BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 5992 of 2023
Complaint filed on : 19.01.2024
Order reserved on : 06.03.2025

1. Shashi Anand
2. Ashok Kumar Anand
Both R/o: H- 1506, PAN OASIS,
Sector-70, Noida-201301, Uttar Pradesh

Complainants

Versus

1. M/s Hometown Properties Pvt. Ltd.
2. M/S Mascot Buildcon Pvt. Ltd.
3. Shri Dharam Singh
Regd. Office: Vishwakarma Colony, Opp. ICD,
MB Road, Lal Kuan, New Delhi- 110044

Respondents

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Rajiv Kumar Khare (Advocate)
Shri Gulshan Sharma (Advocate)

Complainants
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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

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

S.No.	Particulars	Details
1.	Name and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project type	Commercial
3.	Unit no.	F-178, First floor (As per BBA on page 19 of complaint)
4.	Unit area admeasuring (super area)	435.730 sq. ft. (As per BBA on page 19 of complaint)
5.	Allotment Letter	19.03.2014 (Page 14 of complaint)
6.	Date of start of construction	21.03.2014 (As confirmed by both the counsels during proceedings)
8.	Date of execution of buyer's agreement	25.04.2016 (As per BBA on page 16 of complaint)
9.	Possession Clause	38. *The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within* ***36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later*** *with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.* (Page 27 of complaint)
10.	Due date of possession	25.07.2019

		(**Note:** the due date of possession is calculated 36 months from date of execution of buyer's agreement, being later) **Note:** Grace period of 3 months is allowed being unconditional.
11.	Sale consideration	Rs.48,67,104/- (As per BBA on page 19 of complaint)
12.	Amount paid by the complainant	Rs.25,59,279/- (including taxes) (Page 40 of complaint)
13.	Occupation certificate	26.10.2023 (As alleged by respondent in its reply in para 3 of reply to brief facts)
14.	Demand for Offer of possession	08.11.2023 (Page 42 of complaint)

B. Facts of the complaint:

The complainants have made following submissions in the complaint:

a. The complainant booked the said commercial unit on 23.04.2013 on payment of Rs. 5,00,000/-.

b. The respondent no. 2 allotted, for a sale consideration of Rs. 48,67,104/ inclusive of EDC, IDC & PLC, the said commercial unit no. F-178. admeasuring 435.73 sq. ft, on first floor in Project Oodles Skywalk, at Sector 83, Gurgaon, to the complainants on 01.04.2014, after having received a sum of Rs. 12,20,094.35/-.

c. That the R2 entered into a space buyer's agreement (SBA) with the complainants on 25 April, 2016 (Page16), 3 years after having collected Rs. 19,04.092/- including service tax.

d. That the respondent2 was bound to handover possession of the said unit within 36 months from the date of agreement which translates into delivery date not later than 25.04.2019.

e. That the respondent stopped work in 2016 after collecting a sum of Rs. 25,59,279/-.

f. That the license no. 08 of 2013 (Page 43) was issued to Shri Dharam Singh the R3. The R2 and M/s. Home Town Properties Pvt. Ltd., the R1, entered into an agreement for development of the project Oodles Skywalk. The R1 entered into a collaboration agreement with R2 of his own free volition and permitted R2 to develop the project, execute space buyer's agreements and collect the sale consideration from the allottees.

g. That, under the Indian Contract Act, a principal agent relation exists between the R3 on one hand as principal and R1 & R2 on other hand as agents. In terms of such principal - agent relation and in terms of the laws for time being in force, all acts including collection of sale consideration done by the Agent (R1) and R2 are deemed to have been done by the principal i.e. R3.

h. That the R3 has the principal liability to deliver the lawfully completed unit. The allottees are not a party to the collaboration agreement between R1-R3 and R1-R2 and are not aware of its covenants. The R3 has the lawful liability towards the complainants to perform his part of contract, in terms of the apartment buyer agreement executed by R2 with the complainants with the consent of the R1 &R3, the principals.

i. That the Hon'ble Apex court held in its Order dated 02.04.2019 in Civil Appeal 12238 of 2018, on page 19 para 6.7, "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 8-5- 2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice."

j. That the Hon'ble Apex court held in its above-mentioned order on page 15 bottom 2 paras, "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."

k. That the respondents began construction on 21.03.14 but did not enter into SBA until 25.04.16 as their intentions were malafide. That in view of this fact, the Apex court order mentioned above and in interest of justice, the date of possession must be counted from 21.03.14 and fixed on 21.03.17.

l. That the R1 declared and undertook in para 3 of Affidavit and Declaration to the HRERA that project shall be completed by 31.12.2019.

m. That the R1 issued a demand letter for offer of possession on 19.12.2023 without having obtained the OC.

n. That the HRERA website shows the project as a Lapsed Project. The bare truth is that the septuagenarian complainants booked the said unit for securing the future of their only physically challenged child wherefor they paid their hard-earned money for acquiring the booked commercial unit.

o. That the respondents are liable to pay compensation for causing persistent acute mental trauma to the complainants who are over 70 years of age.

p. That the respondents are liable to reimburse the cost of this litigation because his unlawful acts and willful reluctance to deliver possession as per the terms of agreement forced the complainants into this unwarranted litigation.

q. That the respondents have not till date delivered possession of the booked commercial unit and hence they are jointly and severally liable u/s 18(1)(a)

of. the RERA, 2016 which confers absolute right on allottees to seek refund of the amounts paid to the respondents along with accrued interest at prescribed rate from the date of collection of each instalment till the date of actual refund into the hands of the complainants.

C. Relief sought by the complainants:

3. The complainants have sought the following relief(s):

   i. Direct the respondent to refund of the amount paid to the respondents with interest.

4. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

5. The respondent has made following submissions in the reply:

   a. The complainant on his own free will and volition had approached the respondent for allotment of 'unit' in said project and initially submitted application form for booking the dwelling unit in the said project.

   b. Upon submission of the application form for allotment of the unit, the respondent vide letter of allotment dated 19.03.2014 had allotted to the complainant flat no. C-178, First Floor. The allotment letter also contained the details of the payment plan and the particulars of the unit allotted to the complaint in the said project. It is pertinent to mention that as per payment plan opted, the complainant had only paid an amount of 25,59,279/- and accordingly, the respondent had issued payment acknowledgment receipts. The total consideration of the unit agreed was Rs. 48,67,104/-.

   c. Thereafter, the builder buyer agreement was executed between the parties on 25.04.2016 which contained all the terms and conditions of the allotment and possession of the unit booked by the complainant. As per the terms of the agreement, the unit of the complainant was to be completed within a period of

36 months + 3 months grace from the date of execution of the builder buyer agreement.

d. It is submitted that, as this Hon'ble Authority is also aware, that on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of *"Deepak Kumar vs. State of Haryana, (2012) 4 SCC 629"*. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it. Further, developer was faced with certain to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities by the judicial authorities in NCR on account of the environment conditions, restrictions on usage of water, etc. That in addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects.

e. Further, reliance is made by the respondent on the judgment by the Hon'ble Supreme Court in the matter, titled as *CCI Projects (P) Ltd. vs. Vrajendra Jogjivandas Thakkar*. It is further submitted that the Government of India declared nationwide lockdown due to COVID-19 pandemic effective from 24th March, 2020 midnight. It is submitted that the construction and development of the project was affected due to this reason as well. This Hon'ble Authority has vide its order dated 26.5.2020 invoked the force majeure clause.

f. The Hon'ble Supreme Court in the case of *"Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699"* held that the contract, which frequently contains any conditions, is presented for acceptance

and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

g. In view of aforesaid dictum, it is clear that once the complainants have entered into execution of space buyer agreement on 25.4.2016 with the respondent company, which they have never objected to till date, complainant cannot at this belated stage approbate and reprobate and taken the plea of "delay". In this regard, it is respectfully submitted before this Hon'ble Authority that as admittedly in the present case, the execution of the SBA was happened on 25.04.2016, the due date of possession shall be after 36 months + 3 months grace period and the period of lockdown prevailed in the Country due to COVID-19 and due to NGT order for stopping of construction work for 2 months every year, all these period has to be excluded and then the actual date of possession would be given. In the present case from the date of 25.4.2016, if we count 39 months, the period is coming 25.7.2019 for due date of possession and in that period / date 25.7.2019, the period of lockdown and NGT orders period i.e. grace period of more than one year would be added and thus if the period of grace and lockdown, if be added the period of due possession would be around February, 2022 and by that time the possession would be given. Further, with respect to progress of the project is concerned, the project is complete, wherein OC has been obtained by the respondents and offer of possession has already been issued way back on 8.11.2023 to the complainant with due date as 8.12.2023, however, despite elapsing the said date, total outstanding amount of Rs. 53,92,576/- has not been paid by the complainant. In the present case, the unit bearing no. F-178, having area 435.73 was booked vide allotment dated 01.04.2014 and thereafter, the space buyer agreement was executed on 25.4.2016 between the complainant and the respondents, vide total sale

consideration having fixed as Rs. 48,67,104/- alongwith other charges payable for the unit in concerned. It is respectfully submitted that the complainant herein is the defaulter and has not paid the scheduled amount as per schedule of payment and has only paid Rs. 25,59,278/- (including tax) till 06.06.2017 and has stopped making further payment, thus became the defaulter. However, the complainant has not cancelled their unit concerned and has vide its offer of possession letter dated 8.11.2023, offered the unit in question finally (after obtaining the OC from the concerned Authority) to the complainant and directed them to pay Rs. 53,92,576/- (including interest) to the respondent by due date 08.12.2013. However, the complainant has not paid till date the said amount.

h. The respondent submitted that despite exercising diligence and continuous pursuance of project to be completed, project of answering respondent is near for successful completion, however, due to following reasons, there existed some hindrance which reasons are as follows:

- On 19.02.2013 the office of the executive engineer, Huda Division No. II, Gurugram had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewage treatment plant, Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.
- Time and again various orders passed by the NGT staying the construction.
- Orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. However, there was no sewage treatment plant available which led to scarcity of water and further delayed the project.
- Evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute

a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

- It was not only on account of following reasons among others as stated above that the project got delayed and proposed possession timelines could not be completed in addition to above there were several others reasons also as stated below for hindrance in the project:

  i. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers.

  ii. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.

  iii. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever.

  iv. The Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. The said ministries had

barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite based thermal power plants without mixing 25% of ash with soil.

v. Shortage of bricks in region has been continuing ever since and the Respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.

vi. In addition, the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.

vii. In July 2017 the Govt. of India further introduced a new regime of taxation Page 20 of 26 Complaint No. 1069 of 2018 under the Goods and Service Tax which further created chaos and confusion owning to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

viii. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.

ix. The respondent submitted that there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT, the construction activities at the project site were also delayed for several other reasons as stated in the aforesaid paragraphs and which were clearly prescribed under the agreement.

i. Copies of all the relevant documents have been filed and placed on 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:

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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 the allottee as per the agreement for sale. Section 11(4)(a) is reproduced

as hereunder:

> ***Section 11(4)(a)***
> *Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

11. Hence, given 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.

F. Findings on objections raised by the respondents

F.I Objection regarding delay due to force majeure circumstances

I. 12. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such delay in the completion. Insofar as relief pertaining to COVID-19 is concerned, it

is noted that the due date in question predates the onset of the COVID-19 pandemic, being 25.07.2019. Accordingly, no relief can be granted on this ground. Although a grace period of 3 months as per clause 38 of buyer's agreement is being allowed.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to refund of the amount paid to the respondents with interest.

13. The complainants were allotted a unit in the project of respondent "Oodles Skywalk" at sector 83, Gurgaon vide allotment letter dated 19.03.2014 for a total sum of Rs.48,67,104/- and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 25,59,279/-. The complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> ***Section 18: - Return of amount and compensation***
> *18(1). If the promoter falls 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 of 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."*

14. As per clause 38 of the agreement provides for handing over of possession and is reproduced below:

> *The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within* ***36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later*** *with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.*

15. By virtue of clause 38 of the agreement, the possession of the subject unit was to be delivered within a period of 36 months with an additional grace period of 3

months from the date of signing of this agreement or the date of start of construction, whichever is later. The due date is calculated from 36 months from date of signing of the agreement dated 25.04.2016 being later + 3 months of grace period is allowed unconditionally. Accordingly, the due date of possession comes out to be 25.07.2019.

16. The respondent in its reply mentioned that the occupation certificate of the project was obtained on 26.10.2023 and demand for offer of possession was made on 08.11.2023. However, the complainant neither come forward to take the possession nor informed the respondent that she does not want to continue with the project. The complainant has filed the present complaint on 19.01.2024 i.e., after demand for offer of possession seeking refund of the paid-up amount.

17. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated was obtained on 26.10.2023 after delay of almost 4 years from the due date of possession. However, after competition of the unit and obtaining of occupation certificate, the complainants are seeking refund of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement, wished to withdraw from the project.

18. Although there is substantial delay in making offer of possession, however, the complainants/allottees never opted his right of full refund in terms of section 18 after due date of possession i.e., 25.07.2019 was over but before the demand for offer of possession was made on 08.11.2023. As per section 18 of the Act of 2016, the complainant–allottee has right to continue or withdraw from the project but the same has to be expressed in clear terms before offer of possession as held by the Authority in **Complaint No. 613 of 2018** titled as ***"Mridula Parti and Partha Sarathi De Vs. M/s Microtek Infrastructures Pvt. Ltd."***, the relevant para is reproduced herein below:

> *The allottees have not exercised the right to withdraw from the project after the due date of possession was over, till the offer of possession was made to*

them. The promoter has already invested in the project to complete it and offered possession of the project, the consequences for delay provided in proviso to section 18(1) would come in force and the promoter would be liable to pay interest at the prescribed rate of every month of delay till the handling over of possession. However, in the present matter, this is not the case.

19. In the instant complaint, the complainant never expressed his wish to withdraw from the project before offer of possession i.e., 08.11.2023 which tacitly shows that the complainant intended to continue with the project and the refund has been sought only by way of filing of this complaint on 31.02.2022 i.e., after offer of possession has been made. Thus, the date of filing of complaint for refund of the paid-up amount can be considered as date of surrender of the unit by the complainant.

20. However, now when complainants approached the Authority to seek refund, it is observed that as per clause 23 of buyer's agreement at page 27 of the reply i.e., booking application form, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

> ***The "Company" and the Allottee hereby agree that the amounts paid on booking/on allotment and /or in installments as the case maybe, to the extent of 10% of the Basic Sale Price of the said unit will collectively constitute the earnest money.*** *Non fulfillment of any terms and conditions of the sale and those of the agreement as also in the event of failure to sign this agreement by Allottee within the time allowed, may entail the forfeiture of the earnest-money together with interest on delayed payments and any other mount of non-refundable nature including but not confined to brokerage paid by the "Company".*

21. 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 unit remains with the builder

as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under:

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

22. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates*

which the State Bank of India may fix from time to time for lending to the general public.

22. The legislature in its wisdom in the subordinate legislation under the provision of rule15 of the rules, has determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> *the interest payable by the promoter to the allottee shall be from the date the 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 defaults in payment to the promoter till the date it is paid;"*

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available,

to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

H. Directions issued by the Authority:

26. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

I. The respondents are directed to refund the paid-up amount of Rs. 25,59,279/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest @ 11.10% p.a. on such balance amount from the date demand for offer of possession (08.11.2023) till the actual date of realization.

II. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottees-complainants.

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

27. Complaint stands disposed of.

28. File be consigned to the Registry.

Dated: 15.04.2025

V.I

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