

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

Complaint no.	5012 of 2023
Date of filing complaint	02.11.2023
First date of hearing	09.02.2024
Date of decision	18.09.2024

1. Mr. Chirag Arora
2. Ms. Supriya Madan
Both R/o: A-2601, Heritage Max, Sector- 102,
Gurugram, Haryana 122505

Complainants

Versus

Vatika Limited
Registered office: Vatika Triangle, 4th floor,
Sushant Lok, Phase 1, Block A, Mehrauli-
Gurugram Road, Gurugram- 122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Priyanka Agarwal (Advocate)

Mr. Venket Rao (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Xpressions by Vatika", Sector- 88A and 88B, Village Harsaru, Gurugram
2.	Nature of Project	Independent Residential Floor
3.	RERA Registered or not registered	271 of 2017 dated 09.10.2017 valid upto 08.10.2022
4.	DTCP License and validity status	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Date of allotment	01.02.2016 (Page 28 of reply)
6.	Date of execution of builder buyer agreement	25.05.2016 (Page 20 of complaint)
7.	Unit no.	HSG-028-Sector-88B, Plot No-32, ST. H-33, Level-2 (Page 22 of complaint)
8.	Unit area	1550 sq. ft. Super area (Page 22 of complaint)
9.	Possession Clause	<p>Clause 13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR</p> <p><i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor within a period of 48 (Forty Eight) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to failure of the Allottee(s) to pay in time price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-1 or as per demands raised by the Developer from time</i></p>

		<i>to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.”</i> (Page 31 of complaint)
10.	Due date of possession	25.11.2020 (Calculated to be 48 months from the date of execution of builder buyer agreement dated 25.05.2016 + Grace period of 6 months in as per HARERA notification no. 9/3-2020 dated 26.05.2020, for the projects having completion/due date on or after 25.03.2020)
11.	Basic Sales Price	Rs. 91,60,500/- (As per Account statement dated 09.02.2021 at page 56 of complaint)
12.	Total sale consideration	Rs. 1,10,12,987.50/- (As per Account statement dated 09.02.2021 at page 56 of complaint)
13.	Amount paid by the complainant	Rs. 39,30,437/- (As per Account statement dated 09.02.2021 at page 56 of complaint)
14.	Payment reminder letters sent by respondent to complainants	10.05.2022 and 30.05.2023 (Page 35 and 34 of reply, respectively)
15.	Cancellation cum refund letter	27.09.2023 (Page 37 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That even after more than 5 years of implementation of the RERA Act, 2016, the project in question is still not registered, which is a clear violation of Section 3 of the Act.
- b) That on 29.05.2015, based on promises and commitment made by the respondent, the complainants booked a 3 BR+ residential floor measuring super area 1550 sq. ft., along with covered car parking in residential floor project “Xpressions by Vatika”, Sector 88 B, Gurugram, Haryana. The initial booking amount of Rs. 2,00,000/- was paid by the complainants.
- c) That a buyer’s agreement dated 25.05.2016 was executed between the parties. The respondent assured the complainants that the project shall be

completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.

- d) That the complainants were allotted unit no. HSG-028-Pocket-H-2-Level-2, Xpressions by Vatika, Sector-88B, Gurugram, Haryana. The total cost of the said floor is Rs. 1,02,25,500/- including PLC, EDC, IDC, car parking and club membership and the complainants have paid a total amount Rs. 39,30,437/- in a time bound manner.
- e) That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016, the complainants have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement and buyer was bound to sign the BBA and agreed to one sided clause of BBA like escalation cost, force majeure, clause of due date of possession, PLC, club charges, other hidden charges. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
- f) That the complainants had made timely payment of installments till 19.04.2018 and deposited Rs. 39,30,437/-. The respondent in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 60% of the total sale consideration amount as advance and linked the rest 40% amount with the construction of super structure only, which is not depended or co-related to the finishing of floor and internal development of facilities amenities and after taking the same respondent did not even bother about the development of the project till date as the whole project is not even 50% complete. Extracting the huge amount and not spending the money on a project is illegal and arbitrary and matter of investigation.

- g) That the complainants booked apartment on 29.07.2015 (more than 8 years ago) and as per clause 13 of the buyer's agreement, builder was liable to offer possession on or before 25.05.2020. However, the respondent failed to complete the project by the due date i.e., 25.05.2020.
- h) That the complainants were surprised to see that the respondent has illegally terminated the allotment of the complainants vide termination letter dated 27.09.2023, without paying any interest on the delayed possession, or even returning the principal amount paid by the complainants, which is highly illegal, arbitrary and unjust.
- i) That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of the agreement and has rudely and cruelly dashed the expectations of the complainants to the ground and the complainants are eminently justified in seeking delay possession charges from the due date of possession i.e. 25.05.2020 to till date of physical possession of the unit after obtaining O.C.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- I. Direct the respondent to revoke the cancellation of allotment of the complainant's unit.
- II. Direct the respondent not to create any third-party interests in the said unit or to alienate the said unit till the final disposal of the present complaint case.
- III. Direct the respondent to pay delay possession charges from the due date of possession till the actual handover of the unit with interest at the rate prescribed by the Act.
- IV. Direct the respondent to get the occupation certificate and immediately hand over the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.
- V. Direct the respondent to handover the actual physical possession of the fully furnished unit with all the amenities and fixtures as per the BBA at the earliest.
- VI. Direct the respondent to quash the one-sided clauses from BBA.
- VII. Pass an order for refund of GST amount levied upon the complainants and taken the benefit of input credit by builder.

- VIII. Direct the respondents not to raise any further demands from the complainants till the final disposal of the present complaint case.
- IX. Direct the respondents not to impose any tax liabilities on the complainants after the lapse of the due date of possession, i.e., 25.05.2020, as it the builder who has indefinitely delayed the project by no fault of the complainants.
- X. Impose heavy costs on the respondent for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainants.
- XI. Initiate inquiry against the respondent for violation of the provisions of RERA Act, 2016 as even after nearly 6 years of implementation of RERA Act, 2016, the respondent has not registered the project in question with the Hon'ble RERA Haryana.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
6. The respondent contested the complaint on the following on the following grounds vide its reply dated 28.02.2024:
- a) That the complainant learned about the residential project launched by the respondent titled as "Xpressions by Vatika" situated at Sector 88A and 88B, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the project and was satisfied with every proposal demanded necessary for the development.
- b) That after having keen interest in the project being developed by the respondent and post being satisfied with specifications of the project, the complainant decided to book a unit vide Application form dated 29.07.2015 and paid an amount of Rs.2,00,000/- as booking amount for further registration in the project.
- c) That the respondent vide allotment letter dated 14.01.2016 called upon the complainant and requested to come to office on 01.02.2016 for taking the allotment of the unit.

- d) That the respondent vide allotment letter dated 01.02.2016 allotted a unit bearing no. 32, Level 2 Floor, Street no. H-33, admeasuring 1550 sq. ft. super area in the aforesaid project.
- e) That the respondent vide letter dated 29.02.2016 served two copies of the builder buyer agreement for execution and requested the complainant to return the signed copy of the same for further execution.
- f) That on 25.05.2016, a builder buyer agreement was executed between the parties for a total sale consideration of Rs.1,02,25,500/-.
- g) That as per clause 13 of the agreement, the possession of the unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the agreement unless there shall be a delay or there shall be a failure due to reasons beyond the control of the developer or due to the government rules, orders, etc. or due to failure of allottee to pay in time the price of the residential unit along with all other charges and dues in accordance with the schedule of the payment and as pr the same the possession was proposed to be handed over by 25.05.2020. The respondent herein shall be entitled for extension for such period of delay caused due to force majeure circumstances.
- h) That the complainant has defaulted in making payments from initial stages of booking. As can be clearly seen from the Statement of Accounts, that the complainants have always delayed the payment of instalments and therefore not abided by the clauses of the agreement.
- i) That the respondent vide letter dated 13.12.2021 informed the complainants about the payment of Rs.20,51,952/- by 31.12.2021 which the complainants failed to do. Vide letter dated 10.05.2022, the respondent reminded the complainants about the due payment and again on 30.05.2023 gave the complainants last opportunity to pay the outstanding dues.



- j) That as per Section 19(6) of RERA, 2016, the Allottee is obligated for timely payments as per the agreement. So, the timely payments is not only a contractual duty of the complainants but also the legal duty, which the complainants have failed to perform. Therefore, the complainants herein are at default without the fault of the respondent.
- k) That as per Section 11(5) of the RERA, 2016, the promoter may cancel the allotment only in terms of agreement for sale. Also, as per clause 19 of the agreement, the respondent can cancel the agreement if the complainants fail to make the payment on time. Therefore, as per the provisions of the Act of 2016, the respondent herein was well within its rights to cancel the allotment of the complainants in case of default of payment.
- l) The respondent vide letter of cancellation cum refund letter dated 27.09.2023, intimated the complainants that due to their failure to clear the outstanding dues, the company is constrained to and left with no alternative but to cancel the agreement as per the clauses of agreement and also intimated that the complainants, are left with no right, title, interest, charge or lien over the unit and the allotment stands cancelled as of date.
- m) That the complainant further agreed that he shall not be liable for any amount of compensation for such extension which is caused due to reasons beyond the control of the developer. The relevant abstract of clause 16 is mentioned below for reference:

".....The Allottee agrees not to claim compensation of any nature whatsoever (including the compensation stipulated in Clause 18 of this Agreement) for the period of extension of time for handing over the possession of the Residential Floor....."

- n) That the Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45(1) of GMDA Act, 2017 transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352W. Thus the construction was hindered due to re-routing of High-

tension lines passing through the lands resulting in inevitable change in the layout plans.

- o) Furthermore, the project was hindered due to force majeure reasons beyond the control of the respondent such as direction of Hon'ble National Green Tribunal, Environment Pollution Control Authority, Haryana State Pollution Control Board, Commissioner Municipal Corporation Gurugram, Hon'ble Supreme Court, Covid-19 pandemic, etc. which caused a delay of approximately 1.4 years in completion of the project. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This also led to further extension of time period in construction of the project and all such factors may be taken into consideration for the calculation of the period of the construction of the project.
7. All other averments made in the complaint were denied in toto.
8. 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 those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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."

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objections regarding force majeure.

13. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a

very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

14. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

15. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 25.05.2020. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 25.05.2020 i.e., before 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 25.11.2020.

G. Findings on the relief sought by the complainant.

- G.I. Direct the respondent to revoke the cancellation of allotment of the complainant's unit.**
- G.II Direct the respondent not to create any third-party interests in the said unit or to alienate the said unit till the final disposal of the present complaint case.**
- G.III Direct the respondent to pay delay possession charges from the due date of possession till the actual handover of the unit with interest at the rate prescribed by the Act.**
- G.IV Direct the respondent to get the occupation certificate and immediately hand over the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.**
- G.V Direct the respondent to handover the actual physical possession of the fully furnished unit with all the amenities and fixtures as per the BBA at the earliest.**

16. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the present complaint the complainant is seeking relief w.r.t setting aside the cancellation letter dated 27.09.2023. The complainant was allotted unit no. HSG-028-Sector-88B, Plot No-32, ST. H-33, Level-2 in the respondent's project at total sale consideration of Rs.1,10,12,987.50/-. A buyer's agreement was executed between the parties on 25.05.2016. The possession of the unit was to be offered within a period of 48 months from the date of execution of the agreement along with a grace period of 6 months in lieu of **HARERA notification no. 9/3-2020 dated 26.05.2020** with respect to Covid-19. Therefore, the due date of handing over possession comes out to be 25.11.2020. The complainants paid an amount of Rs.39,30,437/- towards the subject unit, and are ready and willing to retain the allotted unit in question.
18. The respondent has sent demand letter dated 10.05.2022 asking the complainant to pay a sum of Rs.20,70,263.40/- towards "On Start of



Flooring work inside the unit”, payable within 7 days of receipt of this demand letter. Thereafter, reminder letter dated 30.05.2023 was issued by the respondent promoter reminding the complainant to pay the outstanding amount within a period of 7 days of the receipt of the said notice, failing which the respondent would be constrained to cancel the unit in question with immediate effect, thereby refunding the amount paid by the complainant after forfeiting the earnest money as per the terms agreed.

19. The complainants submitted that they had made timely payment of instalments till 19.04.2018 and deposited Rs. 39,30,437/-. The respondent in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 60% of the total sale consideration amount as advance and linked the rest 40% amount with the construction of super structure only, which is not dependent or co-related to the finishing of floor and internal development of facilities amenities. However, the project is not even 50% complete.
20. On the other hand, the respondent cancelled the allotted unit of the complainant vide cancellation letter dated 27.09.2023. Now, the question before the Authority is whether the cancellation is valid or not?
21. The authority has gone through the schedule of payments (Annexure I) of the agreement executed between the parties, same is extracted below for ready reference: -

HSG-028-At the time of booking	2,00,000.0
HSG-028-Within 45 days of booking	5.0% BSP
HSG-028-Within 90 days of booking	10.0% BSP
HSG-028-Within 180 days of booking	5.0% BSP
HSG-028-On Completion of super structure	20.0% BSP
HSG-028-On start of Flooring work inside the unit	20.0% BSP
HSG-028-On installation of lift	10.0% BSP
HSG-028-On Offer of Possession	30.0% BSP +100.0% of EDC/IDC + 100.0% of PLC + 100.0% of Car Parking + 100.0% of Electric Meters. +



100.0% of Gas Pipeline + 100.0% of STP + 100.0% of IFMS + Stamp Duty and Registration charges + Escalation in construction cost (If Any)

22. After, considering the documents available on record as well as submissions made by the parties, it can be ascertained that the complainants have paid only Rs.55,39,513/- towards the unit in question. Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties, i.e., towards the stage "On Start of Flooring work inside the unit".
23. The respondent sent reminder letters dated 10.05.2022 and 30.05.2023 to make payment of the outstanding amount. However, the complainant continued with his default and failed to make payment even after receipt of reminders leading to cancellation of unit vide letter dated 27.09.2023.
24. As per clause 8 of the agreement to sell, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 8 of the buyer's agreement is reproduced under for ready reference:

"8. TIME IS THE ESSENCE FOR PAYMENT OF SUMS DUE BY THE ALLOTTEE

.....In case of any default/ delay in the payments by the Allottee and/or to perform or observe his other obligations under this Agreement, the Developer shall cancel the allotment and shall forfeit Earnest Money as described above and may recover simple interest @ 18% per annum on the unpaid amount/installments/charges, etc falling due as per the terms of this Agreement for the period of delay in payment of such unpaid amount/installments/charges. Upon such cancellation, the Allottee shall be left with no right and/or interest in the said Residential Floor in any manner whatsoever and the Developer shall be free to deal with the same in any manner it likes. The amount, if any, after deduction of the Earnest Money and other amounts as stated above, shall be refunded by the Developer to the Allottee without any interest or compensation whatsoever. Without prejudice to its aforesaid right to cancel the allotment as aforesaid, the Developer may, in case of exceptional circumstances, waive the said breach for a short period of delay, subject to the Allottee paying penal simple interest @ 18% p.a on unpaid



amount/installments/charges, etc falling due as per the terms of this Agreement, for the period of delay in payment of such unpaid amount/installments/charges, etc It is made clear and so agreed by the Allottee that exercise of discretion by the Developer in the case of one allottee shall not be construed to be a precedent and/ or binding on the Developer to exercise similar discretion in the case of other allottees."

25. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainant vide letter dated 27.09.2023. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 25.05.2016 is held to be valid.
26. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation

known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

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

27. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of Regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis sale consideration and return the remaining 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 termination/cancellation i.e., 27.09.2023 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017
ibid.

- G.VI Direct the respondent to quash the one-sided clauses from BBA.**
- G.VII Pass an order for refund of GST amount levied upon the complainants and taken the benefit of input credit by builder.**
- G.VIII Direct the respondents not to raise any further demands from the complainants till the final disposal of the present complaint case.**
- G.IX Direct the respondents not to impose any tax liabilities on the complainants after the lapse of the due date of possession, i.e., 25.05.2020, as it the builder who has indefinitely delayed the project by no fault of the complainants.**

G.X Impose heavy costs on the respondent for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainants.

28. In view of findings of the Authority above, the aforesaid relief no.'s VI-IX stands redundant and therefore, no directions to this effect are required.

G.XI Initiate inquiry against the respondent for violation of the provisions of RERA Act, 2016 as even after nearly 6 years of implementation of RERA Act, 2016, the respondent has not registered the project in question with the Hon'ble RERA Haryana.

29. The Planning branch of the Authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act.

H. Directions of the authority

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

I. The respondent is directed to refund the paid-up amount of Rs.39,30,437/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration along with interest at the prescribed rate, i.e., 11.10% per annum from the date of cancellation, i.e., 27.09.2023 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, *ibid*. The amount already paid by the respondent to the complainant, if any may be adjusted from the refundable amount and shall return the balance amount to the complainant.


II. 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.

III. The Planning branch of the Authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act.

31. Complaint stands disposed of.

32. File be consigned to registry.

Dated:18.09.2024


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



HARERA
GURUGRAM