

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

Complaint no.	2276 of 2019
Date of filing of complaint	23.05.2019
First date of hearing	13.09.2019
Date of decision	06.10.2022

Sh. Sanmeet Singh Kochhar R/O: 1/17, Sundar Vihar, Delhi-110087	<b>Complainant</b>
Versus	
M/S Imperia Structures Limited Regd. Office: A-25 Mohan Co Operative Industrial Estate New Delhi 110044	<b>Respondent</b>

**CORAM:**

Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Kanwar Kuldeep Singh (AR)	<b>Complainant</b>
Sh. Mihir Garg (Advocate)	<b>Respondent</b>

**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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and

functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Mindspace" at sector 62, Golf Course Road, Gurgaon, Haryana
2.	Nature of project	IT Park Colony
3.	Project area	8.35625 acres
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid upto 22.10.2020
5.	Name of licensee	Baakir Real Estate Pvt. Ltd. and others
6.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017 valid upto 31.12.2020
7.	Date of application for booking	Not dated
8.	Unit no.	A5th Floor 011, Tower A (Annexure P-6 at page 30 of amended CAO)
9.	Unit area admeasuring	250 sq. ft. (Annexure P-2 at page 24 of amended CAO)



10.	Date of execution of Apartment Agreement of Buyer's	Not executed
11.	Possession clause (taken from BBA annexed on similar file of same project)	<b>10.1 Schedule for Possession of the said Apartment</b> <i>"The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of <b>three and half years from the date of execution of this Agreement</b> unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure For as per them demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement".</i>
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 16,27,500/- (Page 38 at annexure R-9 of reply)
14.	Amount paid by the complainants	Rs. 3,07,725/- (As alleged by complainant on page 10 of amended CAO)
15.	Demand/Reminder Letters	08.12.2015, 29.12.2015, 03.08.2016, 28.06.2017
17.	Cancellation Letter	02.11.2017 (Page 30 of amended CAO at annexure P6)

18.	Occupation certificate /Completion certificate	Not obtained for Tower A
19.	Offer of Possession	Not offered

**B. Facts of the complaint:**

3. That representatives of respondent induced complainant to book a space in proposed its project viz 'Imperia Byron', situated at Sector-62, Gurgaon, Haryana. The complainant was assured that the project will be completed within 36 (Thirty Six) months from the date of the application i.e. from 12/08/2011. The complainant also paid an amount of Rs. 1,50,000/- through cheque for office space of 250 sq. ft. on the same date.
4. That the respondent communicated to the complainant that said office space of 250 sq. ft. shall be deemed to be allotted to him only after execution of the buyer's agreement on the standard format provided by respondent. However, no particulars of space, tower, unit number etc. has been given to complainant till date. The complainant made payments regularly and deposited another amount of Rs. 1,57,725/- on 02/11/2011 with the respondent.
5. Even after payment of the said amounts, the respondent kept silent and no agreement was executed between the parties. It is also pertinent to highlight that the respondent did not even commence the construction of the project let alone completion of the same.
6. Thereafter, the complainant received a cancellation letter dated 02/11/2017 wherein it was stated that respondent will forfeited the 15% of the basic sales price (constituting the earnest money) on account of cancellation. In this letter, in para no. 4, respondent stated that



complainant has committed a default in making in payment in spite of demand letter dated 12/09/2011 and in lieu of the same, the provisional allotment in respect of unit/ flat stands automatically cancelled. Along with this letter, respondent also sent a cheque for the amount of Rs. 81,750/- towards refund of the amount as per terms of alleged application form. In this letter, respondent stated that unit/ flat no. A5th floor 011 Tower in commercial project "Imperia Mindspace" at Sector-62, Gurgaon, Haryana has been cancelled.

7. That this letter dated 02/11/2017 and forfeiture of amount of Rs. 2,18,250/- is illegal, unlawful, against the principles of natural justice also a fraud upon complainant. The respondent has committed a criminal breach of trust against complainant.
8. That complainant never requested for unit/ flat in commercial project 'Imperia Mindspace' at Sector-62, Gurgaon, Haryana. In fact, the complainant on the inducement of respondent booked an office space of 250 sq. ft. in project 'Imperia Byron', Sector-62, Golf Road Extn., Gurgaon, Haryana. It is pertinent to highlight that the complainant has paid total amount of Rs. 1,50,000/- plus 1,57,725/- to respondent for office space in project 'Imperia Byron', Sector-62, Golf Road Extn., Gurgaon, Haryana. In spite of paying a considerable amount, no agreement was executed between the parties. It was particularly mentioned that above said space shall be deemed to be allotted to complainant only after execution of the buyer's agreement in the standard form. The respondent categorically admitted that the allotment shall not be binding on the company until buyer's agreement is executed by the company. The complainant was made to sign on application form which was blank in many respects. It was also undated.

9. It is also submitted that the sale price of said office space was not disclosed in any of the papers which the respondent unilaterally got signed from complainant. The said application for registration of space in 'Imperia Byron' was blank except mentioning Rs. 1,50,000/ paid through cheque no. 372131 dated 12/08/2011 HDFC Bank. This application form was not signed by Respondent and buyer's agreement was not executed at any point of time.
10. That till date, the complainant has not been informed regarding basic consideration price, IDC charges etc. No details of instalments were mentioned therein in any form which the complainant was made to sign forcefully.
11. That as per registration certificate bearing no. 240 of 2017, dated 25/09/2017, the respondent has to comply with all the provisions of RERA Act, rules and regulations. As per law and as per registration certificate, respondent cannot accept a sum more than 10% of the cost of the apartment, plot or building as the case may be as an advance payment or an application fee from a person without first entering into a written agreement for sale with such person and register the said agreement for sale under any law for the time being in force. However, the respondent has not executed the written agreement till date. The respondent has received an amount of Rs. 3,07,725/- from complainant but till date respondent has not disclosed the basic sale price of the space to complainant. Hence, the respondent has violated all the provisions of RERA Act. 2016 and rules made by Haryana RERA Authority.
12. That the complainant also sent a legal notice dated 03/11/2018 calling upon respondent to pay an amount of Rs. 3,07,725/- after deduction of Rs. 81,750/- along with interest @ 2% above the SBI lending rate plus

compensation of Rs. 5,00,000/- and the same was duly served. The complainant also demanded an amount of Rs. 21,000/- as cost of the legal notice. In spite of the receipt of legal notice, respondent has not complied with the same. In fact, the respondent has not even replied to the said notice.

13. That the respondent has no right to forfeit the amount deposited by complainant. The amount deposited by complainant with respondent is a trust money. The respondent has not completed the project and has violated all the terms and conditions of RERA Act and Rules. As per para 10 of registration certificate, respondent is duty bound to return the amount with interest @ 2% above the SBI highest marginal cost of lending rate on the amount deposited by complainant with respondent.

**C. Relief sought by the complainant:**

14. The complainant has sought following relief(s):

- i. Direct the respondent to refund the complainants an amount of Rs. 3,07,725/- after deduction of Rs. 81,750/- along with interest @ 2% above the SBI lending rate from 12.08.2011 on amount of Rs. 1,50,00/- till date of payment and from 02.11.2011 on amount of Rs. 1,57,725/- till the date of payment.
- ii. Direct the respondent to award cost of litigation as well compensation for mental agony in favour of the complainant.

**D. Reply by respondent:**

15. That the complainant has filed complaint before this Authority thereby misleading certain facts and manipulated them according to the suitability of their whims and fancies, the correct facts were not placed



before this Hon'ble Authority, therefore, it has become the dire need of the time to place the correct sequence of events to avoid the deception and miscalculation. Thus, the respondent had sought dismissal of the present complaint on the ground of misleading and distorted information placed before this Hon'ble Authority. To apprise this Hon'ble Authority with correct sequence of events, the respondent has placed them herein below:

16. That, on 12th of August, 2011 the complainant booked an office space with the respondent company at project launch, then named as "Imperia Byron" (presently known as "Imperia Mind space") located at Sector-62, Golf Course Road, Gurgaon, Haryana, and thereby signed an "Application Cum Registration form" by making a payment some of Rs. 1,50,000/- (One Lac Fifty Thousand Only) through cheque No. "572131" dated 12.08.2011 drawn on "HDFC Bank" and opted for the "Construction Link Payment Plan."
17. That, on 2nd of November, 2011 the complainant made further payment of Rs. 1,57,725/- (One Lac Fifty Seven Thousand Seven Twenty Five Only) through Cheque No. "745936" dated 02.11.2011 thereby making the total payment of Rs. 3,07,725/- (Three Lac Seven Thousand Seven Twenty Five Rupees Only) out of these amount, the respondent company had paid the service tax of Rupees 7,725/- (Seven Thousand Seven Twenty Five Rupees Only) and also some of Rs. 75,000/- (Seventy five Thousand Only) for the Brokerage Fee, thereafter the remaining amount, which is there with the respondent company is Rs. 2,25,000/- (Two Lac Twenty Five Thousand Only).
18. That, it is germane to mention herein that the state government had acquired the huge land which comprises the said project land from





farmers and transferred such land to the respondent company for development in accordance with its master plan and then it had carved out various sectors and plots therein. Thereafter, the construction over the said project land was started after obtaining all necessary sanctions/approvals/ clearances from different state/central agencies/authorities. That, it is necessary to mention that the respondent company received initial approval of building plans on 4th of December 2015 and started the milestone construction of the present project.

19. That, subsequently receiving the building plans as mentioned herein above the respondent company started the construction in full swing and also allotted the unit to the concerned allottees. The respondent company also allotted the unit in the present case to the complainant vide letter dated 8<sup>th</sup> of December 2015, and the same was communicated to the complainant along with the raised demand of Rs. 1,50,000/- (One Lac Fifty thousand Only). However, till today the complainant has not paid the said demand even after the respondent company received occupancy certificate in the said project. Thereupon, again the respondent company vide letter dated 29.12.2015 send a reminder letter to the complainant for making the said payment, which was due on 21<sup>st</sup> of December 2015 and also intimated that in case of failure in making the said payment immediately, the said booking shall be cancel due to failure on the part of the complainant for making the timely payment. However, the complainant neither made the payment nor replied to the said reminder letter. Thereafter, 2<sup>nd</sup> reminder was sent vide letter dated 03.08.2016.

A

20. That, the respondent company on certain recommendation changed the name of the project from the "Imperia Byron" to "Imperia Mindspace" and the same was communicated to the customer vide letter dated 15th of March 2016.
21. Thereafter, a fresh demand on casting of 2nd basement floor slab was raised along with the previous demand, which was not paid by the complainant vide letter dated 07.11.2016, however, the same is also remain unpaid so far by the complainant. Another demand was raised by the respondent company vide letter dated 28.06.2017, which has still not been paid to this date.
22. Finally, the respondent company was left with no other option but to cancel the said unit due to the continuous default by the complainant by not adhering to the payment plan/schedule and chooses not to make the timely payment to retain the said unit allotted to him, as it is evident from the fact that the complainant was not willing to retain the said unit as he chooses not to make the payment for almost more than three years of the time and neither made the payment nor replied any of demand/communication sent to the complainant. Consequently, the respondent company constrained to cancel the said unit vide cancellation letter dated 2nd of November, 2017 by virtue of the terms and conditions agreed between the parties under the application form. The cancellation was also to be done looking at the larger interest of other allottees those who are making the timely payments and adhering to the terms and conditions agreed between the parties. As it is known fact that the promoter puts all its money received from the allottees upon the construction and default in making the payment affects the construction speed and the whole cycle of completion of the committed

Ar

project, therefore, the default in making the payment affects the whole cycle of construction and eventually affects the delivery of the project to other allottees to whom the promoter has committed the timely delivery.

23. It was also submitted that in spite of several difficulties and certain force majeure such as recent COVID-19, the respondent company has procured the occupancy certificate vide OC dated 2 of June 2020, which shows the bonafide intention of the respondent company to complete the project in spite of the many hardships faced in completing the project.

24. That, as the correct sequence of facts mentioned herein above, which clearly illustrate and suggest that the respondent company before cancelling the said unit, has followed the due process, and cancel the unit only after the affording multiple opportunities to the complainant for making the payment. It is needless to state that both the parties has agreed to certain terms and conditions under the "Application Form," which are reproduced herein after for ready reference:

*-18. The Applicant(s) agrees and understand the time is the essence with respect to their obligations to pay the sale price as provided in the payment schedule along with other payments such as applicable stamp duty, registration fee and other charges that will be more specifically stipulated in the agreement to be paid on or before due date or as and when demanded by the Company as the case may be and also to perform or observe all the other obligations of the applicants under the buyers agreement. It is clearly agreed and understood by the applicants that it shall not be obligatory on part of the Company to send demand notices/reminders regarding the payment to be made by the applicants as per the schedule of the payment or obligations to be performed by the Applicant(s).*

*19. In case of delay of 60 days in making payments by the applicant(s) to the company as per the schedule of payments, the company shall have the right to terminate the allotment/agreement and forfeit the earnest money. The company shall also be entitled to charge interest @ 18% P.A. from the due date of instalments, as per the schedule of payments, till the date of payment, however, the*

*Pa*

*company may in its sole discretion, waive its right to terminate the Allotment Agreement, and enforce all the payment and seek specific performance of the buyers agreement. In such a case, the parties agree that the possession of the space will be handed over to the Applicant(s) aly upon the payment of all outstanding dues, penalties etc along with interest by the Applicant(s) to the satisfaction of the Company."*

25. In view of the above clauses agreed between the parties are unequivocally clear that, in case of the complainant not adhering to the schedule payment plan, the respondent company shall have the right to terminate the allotment/agreement and forfeit the earnest money. In case of forfeiture of earnest money, it is also agreed between the parties about the earnest money and the same is also reproduced hereinafter for ready reference:

*"12. The Applicant(s) agrees that out of amount(s) paid/payable by him/her/them/it towards the sale price, the Company shall treat 15% of the sale price as earnest money to insure due fulfilment, by the Applicant(s) of all the terms and conditions as contained herein and the Buyer's agreement. The company and the Applicant(s) hereby agree that the money for the purpose of the application and Buyer's Agreement shall be per space. The Applicants(s) hereby authorizes the Company to forfeit the earnest money along with the interest paid, due of payable along with any other amounts of non-refundable nature in case of non-fulfilment of any of the terms and conditions herein contained....."*


26. Thus, it is clear that the complainant made the default in making the payment as per the schedule payment plan and the respondent company had afforded multiple opportunities to the complainant to make the payment, however the complainant did not chose to either make the payment or reply to the demand communications sent to the complainant. it is also evident that before cancelling the said unit, the respondent company followed the due-process.

27. That, the sale price to the said unit is Rs. 16,72,500/- (Sixteen Lac Seventy two thousand five hundred Rupees only), and against the same, the respondent company had received amount of Rs. 3,07,725/- (Three Lac Seven Thousand Seven Twenty Five Rupees Only) out of these amount, the Respondent Company had paid the Service Tax of Rupees 7,725/ (Seven Thousand Seven Twenty Five Rupees Only) and also some of Rs.75,000/- (Seventy five Thousand Only) for the brokerage fee, thereafter the remaining amount, which is there with the respondent company is Rs. 2.25,000/- (Two Lac Twenty Five Thousand Only). The deduction of amount i.e. 15% as Earnest Money of the sale price is approximately Rs. 2,50,875/- (Two Lac Fifty Thousand Eight Seventy Five Rupees Only). Therefore, after deduction of the service tax and the brokerage, the respondent company had to have recover the earnest money from the complainant, since it is lesser than the 15% of the sale price.

28. That, in view of the above said detailed reply; it is crystal clear that all the issues and grievances of complainants are vexatious, mischievous and misleading. it is denied that the complainants are entitled for any relief as prayed for by the complainants. Hence, the said complaint may kindly be rejected/dismissed in the interest of justice.

29. All other averments were denied in toto.

30. 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:**

31. 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**

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the 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**


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

##### **Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

 34. 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 complainant at a later stage.

35. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

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

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

*12*

**F. Entitlement of the complainant for refund:**

**F.I To direct the respondent to refund the complainants an amount of Rs. 3,07,725/- after deduction of Rs. 81,750/- along with interest @ 2% above the SBI lending rate from 12.08.2011 on amount of Rs. 1,50,00/- till date of payment and from 02.11.2011 on amount of Rs. 1,57,725/- till the date of payment**

***Validity of Cancellation***

37. In the instant case, the complainant booked a unit in respondent's project and the same can be ascertained by the fact that the respondent raised demands from the complainant. However, no BBA was executed between the parties and due to lack of documents even due date of possession cannot be ascertained. It is pertinent to mention that the complainant has till now paid only Rs. 3,07,725/- out of sale consideration of Rs. 16,27,500/-.

38. The respondent sent various demand letters to the complainant for payment of dues. The complainant initially even made payments in accordance with the demands raised. The respondent raised further demand vide letter dated 08.12.2015 followed by reminder letters dated 29.12.2015 and 03.08.2016 but no avail. A fresh demand on casting of 2nd basement floor slab was raised along with the previous demand, which was not paid by the complainant vide letter dated 07.11.2016 followed by another demand letter dated 28.06.2017, which was not paid. In view of the same, the respondent cancelled the unit of the complainant vide letter dated 02.11.2017. The Authority is of the view that the cancellation of the unit is valid per se. However, the respondent is not right in forfeiting more than 10% of sale consideration as earnest money.

39. The cancellation of unit was made by the respondent after the Act, of 2016 came into force. So, the respondent was not justified in forfeiting the whole of the paid amount and at the most could have deducted 10% of the basic sale price of the unit and not more than that. Even the Hon'ble Apex court of land in case 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**, 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 damage. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**5. AMOUNT OF EARNEST MONEY**

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

40. Keeping in view the above-mentioned facts and since the allottee requested for cancellation of the allotment on 02.11.2017 and even withdrew from the project by filing the complaint, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the paid up amount of Rs. 3,07,725/- to the

complainant after deduction of 10% of sale consideration with interest at the rate of 10.00% (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 cancellation i.e., 02.11.2017 (inadvertently mentioned as email of surrender dated 17.11.2014 and the same stands corrected by this order) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**F.II To direct respondent to pay litigation cost as well as compensation for mental agony.**

41. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

42. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

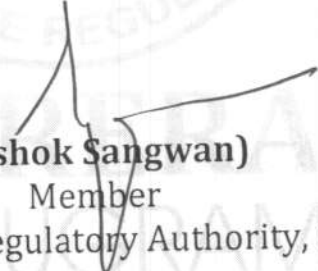
*R*


- i. The respondent-promoter is directed to refund the paid up amount of Rs. 3,07,725/- to the complainant after deduction of 10% of sale consideration of the subject unit being earnest money as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.00% p.a. on the refundable amount, from the date of cancellation i.e., 02.11.2017 till the date of realization of amount.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

43. Complaint stands disposed of.

44. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 06.10.2022**