

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 16.01.2019
Complaint No.	840/2018 Case titled as Randeep Lal V/S Bestech India Pvt. Ltd.
Complainant	Randeep Lal
Represented through	Complainant in person with Shri Amit Kumar, Advocate.
Respondent	M/S Bestech India Pvt. Ltd.
Respondent Represented through	Shri Ishaan Dang, Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Argument heard.

It has been brought to the notice of the authority by the complainant that they had booked a flat/unit No.B-1804, 17th floor, Tower-B, in project "Park View Sanskruti" on 26.7.2013 for which they paid an amount of Rs.19,50,000/-. As they had no intention to continue with the project as a

result of which the respondent cancelled the unit and forfeited the entire amount on 31.8.2015 which is an excess amount on the part of builder/respondent. All the events had happened after coming into force RERA Act. A Builder Buyer Agreement was signed inter-se the parties on 26.7.2013. As a matter of fact, as per Notification No.202-2018/Ext. dated 5th December 2018, para No.5 is re-produced as under:-

Para No.5 : AMOUNT OF EARNEST MONEY

“Scenario prior to the Real Estate (Regulation 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 judgments 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 relations shall be void and not binding on the buyer”.

In view of the above facts and taking into consideration the judgement 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 of 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. It is ordered accordingly. The earnest money component as mentioned above is exclusive of outstanding interest accruing as a result of delay in making payment, processing fee, brokerage paid if any, taxes, VAT and /or any other amount of a non-refundable nature which the allottee(s) is contractually bound to pay to the Developer. Therefore the same be also deducted as per contract.

Counsel for the respondent has produced a number of authorities w.r.t forfeiture of earnest money to the extent of 20% which have been placed on record.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
16.01.2019

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

Complaint no. 840 of 2018
Date of first hearing 16.01.2019
Date of decision 16.01.2019

Mr Randeep Lal
R/o St Patrick's Residences, Singapore-
423467

**(Through special power of attorney
holder)**

Mr Ratul Roshan
R/o 701, Jasminium-2, Vatika City, Gurgaon-
122018, Haryana

Complainant

Versus सत्यमेव जयते

M/s Bestech India Pvt. Ltd.
Registered Office : Unit no 5d, 5th floor,
Assets Area 4, Delhi Aerocity Hospitality
District, New Delhi-110037
Other Office : 1/2873, Ram Nagar, Loni
Road, Shahdara, New Delhi-110032
Gurugram Office : Plot No 51, Sector 54,
Gurugram

Respondent

HARERA
GURUGRAM



CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Kailash Prashad Pandey Advocate for the complainant
Shri Jag Mohan Dang Advocate for the respondent

ORDER

1. A complaint dated 06.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr Randeep Lal through special power of attorney holder Mr Ratul Roshan, against the promoter M/s Bestech India Pvt. Ltd. on account of violation of clause 3(a) of the apartment buyer's agreement executed on 26.07.2013 for unit no. B-1804 on 17th floor, B tower, admeasuring super area of 2,120 sq. ft. in the project "Park View Sanskruti" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer agreement was executed on 26.07.2013 and due date of possession was 26.01.2017 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.



3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Park View Sanskruti” in Sector 92, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	12.7875 acres
4.	Current status of the project	Occupation certificate received dated 19.06.2018
5.	Unit no.	B-1804, 17 th floor, tower no. B
6.	Unit area	2120 sq. ft super area
7.	Registered/ not registered	Not registered
8.	DTCP license	13 of 2009 dated 21.05.2009 43 of 2011 dated 13.05.2011
9.	Date of apartment buyer's agreement	26.07.2013
10.	Total consideration	Rs 1,33,26,680/-
11.	Total amount paid by the complainant	Rs. 19,50,000/-
12.	Payment plan	Instalment payment plan/ Construction linked payment plan
13.	Date of delivery of possession	26.01.2017 Clause 3(a) – 36 months from date of signing of agreement (26.07.2013) or approval of building plans (04.05.2013), whichever is later, i.e. 26.07.2016 + 6 months grace period i.e. 26.01.2017



14.	Date of approval of building plans	04.05.2013
15.	Date of occupation certificate	19.06.2018
16.	Date of cancellation letter	31.08.2015
17.	Date of revised site/building plan	20.07.2017
18.	Delay of number of months/ years upto 16.01.2019	1 year 11 months 20 days
19.	Penalty clause as per builder buyer agreement dated 26.07.2013	Clause 3(c)(iii)- Rs. 5/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement dated 26.07.2013 is available on record for unit no. B-1804 on 17th floor, B tower, admeasuring super area of 2,120 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 26.01.2017.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 16.01.2019. The reply has been filed on behalf of the respondent and has been perused.

Facts of the complaint

6. The complainant submitted that he is currently resident in Singapore with his wife and daughter and is a citizen of India. The instant complaint is being filed through his special power



of attorney holder, Mr. Ratul Roshan, who is duly authorised to sign, verify, affirm and institute the instant proceedings on behalf of the complainant *vide* special power of attorney dated 24.07.2018 duly attested by the High Commission of India in Singapore on 27.07.2018. Mr. Ratul Roshan is also otherwise conversant with the facts and circumstances of the case and is thus competent to do all of the foregoing.

7. The complainant submitted that in the year 2012 the complainant, then resident in Vatika City, Gurgaon – 122018, Haryana, was desirous of purchasing a 3 bedroom hall kitchen property in a gated society in Gurugram and approached the respondent to explore their 3bhk units in their housing project namely 'Bestech Park View Sanskruti' on land admeasuring 12.7875 acres located in Sector-92, Tehsil – Wazirpur, Gurgaon, Haryana, India .

8. The complainant submitted that after viewing various options the complainant shortlisted a 3 bedroom hall kitchen with servant quarter unit admeasuring 2120 sq. ft with a basic sale price of Rs. 5,435 per sq. ft along with two parking spaces for a total consideration of Rs. 1,33,26,680/- inclusive of club



membership fee and interest free maintenance security. The complainant paid earnest money of the amount of Rs. 50,000/- *vide* cheque no. 629562 dated 26.12.2012 drawn on ICICI bank, Gurgaon branch against said payment, a receipt was also issued to the complainant.

9. The complainant also submitted that further, *vide* cheque no. 976229 dated 25.02.2013 drawn on Yes Bank, Gurugram branch, the complainant paid Rs. 11,50,000/- as advance payment toward the future demand notice raised on 10.05.2013 upon 'booking +0 days', as directed by the representatives of the respondent company. Against said payment, a receipt was also issued to the complainant.

10. Thereafter after paying a cumulative amount of Rs. 12,00,000/- and believing the oral assurances and reassurances of the representatives of the respondent company as to the accommodating and flexible nature of their payment scheme, the complainant submitted the allotment application on 10.05.2013. Further on 26.07.2013 the complainant was provided an apartment buyer's agreement



whereby he was provisionally allotted apartment no. B-1804 in tower B on the 17th floor admeasuring 2120 sq. ft.

11. According to the said agreement the payment was to be made by the complainant according to a construction linked plan. It was stipulated in clause 1.2 (k) of the said agreement that interest payable on the amounts due would be calculated at 18% per annum compounded quarterly and possession of the said apartment was to be given by the respondent company within 42 months i.e. by 27.01.2017 according to clause 3 (a) of the said agreement.
12. The complainant also submitted that demand notices along with reminders were raised by the respondent in the period intervening 01.06.2013 and 17.08.2015. It is noteworthy here that the demand notices were raised hastily vis-à-vis the actual completion of the said project, but the complainant made payments towards the demand notices raised to show his bonafides .
13. Despite delay in construction on the part of the respondent, the complainant to show his bonafides, paid a sum of Rs. 2,50,000/ on 21.09.2013 *vide* cheque no. 976245 dated



20.09.2013 drawn on yes bank towards the part payment of the demands by the respondent. against said payment, a payment receipt was also issued by the respondent to the complainant.

14. Demands and receipts up to 20.09.2014 have been reflected in ledger dated 25.08.2014 issued by the respondent to the complainant.

15. The complainant in order to continue his relation with the respondents and to further show his willingness to service the demands raised upon him, vide cheque no. 797408 dated 15.01.2015 drawn on yes bank, remitted a further payment of Rs. 5,00,000/- against which a receipt was also issued to the complainant. Such payment of rupees five lacs further shows the bonafides of the complainant who wanted to keep his claim alive and was willing to service his dues with the help of some reconciliation and relaxation from the respondent company's side as orally assured to the complainant at the time of oral protest upon certain clauses of the application form.

16. The complainant submitted that a cancellation notice was sent by the respondent to the complainant on 31.08.2015 with



regard to the said apartment due to non-payment of dues by the complainant. It was further conveyed that as per the said agreement 20% of the total sale consideration would be treated as earnest money and the same would be forfeited. The said letter further stipulates that the complainant was no longer left with a claim, right, title, interest in the said apartment

17. The complainant also submitted that the interest on delayed payment was stipulated to be calculated at 18% per annum compounded quarterly as per clause 1.2 (k) of the said agreement and as stated in the cancellation notice dated 31.08.2015, it already stood at Rs. 11,58,775/-
18. The complainant submitted that pursuant to the cancellation of the said apartment and forfeiture of the amount of Rs. 19,50,000/-, the complainant made several representations, requests and pleas beginning 10.02.2016 to the respondent to give him some rebate as to the interest payable on the amounts due. The complainant tendered several alternatives to the respondent to be able to salvage his monies, *inter alia* adjustment against another unit in the same project, waiver of



interest on delay, rebate on interest on delay, calculation of interest on delay only up to the date of forfeiture.

19. The complainant also submitted that the respondent *vide* mail dated 06.04.2016 sent to the complainant a progress report of the said project in context of the other unit which the complainants had purchased. In the said progress report sent 06.04.2016 which showed pictures of the progress up to February 2016, it could be clearly seen that the said project would not meet the possession date stipulated in said agreement.
20. The complainant *vide* mail dated 15.05.2017 re-initiated the conversation with the respondent and pleaded that the interest component on the said apartment be waived and expressed his willingness to service all of his dues there from. A response by the respondent company to the complainant on the same date stated categorically that the said apartment was not on stock anymore. Therefore the said apartment had already been sold to another buyer subsequent to the default of the complainant. The respondent further stated that if the complainant wished to revive the monies paid by him, he



would have to suffer deduction on account of delay, moreover that the booking would be in the rates prevailing on the contemporaneous date. It is understood that the rates prevailing on the contemporaneous date would have been inflated compared to the rates at which the said apartment was originally booked, thereby increasing the demand burden on the complainant. The complainant in a mail response the same day submitted a counter-offer to the respondent on which was outright rejected by the respondents *vide* mail dated 16.05.2017, thus continuing their high-handed attitude.

21. It is noteworthy that possession of any unit in the said project is yet to be physically granted. In fact, for the other unit the complainant owns in the said project, namely A-901 the offer for possession letter was issued only *vide* mail dated 16.07.2018 as against the earlier promised date of 27.01.2017 and the respondents have demanded a further time of 10 months for granting physical possession *vide* mail dated 17.07.2018.

22. The complainant also submitted with regard to earnest money that it must be given at the moment at which the contract is



concluded and that it represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract. the complainant only paid Rs. 50,000/- towards earnest money on 26.12.2012 *vide* cheque no. 629562 and all of the subsequent payments have been made either towards advances or demands raised by the respondent. The respondent has therefore, illegally forfeited a total amount of Rs. 19,00,000/- paid by the complainant and despite being provided with information of the same being illegal, has not refunded the excess amount forfeited.

23. The complainant submitted that forfeiture of earnest money is an act which falls under section 74 of the Contract Act because a liquidated amount fixed as per the contract between the parties is forfeited, but the eventuality of such a clause of forfeiture coming into application would only be where contract is such by its nature that the loss cannot be proved; it is further submitted by the complainant that breach of an agreement to sell/purchase of immovable property is a type of contract where loss can be proved, and that once loss is not



pleaded and proved to be caused to the appellant/respondent,
then earnest money amount cannot be forfeited

24. It is submitted that if the amount which is allowed to be forfeited under the contract is in the nature of penalty then courts are empowered to treat the amount of liquidated damages (earnest money) as one in the nature of penalty clause under section 74 of the Indian Contract Act, 1872 and that earnest money amount only represents the upper limit of damages which are allowed to be forfeited in terms of the forfeiture clause, and actual forfeiture only of a lesser and a reasonable amount should be allowed instead of the large amount/penalty as stated under a contract as being entitled to be forfeited and that too merely because a contractual clause allows such a forfeiture.

25. It is submitted that the commercial viability of any investment into housing projects financed by buyers by way of loans taken at market rates, exists only till the sellers deliver possession on or before the promised time or if compensation is paid in lieu of delay and is further eroded when burdensome and



onerous conditions and covenants are imposed upon the buyers.

26. The complainant also submitted that the cause of action for the present suit arose on different dates and moreover is in the nature of a continuing cause of action. The cause of action first arose on 31.08.2015 when the respondent illegally and wrongfully forfeited the sum of Rs. 19,50,000/- The cause of action further arose on the dates when mails were exchanged between the complainant and the respondent *inter alia* on 29.02.2016, 15.05.2017, 14.08.2017, 02.04.2018 when the complainant made requests to the respondent to adjust the monies paid by him or offer him some rebate on interest accrued etc. Cause of action also arose on 18.04.2018 when the respondent completely refused to refund any portion of the excess monies forfeited and held its forfeiture of 20% of the sale price of the earnest money as valid and legal.

27. The complainant also submitted that he has his permanent residence in Gurugram and the said project, constructed by the respondent is located in Gurugram. Furthermore, the respondent has a corporate office in Gurugram. The apartment



buyer's agreement at clause 16 also stipulates that the courts at Gurugram shall have jurisdiction in all matters arising out of and/or concerning the said transaction

28. The complainant also submitted that there are no proceedings pending between the parties in any other forum/ courts etc. or before any other high court(s).

Issues raised by the complainant

29. The relevant issues raised in the complaint are:
- I. Whether the forfeiture of Rs 19,50,000/- by the respondent of the monies paid by the complainant is illegal?
 - II. Whether the respondent is liable to refund the total sum of Rs. 19,00,000/- to the complainant as established by law in various Supreme Court cases?
 - III. Whether according to the apartment buyer agreement, the possession of the forfeited flat was offered within 36 months of the date of agreement?



Relief sought

30. The reliefs sought by the complainant are as follows :-

- I. To direct the respondent to refund the total sum of Rs. 19,00,000/- to the complainant along with interest at the rate of 18% per annum from the date of respective payments made to the respondents till realisation and
- II. To grant the liberty to the complainant to seek compensation in accordance with law as assessed by the learned adjudicating officer in terms of the Real Estate (Regulation and Development Act) 2016.

Respondent's reply

31. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment in question was made on 30.06.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate in respect of the project was issued by the competent authority on



19.6.2018. Thus, the project in question is not an ‘ongoing project’ under rule 2(1)(o) of the rules. This hon’ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

32. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint. The complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

33. The respondent submitted that as the terms and conditions of booking, an amount of Rs 11,57,095/- was to be paid by the complainant at the time of booking. However, the complainant expressed his inability to pay the entire amount at that time and requested the respondent to initially accept a sum of Rs 50,000/- and promised to pay the balance amount within a short span of time along with application form. A sum of Rs 11,50,000/- was paid by the complainant subsequently vide cheque dated 25.02.2013. However the application form was eventually submitted by the complainant only on 21.05.2013.



34. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by the complainants.

35. The demand notice dated 19.08.2014, notice dated 01.09.2014, reminder dated 06.10.2014, second reminder dated 20.10.2014 and final notice dated 04.11.2014 was issued by the respondent to the complainant.

36. The respondent submitted that the construction of the project was completed on 30.6.2017 and the respondent made an application to the competent authority for issuance of occupation certificate in respect of the same. Occupation certificate was granted by the office of DTCP, Haryana on 19.06.2018.

37. The respondent also submitted that after affording innumerable opportunities to the complainant to pay its outstanding dues, the complainant was left with no option but to cancel the provisional allotment in favour of the



complainant vide letter dated 31.08.2015, the complainant was informed that the provisional allotment of the apartment stood cancelled.

38. The respondent submitted that the complainant is an investor who has booked the apartment in question as a speculative investment and not for his own use. The complainant has also booked another apartment in the same project of the respondent being apartment no 0901 situated in tower A of the project. Pertinently, the complainant has made payment for all the demanded instalments for the second unit. Therefore the false excuses put forward by the complainant for his failure to make payment for the apartment which is the subject matter of the present complaint is clearly without any basis.

Determination of issues

39. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
40. In respect of the **first issue**, As per clause 1.2 (h) of apartment buyer agreement time is the essence of the agreement for the



payment of sale consideration, maintenance charges and other deposits and amounts, including any interest. If the allottee fails in timely performance of its obligations agreed to pay in time any of the instalments to the company or to perform any other duties under the apartment buyer agreement, the company shall be entitled to cancel the allotment and forfeit the earnest money under clause 1.2 (g) of apartment buyer agreement and section 11 (5) of the Real Estate (Regulation and Development) Act, 2016 . There have been letters issued by the respondent to the complainant demanding the payment of due instalments. Thus the respondent has abided by the agreement and has cancelled the allotment of the unit vide letter dated 31.08.2015.

Section 11(5) of the RERA Act, 2016 reproduced as below :

“The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the authority for relief, if he aggrieved by such cancellation and such cancellation is not in accordance with the terms if the agreement for sale, unilateral and without any sufficient cause”



41. In respect of **second issue**, As per clause 1.2 (g) of the apartment buyer agreement, the respondent treats 20% of the sale price as earnest money.

The clause 1.2 (g) of the apartment buyer agreement is reproduced as below

“The apartment allottee has entered into this agreement on the condition that out of the amounts paid/ payable towards the SALE PRICE, the Developer shall treat 20% of the SALE PRICE as Earnest Money to ensure fulfilment by the ALLOTTEES of the terms and conditions as contained in this Agreement”

In the case of **DLF Ltd. v. Bhagwati Narula**,¹ revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus,



¹ 1(2015) CPJ 319 (NC)

amount beyond 10% cannot be forfeited and if done so that would be unreasonable

It is a well settled principle that any clause in derogation to the said law shall not be valid in law. **Thus, it has to be noted that the respondent cannot forfeit more than 10% of the earnest money. Therefore the respondent is liable to refund the balance amount after deduction of 10% of sale price.**

42. In respect of the **third issue** raised by the complainant, the authority is of the view that as the unit allotted to complainant stood cancelled therefore there is no case for delivering possession particularly when unit has been cancelled right as per agreement for sale.
43. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



Findings of the authority

44. **Jurisdiction of the authority-** The project “Park View Sanskruti” is located in Sector 92, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide

notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

45. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

46. In view of the facts and taking into the consideration the judgment 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 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, if 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. It is ordered accordingly. The earnest money component as mentioned above is exclusive of outstanding interest accruing as a result of delay in making payment, processing fee, brokerage paid if any, taxes, VAT and/or any other amount of a non-refundable nature which the allottee(s) is contractually bound to pay to the developer. Therefore the same be also deducted as per contract. Counsel for the respondent has produced a number of authorities with respect to forfeiture of earnest money to the extent of 20% which have been placed on record.

Decision and directions of the authority

47. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play :

- i. The respondent is directed to refund the balance amount after forfeiting 10% of the consideration amount paid by the



complainant excluding outstanding interest accruing as a result of delay in making payment, processing fee, brokerage paid if any, taxes, VAT and/or any other amount of a non-refundable nature.

48. The order is pronounced.

49. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 16.01.2019

Judgement Uploaded on 24.01.2019

