

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

Complaint no. : 2254 of 2022  
Complaint filed on: 25.04.2022  
Date of decision : 26.05.2023

Mr. Saurabh Sharma  
R/o: - House No. 71, 4<sup>th</sup> Floor, Avtar Enclave Paschim  
Vihar, Delhi- 110063

**Complainant**

Versus

Roshni Builders Private Limited.  
**Regd. office:** - LGF, F-22, Shushant Shopping Arcade  
Sushant Lok Phase- I, Gurugram- 122002, Haryana

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

Member

**APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)  
Ms. Shriya Takkar (Advocate)

Complainant  
Respondent

**ORDER**

1. This 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 provision of the Act or the Rules and regulations made

thereunder or to the allottees 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:

S. N.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	<b>71 of 2018 dated 25.02.2018 valid till 24.10.2023</b>
5.	Name of licensee	Roshni Builders Pvt. Ltd., and Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Unit no.	R7, 215, 2 <sup>nd</sup> floor, block - 7 (Page no. 96 of the reply)
8.	Unit area admeasuring	133.15 sq. ft. [Carpet area] 294.74 sq. ft. [Super area]



		(Page no. 96 of the reply)
9.	Welcome letter	18.01.2019 (Page no. 72 of the reply)
10.	Allotment letter	01.01.2019 (Page no. 73 of the reply)
11.	Date of execution of agreement to sell	15.07.2020 (Page no. 90 of the reply)
12.	Possession Clause	<p><b>7. Possession of the unit</b></p> <p><b>7.1 Schedule for possession of the said unit:</b> - The developer agrees and understands that timely delivery of possession of the unit along with the Car parking space(s), if any, to the Allottee and the Common areas to the Association of Allottees or the competent Authority, as the case may be, as provided under this Act and Rule 2(1)(f) of the Rules of 2017, is the essence of the agreement.</p> <p><b>7.2</b> It is further agreed between the parties that the Allottee shall not raise any objection or refuse to take possession of the Unit on ant pretext whatsoever, if the possession of the same is being offered duly completed with all specifications, amenities,</p>



		Facilities, as mentioned in 'Schedule E' hereto, any time prior to the commitment period.
13.	Due date of possession	31.10.2023 [as per mentioned in the RERA registration]
14.	Total sale consideration as per agreement for sale dated 15.07.2020 at page no. 88 of the reply	Rs.42,43,549/-
15.	Total sale consideration as per customer ledger dated 01.12.2022 at page no. 81 of the reply	Rs.62,18,815/-
16.	Amount paid by the complainant	Rs.20,97,146/- (As alleged by the complainant)
17.	Pre-handover amounts paid by the respondent to the complainant	Rs.5,13,286/- (As submitted by the respondent in his reply)
18.	Occupation certificate /Completion certificate	13.12.2021 (Page no. 157 of the reply)
19.	Offer of possession	16.12.2021 (Page no. 159 of the reply)
20.	Pre cancellation notice	17.01.2022 (Page no. 166 of the reply)
21.	Cancellation letter	01.02.2022



**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That in November 2018, the complainant received a marketing call from a real estate agent, who represented himself as an authorized agent of the respondent and invited him for booking in a commercial project being developed by the respondent by the name and style of “**M3M Broadway**”, Sector – 71, Gurugram. He visited the office of the respondent and project site along with the real estate agent and met with the marketing staff of the respondent. The Marketing staff of the respondent allured the complainant with a colourful brochure and audio-video presentation and assured him that the project would be a landmark commercial in the vicinity. The marketing staff assured that possession of the shop would be handed over by December 2020.
- II. That believing on representations and assurance of the respondent, the complainant, booked one commercial retail unit bearing no. R7 215, 2<sup>nd</sup> floor in block - 7, admeasuring 294.74 sq. ft. (super area), and paid Rs. 2,00,000/- as the booking amount and signed a pre-printed application form. The retail unit was

purchased under the possession linked plan for a total sale consideration of Rs.43,68,815/-.

- III. That on 01.01.2019, the respondent issued an allotment letter in name of Saurabh Sharma confirming the allotment of a commercial shop bearing unit no. R7 215 on 2<sup>nd</sup> Floor in block/building no. 07, admeasuring super area 294.74 sq. ft. in the said project, along with a payment plan. As per the terms and conditions of the allotment letter, the respondent was required to pay the pre-handover amount (assured return) to the allottee @ Rs.16,187/- per month from 10.01.2019 to till the date of notice of offer of possession of the unit. On 01.10.2019, he paid an amount of Rs.11,64,877/- to the respondent against a demand raised by it.
- IV. That the CRM staff of the respondent called the complainant to his office and got him to sign a pre-printed, arbitrary, and one-sided agreement, i.e., buyer's agreement without any date. The project of the respondent is registered with HARERA vide registration No. 31 of 2018 dated 14.12.2018 to 31.10.2023 and the said buyer's agreement is not in accordance with the model BBA/ATS. The terms & conditions of buyer's agreement are arbitrary and against the provisions of the Act of 2016, Rules, and regulations thereunder. It is most important to bring the kind notice of this authority that there is no due date of possession in the said agreement.



- V. That till 01.10.2019, the respondent collected Rs.20,97,146/- i.e., 48% of the total sale consideration, in violation of section 13 of the Act, read with Rule 8 of the Haryana Real Estate Regulation & Development Rules, 2017.
- VI. Thereafter, there was a lockdown in the country. There was a Covid-19 pandemic in the whole world and due to pandemic, most people were affected in the country. Most people are lost their jobs and suffered huge losses in their businesses. He is one of them who suffered a big loss in the business and is facing a financing crisis.
- VII. That on 16.12.2021, the respondent issued a notice for offer of possession of the allotted commercial unit and demanded Rs.25,43,068/-. The respondent increased the area of the unit by 5.26 sq. ft. and therefore, the cost of the unit also increased. The original super area of the unit was 294.74 sq. ft., and the revised area is 300.00 sq. ft. It is pertinent to mention here that the respondent increased the area without any justification.
- VIII. That after receipt of the offer of possession, he shows his inability to pay the final demand and asked for a refund of the paid amount without any interest, but the respondent refused to accord the request.
- IX. That, since December 2021, he was regularly contacting the office bearers of the respondent and making efforts to get the refund but despite several visits by him, the respondent refused to refund the



paid amount. It is admitted that from 27.02.2019, the respondent paid the assured return amount to the complainant.

- X. That on 14.01.2022, the complainant sent an email to the respondent and asked for a transfer/adjustment of the paid amount by writing as under: "I am proud to be with M3M, I have a Shop booked in Broadway R7 215. I came yesterday to your office but could not meet with Deepak Yadav as he was busy. I meet Preeti Sharma. My problem is I incurred Great losses during the covid period hence can not afford to pay the outstanding of my shop and request you to transfer/adjust the fund to the office cabin 17/19 Broadway". Thereafter, on 26.01.2022, 28.01.2022, 03.02.2022, 14.02.2022, 06.03.2022, 28.03.2022 & 08.04.2022, respectively the complainant sent emails to the office bearers of the respondent and requested for a refund.
- XI. That on 01.02.2022, the respondent send a cancellation of provisional allotment of unit no. R7 215 in M3M Broadway located in Sector -71, Gurgaon, (Haryana) forfeited the entire paid amount. As per the statement of account issued by the respondent, he has paid an amount of Rs.20,97,146/- i.e., 48% of the total sale consideration.
- XII. That for the first-time the cause of action for the complaint arose in January 2019 when the unilateral, arbitrary, and one-sided terms and conditions were imposed on him. The second time cause of action arose in December 2020 when it failed to hand over the possession of the unit. The cause of action further arose in January



2022, when the respondent failed to refund the paid amount. The cause of action is alive and continuing and would continue to subsist till such time, as this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

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

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

I. **Direct the respondent party to refund the paid amount with interest.**

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 has contested the complaint on the following grounds.

I. That after making independent enquiries and only after being fully satisfied about the project "M3M Broadway", a commercial project developed in a planned and phased manner consisting of modern office spaces, entertainment, food and beverage outlets, modern office spaces, upscale efficient lofts situated in Sector 71, Gurugram, (Haryana), the complainant through his broker M/s. Chahat Homes Infratech Private Limited submitted an application form with an amount of Rs.2,00,000/- towards booking of a unit in the project 'M3M Broadway' on 05.01.2019.

- II. That in consideration of the commitments to make timely payments, he was allotted unit no. R7 215 situated on 1<sup>st</sup> floor in block-1 in the commercial project "M3M Corner Walk" vide allotment letter dated 18.01.2019 along with welcome letter confirming the allotment of the said commercial unit. The cost of the unit for carpet area admeasuring 133.15 sq. ft as per allotment letter is Rs.42,43,549/- plus other charges. He is being an allottee, on his own free will and due understanding of the legal import and effect opted for the possession linked payment plan. In furtherance of allotment letter, the respondent sent copies of buyer's agreement to him for due execution at his end along with covering letter dated 04.02.2019.
- III. That the complainant wife Ms. Indu Sharma also booked unit bearing no. R2 124 in the commercial project 'M3M Corner Walk', Sector 74, Gurugram and had paid an amount of Rs.6,10,000/- towards the allotment. She approached the associate company M/s. Prompt Engineering Pvt. Ltd. and requested for cancellation of the unit and transfer of funds to the unit in M3M Broadway. The respondent being a customer-oriented company acceded to the request of the complainant's wife and transferred the amount of Rs.6,10,000/- into the account of the complainant without any deductions on 04.05.2019.
- IV. Thereafter, vide letter dated 28.08.2019, he was sent copies of related documents and was requested to send back executed copies of all the documents including the buyer's agreement.
- V. That the respondent raised the demand due within 45 days of booking on 01.10.2019 for an amount of Rs.18,72,000/-. He had

expressed his interest to book a ready to move in unit in an OC received project of the associate company M/s. M3M India Pvt. Ltd. and had paid an amount of Rs.11,64,877/- towards the booking of such unit. On the request of the complainant, the amount given towards booking of the unit in one of the OC received projects of M/s. M3M India Pvt. Ltd. was also adjusted towards the unit in M3M Broadway. Accordingly, a receipt for an amount of Rs.11,64,877/- was issued. Further, the respondent also gave the complainant a rebate of Rs.97,123/-.

- VI. That, after a delay of 1.5 years at the behest of the complainant, the buyer's agreement was executed and registered on 15.07.2020. The buyer's agreement duly covered all the rights and liabilities for both the parties.
- VII. That in view of the booking and commitment to make timely payments, the respondent offered the complainant a monthly pre-handover amount to provide him the comfort of its commitment to deliver the unit on time. As per letter, the respondent was to pay the pre-handover amount of Rs. 16,187/- to the complainant per month from 10.01.2019 till the date of notice of offer of possession. The respondent in compliance of the said letter duly paid the pre-handover amount to him. An amount of Rs.5,13,286/- has been paid to him as pre-handover amount from 10.01.2019 to 31.10.2021.
- VIII. That the respondent completed the construction and development of the retail component of the complex well within time and applied to the competent authority for the grant of occupation certificate on 31.08.2021 after complying with all the requisite



formalities. Thereafter, the occupation certificate was obtained from the competent authority after due verification and inspection on 13.12.2021

- IX. That the respondent fulfilled its promise and constructed the said unit of the complainant way before the agreed timeline i.e., 31.10.2023 by investing its own funds. The respondent vide offer of possession dated 16.12.2021 requested the complainant to clear the outstanding dues amounting to Rs.25,43,068/- on or before 15.01.2022 and take possession of the unit ready and complete. The cost of the unit for carpet area admeasuring 133.15 sq. ft. as per the buyer's agreement was Rs.42,43,549/- plus other charges. However, due to increase in area, the price of the unit is not Rs.42,94,133/- plus other charges for carpet area of 139.93 sq. ft. The increase in value is due to increase in area of the apartment as per clause 1.8 of the buyer's agreement. As per the opted payment plan, the complainant was under an obligation to pay balance amount at the time of notice for offer of possession.
- X. That even after continuous reminders, he failed to come forward to clear his outstanding dues and take over the possession of the unit. Therefore, the respondent was constrained to issue a pre-cancellation notice dated 17.01.2022. However, the complainant failed to avail that this opportunity and continued to breach the terms of buyer's agreement.
- XI. That the complainant is not a genuine consumer and an end user as he had booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainant has invested in many projects of different

companies which prove that he is not a consumer but only an investor. Thus, it is clear that the complainant has invested in the unit in question for commercial gains, i.e., to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainant is not a consumer/end user. The complaint is liable to be dismissed on this ground alone. Under these circumstances, it is all the more necessary for the complainant, on whom the burden lies, to show how he is a consumer.

- XII. That on account of wilful breach of the terms of the buyer's agreement by failing to clear outstanding dues despite repeated requests, the respondent was constrained to terminate the allotment of the said unit vide cancellation notice dated 01.02.2022. The default of the complainant in making timely payments and complying with other obligations is duly covered under the buyer's agreement, and the cancellation and forfeiture of the earnest money along with other refundable amount has been in accordance with clause 9.3 of the buyer's agreement.
- XIII. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by it. The respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement by the complainant, for which he is liable to pay as per the terms of the agreement. He had paid an amount of Rs.19,74,877/- against the total dues of Rs.43,68,815/- plus other charges.



XIV. That the respondent has fulfilled its contractual obligations under the buyer's agreement however despite that the complainant failed to clear the outstanding dues as a result of which the respondent was constrained to cancel his allotment. He is in default of his contractual obligations and is raising these frivolous issues in order to unjustly enrich himself. Therefore, the complainant is not entitled to any relief whatsoever.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents as well as written submission made by the parties.

**E. Jurisdiction of the authority**

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

8. 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**

9. 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.*

10. 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.
11. 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. (Supra)*** 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."*

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

**F. Findings on the relief sought by the complainant**

**F.I Direct the respondent to refund the paid amount along with interest**

13. The complainant submitted that he has paid an amount of Rs.20,97,146/- against the total sale consideration of Rs.42,43,549/-. Furthermore, the complainant showed his inability to pay the final demands raised after offer of possession and asked for refund of the amount paid by him. But the respondent refused to accord with the request of the complainant. Even in December 2021, he regularly contacted the office bearers of the respondent/promoter and made





several efforts to address his concerned. But despite several visits and reminders, the respondent refused to refund the paid-up amount. It is an admitted fact the respondent has paid assured return amount to the complainant. On 14.01.2022, the complainant sent an email to the respondent and asked for a transfer/adjustment of the paid amount and the same is reproduced as under: "I am proud to be with M3M, I have a shop booked in Broadway R7 215. I came yesterday to your office but could not meet with Deepak Yadav as he was busy. I meet Preeti Sharma. My problem is I incurred Great losses during the covid period hence cannot afford to pay the outstanding of my shop and request to you transfer/adjust the fund to the office cabin 17/19 Broadway. Thereafter on 26.01.2022, 28.01.2022, 03.02.2022, 14.02.2022, 06.03.2022, 28.03.2022, and 08.04.2022, respectively he sent various emails to the office bearers of the respondent/promoter and requested for refund.

14. The counsel for the respondent company has brought to the notice of the Authority that the respondent has paid pre-handover amount to the complainant amounting to Rs.5,13,286/- with effect from 10.01.2019 to 31.10.2021. Thereafter, the respondent/promoter has obtaining OC on 13.12.2021 and issued an offer of possession on 16.12.2021 and demanding the remaining amount to be paid before 15.01.2022. However, which according to the complainant is against the terms and conditions discussed with the company. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice dated

01.02.2022 stating that the agreement stands cancelled, and the entire amount paid stands forfeited.

15. On consideration of the documents available on record and submissions made by the parties, the authority is of the view that the complainant paid an amount of Rs.20,97,146/- towards the total sale consideration of the unit i.e., Rs.42,43,549/-. A buyer's agreement was executed on 15.07.2020. The possession of the unit was to be offered by 31.10.2023. The complainant has also received an amount of Rs.5,13,286/- as pre-handover amount (Assured return) with effect from 10.01.2019 to 31.10.2021. Further, the respondent has offer of possession of the subject unit on 16.12.2021 after obtaining the occupation certificate on 13.12.2021. Accordingly, the complainant failed to abide by the terms of the agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The reluctant behaviour of complainant led to issuance of notice of cancellation by the respondent on 01.02.2022. Now, the question before the authority is as to whether the cancellation is valid?
16. As per clause 9.3 of the agreement to sell, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 9.3 of the agreement to sell is reproduced as under for a ready reference:

***Clause 9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:***

- (i). *In case the Allottee fails to make payments for two consecutive demands made by RBPL despite having been issued notice in that regard the Allottee shall be liable to pay interest to RBPL on unpaid amount at the rate prescribed in the Rules.*
- (ii). *In case of default by the Allottee continues for a period of 90 (ninety) days after notice from RBPL in this regard, RBPL may cancel the allotment of the Unit along with the parking (if applicable) if any, in favour of the Allottee and refund the money paid by the Allottee after forfeiting the Earnest Money (being 10% (ten percent) of the Total Consideration) and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to RBPL in terms of Clause 1.16 herein before) and brokerage/ any rebates availed earlier/ margin/ incentive paid to a "Indian Property Associate" ("IPA")/"Channel Partner") in case booking is made through a "Indian Property Associate" ("IPA")/"Channel Partner"). The balance amount of money paid by the Allottee shall be returned by RBPL to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation. On such default, the Agreement and any liability of RBPL arising out of the same shall thereupon, stand terminated. Provided that, RBPL shall intimate the Allottee about such termination at least 30 (thirty) days prior to such termination."*

17. The respondent issued a pre-cancellation letter, and thereafter, issued a cancellation letter to the complainant. The OC for the project of the allotted unit was granted on 13.12.2021. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
18. 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. Though vide letter dated 01.02.2022, the details of amount to be returned after deductions have been given but it is pleaded by the

allottee that has not received any amount after cancellation of the unit. Even otherwise a perusal of letter dated 01.02.2022 shows that besides the entire amount paid by you stands forfeited on account of your default. The provisional allotment of the unit in your favor hereby stands cancelled, which is nothing but in the nature of penalty as per section 74 of the Contract Act, 1872. 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."*

19. Keeping in view the aforesaid facts and legal position, the cancellation of the allotted unit is held to be valid and forfeiture of the 10% of the earnest money of basic sale price cannot be said to be wrong or illegal in any manner. However, after forfeiting that amount to the extent of 10% of the basic sale consideration, after the amount paid on account of assured return may be adjusted from the refundable amount.

**H. Directions of the authority**

20. 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.20,97,146/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs.42,43,549/-.



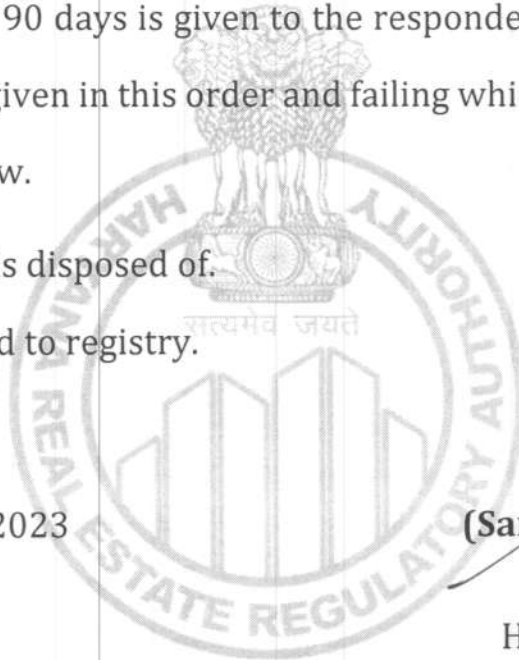
The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainant. The refund should have been made on the date of cancellation i.e., 01.02.2022. Accordingly, the interest at the prescribed rate i.e., 10.70% balance amount from the date of cancellation to the date of actual refund.

- 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 26.05.2023



*(Sanjeev Kumar Arora)*

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**