approached this court with clean hands. It is most respectfully submitted that the complaint filed by the complainants is not maintainable as the buyer's agreement dated 10.05.2014 contains arbitration clause that mandates the invoking of arbitration proceedings in the event of a dispute between the parties which were duly invoked. That the complaints have categorically avoided this disclosure from their pleadings.
- iv. The respondent-company firmly informed the complainants that timely payment of instalments is one of the most important factors which constituted normal circumstance. However, the respondent-company did not get timely payments from various allottees including the complainants. As per clause 3.9 of the buyer's agreement 'timely payment was the essence of the agreement between the parties in accordance with the payment plan annexed with the agreement. The complainants have violated the very essence of the buyer's agreement



by not making the payment according to the payment plan and hence is liable to pay interest for the same.

- v. That the respondent-company had applied for the occupation certificate on 27.3.2017. Thereafter, occupation certificate was received on 03.11.2017 and the final call letter dated 17.04.2019 was sent to the complainants to take over the possession of the said unit after paying the remaining dues. The Complainants have neither paid the outstanding dues of Rs.48,29,594/- nor taken over the possession as offered via final call letter by the company.
- vi. That as per Section 19 of the RERA Act, which enumerated the rights and obligations of an allottee, an allottee is bound to follow the payment plan and in case of delay in payments is further liable to pay interest on the same. That in the instant case the OC was received way back in 2017 thereafter possession was offered in 2019 therefore, under no circumstances the relief of refund is sustainable at this juncture. It is pertinent to note herein that the construction of the subject project was achieved as per the promised timeline but in the existence of pending dues to be remitted by the complainants the respondent could not have offered the possession. That despite the fact that an appreciable amount remains due and pending on part of the complainants, the respondent has already offered the possession.
- vii. Thus, on a bare perusal of the above, it is evident that the Complainants herein are liable to take possession of the unit as per the terms and conditions of the Buyer's Agreement. That this Ld. Authority in **M3M India Private Limited & Anr. v. Sushila Bhartiya** [Complaint No. 1598 of 2019], treating the said complaint as an application for non-compliance of statutory obligations on part of the allottee in terms of



section 34(f) of the Real Estate (Regulation and Development) Act, 2016, held that the allottee was under a solemn obligation to take over the possession of the unit, when it was provided to here, after paying the due payments.

- viii. It is also pertinent to mention, that till the final call letter was issued to the complainants, there was not even a whisper of any issues of timely completion or over the terms of the buyer's agreement. In fact, the issues being raised by the complainants, who are investors, wish to abuse the process of law for making gains not due to them. The averments of the complainants regarding the delay in handing over of possession are nothing but afterthought. Thus, in light of the above, the complainants are bound to take over the possession of the said unit, after making the payment of the remaining dues.
- ix. That the complainants instead of making payment of their dues with respect to the said unit in terms of buyer's agreement started raising frivolous and baseless issues vide her e-mails and letters. The complainants have raised frivolous allegations with respect to completion of work and decrease in super area. It is pertinent to mention herein that the respondent-company duly addressed all the queries and concerns raised by the complainants and has also decreased the total payable amount adjusted according to the decrease in super area. Further, the complainants have been merely trying to find some or the other unreasonable faults with respondent to avoid their obligation to clear the dues. that in the first final call letter i.e. dated 17.04.2019 the demand might have been raised as per the initially agreed area of the unit which was an inadvertent error and the same was revised subsequently as per the actual area of the unit. That it is a



matter of fact that as on date the dues standing against the complainants are on the basis of the actual area of the unit, that there exists no confusion or controversy detrimental to the said fact.

- x. That it is most respectfully submitted that this authority has no jurisdiction to entertain the present complaint the complainants have not come to this authority with clean hands and has concealed the material facts. The complainants have concocted a false story to cover up their own defaults and have raised false and frivolous issues.
- xi. That the respondent has completed the project without any deficiency, however, the complainants have refused to take over the possession of the flat which has been ready for more than 4 years from now. That it is the respondent-company who is bearing the losses for which the complainants are solely liable.
- xii. That the complainants are investors and had expressed their desire/interest in purchasing the said unit. The complainants approached the respondent-company to purchase the said unit and while entering into the agreement to purchase the said unit, the complainants had satisfied themselves fully about the rights, interests, status and title of the respondent in the said project/unit and also about the integrity and the goodwill of the respondent. Accordingly, the complainants, fully capable of making decisions and in sound mind, approached the respondent-company. It is submitted that the sanctioned building plans, terms and conditions of sale and all other facts of the said unit/project were also inspected and duly seen by the complainants at the time of the execution of the buyer's agreement.
- xiii. That the complainants were further asked to pay the outstanding amount within 30 days from the date of final call letter. further, the



complainants were also apprised of their liability to pay the holding charges should they fail to clear the outstanding dues before the expiry of 30 days from the date of final call letter till the realization of the principal amount, calculated at the rate of Rs. 7/- per sq. ft. per month. That the respondent sent repeated reminders calling out the complainants to remit the pending dues and take the possession of the unit within 30 days from making such payments. The respondent-company was constrained to issue payment reminders against the demand raised by the respondent-company in terms of the payment plan.

- xiv. That owing to the complainant's failure to clear the outstanding dues despite repeated reminders, the respondent company was constrained to issue a pre - cancellation letter dated 12.11.2019 and called upon the complainants to make the delayed payments within 05 days from the receipt of the said letter, failing which the respondent shall be constrained to proceed with the cancellation of the said unit in terms of the terms and conditions of the buyer's agreement dated 10.05.2014.
- xv. The respondent-company shall also be entitled to deduct the interest paid on the delayed installments till the date of final call letter and further deductions of the maintenance charges as applicable and the deductions towards the losses suffered by the respondent-company towards brokerage and taxes shall also be done. The complainants were every time informed that there was considerable delay on the part of the complainants in remittance of timely payment, thereby waiving off the complainant's entitlement to claim for delay in handing over the possession of the unit.



xvi. That as per clause 3.9 of the buyer's agreement dated 10.05.2014, timely payments by the complainants herein was the essence of the said agreement and it was further laid down under clause 3.10 that in case the complainants, being the allottees, fail to pay the installments in the manner and within time, then the respondent-company, at its own option, shall be at liberty to forfeit the entire amount of earnest money, which right hasn't been exercised by the company as the unit is complete and ready to be handed over, and in any case, it is impossible for the company to cover its losses by a mere forfeiture of the earnest amount. The clauses are reproduced here under:-

6. *"3.9 That the timely payment of installments as stated in Payment Plan (Annexure-III) and applicable stamp duty, registration fee, maintenance and other charges payable under the agreement as and when demanded is the essence of this agreement. सत्यमेव जयते"*

7. *3.10 That it shall be incumbent on the Allottee to comply with the terms of payment and/or other term & conditions of this Agreement failing which the Company shall be at the liberty to forfeit the entire amount of earnest money and whereupon this Agreement shall stand cancelled and the Allottee shall be left with no lien, right, title, interest or claim of whatsoever nature in the Said Unit and/ or under this Agreement. The Company shall thereafter be free to re-sell and/or deal with the Said Unit in any manner whatsoever at its sole discretion. The amount(s), if any, paid over and above the earnest money shall be refunded to the Allottee by the Company only after realizing the amounts on resale, without any interest or any compensation of whatsoever nature. The Company shall have first lien and charge on the Said Unit for all its dues and other sums payable by the Allottee to the Company under this Agreement."*

xvii. The complainants have not disclosed any material fact except the unwarranted correspondences via email just to delay the balance payment as per the legal obligation. The complaint has been filed with the sole object to harass and blackmail the respondent-company in order to gain by illegal means. The respondent-company has been willingly calling out its prestigious allottees to take the possession in qua their respective units, which goes onto show the intent of the respondent-company to honour its promise and commitment.

E. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the 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, Haryana 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 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant 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.*** 2021-2022(1) RCR(Civil), 357 and reiterated in case of ***M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other 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 maintainability of present complaint.**

14. The respondent's counsel has raised an objection, stating that the present complaint is not maintainable under Order 9 Rule 9(1) of the Code of Civil Procedure, 1908. They argue that the complainants had previously filed a complaint for a refund before this Authority in 2021 (complaint no. 4349 of 2021), which was dismissed for want of prosecution vide order dated 11.04.2023.
15. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) as such are not applicable to the proceedings under the Act of 2016, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice and equity. Although, the earlier complaint was dismissed in default for non-appearance besides the complaint was neither heard and nor decided on merits. Also, the same issue was already dealt by Hon'ble Apex Court in paragraph 16 of *"New India Assurance Co. Ltd. Vs R. Srinivasan [(2000) 3 SCC 242]"*.
- "... the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default."*
16. Further it was also held by the Hon'ble Supreme Court of India in **"Civil Appeal No.557 of 2016"** that "in view of the decision rendered by this court, with which we have no reason to disagree, we are of the opinion that the second complaint filed by the appellant was maintainable on the facts of this case."

17. Furthermore, it is evident that the respondent-promoter has not refunded the amount paid by the complainants-allottees. Herein, the complainant is seeking refund of the entire amount paid, along with interest, as the respondent has failed to provide the promised assured returns up to the date of offering possession of the completed unit. Also, the unit has still not been completed, and possession has not been handed over. Therefore, the complainants continue to have an active and valid cause of action, as the respondent's failure to complete the unit, deliver possession and pay the agreed assured return constitutes a continuing wrong.
18. The Hon'ble Apex Court, in the case of Balkrishna Savalram Pujari & Others v. Shree Dnyaneshwar Maharaj Sansthan & Others (Civil Appeals nos. 220 to 223 of 1953 decided on: 26.03.1959) explained the concept of a "continuing wrong." The Hon'ble Apex Court held that if a wrongful act results in injury, and the harm continues over time, it is considered a continuing wrong. In such cases, the wrongdoer remains accountable for the ongoing harm. This principle applies when the wrongful act does not just cause one-time damage but causes harm that persists. Therefore, in cases where the injury continues due to ongoing actions or omissions, the cause of action is not limited to a single event but is seen as an ongoing issue. The relevant portion of the said order is reproduced herein below:

It is then contended by Mr. Rege that the suits cannot be held to be barred under art. 120 because s. 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under s. 23 ? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants ? In dealing with this argument it is necessary to bear in mind that s. 23 refers not to a continuing right but to a

continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

19. Additionally, the Real Estate (Regulation and Development) Act of 2016 has been framed to protect the interest of the consumers in the real estate sector and as per section 19(4) of the Act, 2016, it is the right of allottee to seek refund of amount paid along with interest, if the promoter fails to comply in accordance with the terms of agreement. The said section is extracted below:

"19(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."

20. In light of the above, the objection raised by the respondent is dismissed as the complainants' continue to have a valid cause of action due to the ongoing harm caused by the respondent's failure to fulfill the terms of the agreement

G. Findings on the relief sought by the complainants/allottees.

G. I Direct the respondent to refund the entire amount paid by the complainants to the respondent along with prescribed rate of interest.

21. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section



18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." सत्यमेव जयते

22. The complainants were allotted unit no. B-426, admeasuring 703 sq. ft. decreased to 689 sq. ft. in the project "Element One", Sector-47/49, Gurugram" by the respondent/builder for a basic sale price of Rs.72,76,050/- and they have paid a sum of Rs. 44,04,448/- which is approx. 60% of the sale consideration. A buyer's agreement dated 10.05.2014 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was on 10.11.2017. The respondent obtained the OC from the concerned authority on 03.11.2017 and subsequently vide letter dated 17.04.2019, the complainants were requested to clear outstanding dues and to take the possession. The complainants failed to pay the outstanding amount due against the allotted unit.

23. As per 3.9 and 3.10 the terms of the builder buyer agreement the complainants were liable to made the payment as per the payment plan and

the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

- 3.9 *That the timely payment of installments as stated in Payment Plan (Annexure-III) and applicable stamp duty, registration fee, maintenance and other charges payable under the agreement as and when demanded is the essence of this agreement.*
- 3.10 *That it shall be incumbent on the Allottee to comply with the terms of payment and/or other term & conditions of this Agreement failing which the Company shall be at the liberty to forfeit the entire amount of earnest money and whereupon this Agreement shall stand cancelled and the Allottee shall be left with no lien, right, title, interest or claim of whatsoever nature in the Said Unit and/ or under this Agreement. The Company shall thereafter be free to re-sell and/or deal with the Said Unit in any manner whatsoever at its sole discretion. The amount(s), if any, paid over and above the earnest money shall be refunded to the Allottee by the Company only after realizing the amounts on resale, without any interest or any compensation of whatsoever nature. The Company shall have first lien and charge on the Said Unit for all its dues and other sums payable by the Allottee to the Company under this Agreement."*

24. The respondent issued many reminders dated 22.07.2019, 10.08.2019 and 12.09.2019 thereafter pre-cancellation letter issued letter to the complainants on 12.11.2019. The Occupation Certificate for the project of the allotted unit was granted on 03.11.2017. After receipt of OC the respondent offered the possession to the complainant on 17.04.2019. It is evident from the above mentions facts that the complainants paid a sum of Rs. 44,04,448/- against sale consideration of Rs. 72,76,050/- of the unit allotted to them 10.05.2014. The complainants have failed to adhere to the terms and conditions of the builder buyer agreement.
25. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the basic sale consideration and shall return the amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filling of the complaint i.e., 25.10.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority

27. 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):
- The respondent is directed to refund the paid-up amount of Rs. 44,04,448/- after deducting 10% of the basic sale consideration of Rs. 72,76,050/- with interest at the prescribed rate i.e., 11.10% on such balance amount, from the date of filling of the complaint i.e., 25.10.2023 till the actual date of refund.
 - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.



HARERA
GURUGRAM

Complaint no. 4914 of 2023

28. Complaint stands disposed of.
29. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.04.2025



HARERA
GURUGRAM