

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

Complaint no. :	5595 of 2022
Date of filing complaint:	16.08.2022
First date of hearing:	03.11.2022
Date of decision :	10.08.2023

Smt. Manjulika Chowdhary W/o Late Sh. Kishor Kumar Chowdhary R/O: M/S Surya Sales, Shop no. 2372, Gali No.14, Beadon Pura, Gurudwara Road, Karol Bagh, New Delhi-110005	<b>Complainant</b>
Versus	
M/s Adani Brahma Synergy Private Limited Regd. office: Plot no. 83, Sector 32, Gurugram-122001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vijender Parmar (Advocate)	Complainant
Sh. Prashant Sheoran (Advocate)	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 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.no	Particulars	Details
1.	Name of the project	"Samsara (part- 5)", Sector-63, Gurugram, Haryana
2.	Nature of project	Residential floors
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 13 of 2019 dated 26.03.2019
	Validity status	30.09.2023
	Licensed area	144.66875 acres
4.	<b>DTPC License no.</b>	64 of 2010 dated 21.08.2010
	Validity status	20.08.2025
	Licensed area	141.66875 acres
	Name of licensee	M/s Brahma City Pvt. Ltd. & others
	Name of developer	M/s Achaleshwar Infrastructure Private Limited
5.	Independent floor no.	J110-C (type B1) [As per page no. 25 of complaint]
6.	Area admeasuring	1812.25 sq. ft. [Carpet area] [As per page no. 25 of complaint]
7.	Application form dated	30.04.2019 [As per page no. 17 of complaint]
8.	Allotment letter	08.05.2019



		[As per annexure-C1 on page no. 17 of complaint]
9.	Date of agreement for sale	19.08.2019 [As per page no. 23 of complaint] <i>(As per said agreement the complainant and her husband were co-allottees for the subject unit. The complainant approached the Authority after demise of her husband.)</i>
10.	Total sale consideration	Rs. 1,68,96,739/- (TSC) Rs. 1,56,23,933/- (BSP) [As per page no. 32 of complaint]
11.	Amount paid by the complainant	Rs. 32,48,216/- [As per receipts on page no. 19-21 of complaint]
12.	Possession clause	<b>Clause 7.1</b> <b>POSSESSION OF THE APARTMENT:</b> <i>Schedule for possession of the Apartment - .....The Promoter assures to hand over possession of the Apartment for residential usage along with parking and right to use of General Common Areas and Limited Common Areas as per agreed terms and conditions <u>within 27 months from the date of registration of this Agreement unless there is delay due to "force majeure", court orders, government policy/ guidelines, grant of departmental sanctions decisions affecting the regular development of the Plot.....</u> If the completion of the Building is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.....</i>

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13. Due date of possession	19.11.2021 [Calculated as 27 months from date of agreement i.e. 19.08.2019]
14. Demand letters dated	17.03.2021, 10.08.2021, 27.12.2021, 20.01.2022 [As per page no. 27-34 of reply]
15. Pre-cancellation letter dated	18.02.2022 [As per page no. 35 of reply]
16. Cancellation letter dated	28.09.2022 [As per page no. 36 of reply]
17. Occupation certificate	Not obtained
18. Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the respondent advertised itself to be a very ethical business group that lives onto its commitments in delivering its projects as per promised quality standards and agreed timelines and assured to the complainant that it has secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project being developed and sold by it.
4. That in 2019, the respondent through its marketing executives and advertisement done through various medium and means approached the complainants with an offer to buy apartment in the proposed project being developed by the respondent namely "SAMSARA VILASA", situated at sector-63, District-Gurugram, Haryana.



5. The complainant along with her husband late Sh. Kishor Kumar Chowdhary, relying upon the assurances and representations made by the respondent and believing them to be true, jointly booked a residential apartment bearing no. J-110-C in block J admeasuring 1046.99 sq. ft. of carpet area at third floor in the aforesaid project for a total sale consideration of Rs. 1,56,23,933/- excluding taxes; and paid booking amount of Rs. 5,00,000/-. The said unit was thereafter allotted to them vide letter dated 08.05.2019.
6. That thereafter the respondent raised demand for payment of further installments without even executing builder buyer agreement and when the complainant raised objection in this regard, the respondent threatened to forfeit the booking amount paid by them and under such illegal coercion, the complainant paid further installment in June and August 2019.
7. That the respondent sent its standard, pre-printed format of agreement for sale for execution to them. However, the complainant was shocked and surprised to find that the respondent sent a unilateral, illegal, arbitrary and one-sided agreement having all the favourable terms for the respondent and against the interest of the complainant. The complainant immediately raised her objections to the respondent in respect of the unilateral and arbitrary nature of the terms and conditions of the agreement and requested the respondent to negotiate and amend the terms of agreement to make them mutually beneficial and balanced for both the parties. However, it blatantly refused to accept her request and denied any kind of amendment as requested. Further, it threatened to forfeit the entire amount already paid



by the complainant towards the said unit in case she insist to renegotiate and amend the terms of the said agreement. She had no other option and was forced & coerced by the respondent to sign the said unilateral and arbitrary agreement on 19.08.2019.

8. That the respondent then failed to adhere the timelines of construction of said unit and kept delaying it on one pretext or other and did not start the construction of the said unit as agreed. Upon regular follow up done by the complainant, the respondent ultimately issued letters dated 19.10.2020 and 17.12.2020 informing her that the respondent is revising the development plan of the said project to create additional parking space and in the said letters itself admitted the delay in construction of the said project and informed that it is still on the stage of construction of sample flat.
9. That in an unfortunate event during Covid-19 pandemic the world of the complainant turned upside-down as her husband passed away after a prolonged battle in hospital due to Covid-19 virus. It is to be noted that he was the sole bread earner of the family and had to leave the world without having the dream home booked by him for the family. That after the sudden demise of her husband, the complainant came under the extreme financial pressure from all sides to save and take care of her family.
10. That thereafter, the world once again was engulfed by the second wave of Covid-19 pandemic and everything went to the second phase of lockdown and the complainant, who was already going through grim situation in her life, again had to face the brunt of time. The complainant during the

lockdown informed the respondent about the sudden demise of her husband and the respondent assured her that considering her difficult situation and pandemic situation, the force majeure condition has arisen and she need not pay any amount till further notice on humanitarian ground as well. Therefore, the payment of any further installment for the aid unit is relaxed for time being and any further development will be updated to the complainant in due course.

11. That thereafter upon some development in situation and relaxation on the Covid-19 situation, she approached the respondent to know about the status of project and payment of installment, if any due. Upon such enquiry made, the representative of the respondent wrote an email to the complainant on 27.01.2022 asking for the hard copy of the death certificate of her husband to complete the documentation and formalities and assured her that updated payment schedule will be shared with her.
12. That the complainant, thereafter, approached the respondent to enquire about payment of dues, if any and the respondent sought some more time to send the details. However, she was shocked and surprised to receive an arbitrary and illegal notice before cancellation on 18.02.2022 without giving any prior show cause notice or intimation to the complainant. On one side, the respondent has asked for copy of death certificate to update its records in respect of the legal heirs of the deceased and on other side, it illegally and secretly issued notice before cancellation without any valid and sufficient ground.

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13. That the respondent without having valid and reasonable ground issued the aforesaid notice before cancellation only to deprive the complainant of her fundamental right to acquire property and to further deprive her the benefit of price escalation currently prevalent in the market. It issued such notice without giving any prior opportunity or intimation to the complainant by keeping her in dark.
14. That the complainant then objected to the issuance of said arbitrary notice and taken up the issue with the respondent and it was assured to her that the same would be resolve and assured her not to worry. Thereafter, the complainant wrote several emails to the respondent and visited its office on multiple occasion but could not get any satisfactory answer of her issues. The respondent despite repeated requests made by the complainant did not inform her about the exact amount due towards installments, if any. The respondent neither informed the complainant about the due amount nor accepted any payment from her despite repeated requests. She has been running pillar to post but the respondent acting illegally and arbitrarily has not accepted any of her the request and verbally informed her that her unit has been cancelled and they will not accept any payment form her. It is to be submitted that the respondent till now has not issued any cancellation notice to the complainant and has been harassing her on one pretext or other.
15. The complainant never had the intention to commit any default in payment or installment towards the said unit and was regularly paying the due

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amount as per the schedule. There is no intentional or deliberate default on the part of complainant in the entire transaction. It is a factual position, that the years of 2020 and 2021 were nearly wasted in the era of lockdown due to Covid-19 pandemic and the things were not in the control or in the hands of either complainant or respondent. However, now the respondent by not accepting any payment from the complainant towards the sales consideration of said unit is back tracking and withdrawing from its promises.

16. That the action of respondent of not informing her about the amount due towards the sale consideration of said unit and asking her to accept the arbitrary refund amount is totally illegal and unsustainable in eyes of law as it has not issued any cancellation notice to the complainant in respect of the said apartment. Even if any cancellation notice was issued, then it would have been illegal and arbitrary as there is no ground with the respondent for the cancellation of the said unit.
17. That by issuing the notice before cancellation to the complainant, the respondent has acted very unreasonably and imposed disproportionate penalty upon the complainant in form of proposed cancellation of the said unit. It is a settled law that penalty has to be in proportion to the default and cannot be too harsh to frustrate the entire purpose of the transaction. It is submitted without admitting that even if there is a default in payment of the installments of the sale consideration by the complainant then it was only for the reason of situation arisen because of the Covid-19 pandemic and

consequent unfortunate demise of her husband, which here out of her control, therefore, there was no intentional default committed by her and charging of interest at market rate upon the due amount would have been the appropriate penalty that could have been imposed by the respondent under such circumstances. Therefore, cancellation of said unit if done by the respondent would be the extreme step which will shatter the dreams of complainant and her husband and would invalidate the entire transaction without any fault of the complainant and will be very unreasonable penalty to be levied upon her. Further the respondent has no legal or contractual right to deprive the complainant and her family of their fundamental right to acquire property on just a single alleged default of payment that too in the pandemic.

18. That as per the agreement dated 19.08.2019 the possession of the said unit was to be handed over within 27 months from the date of agreement, however the respondent itself failed to adhere the timeline of handover of the completed possession. Therefore, when the respondent is itself at fault and contravened the provisions of said agreement, then it cannot be allowed to take benefit from its own defaults. The said unit is still not complete in its true sense and as per the schedule of payment initially shared with the complainant the respondent has no right to claim the entire payment by way of notice before cancellation without updating the complainant about the actual status of the construction of the said unit and it is totally meritless and unreasonable to demand the total payment in one



go without issuance of notice of possession and getting occupation certificate and actually handing over the possession of the said unit.

19. That the complainant has always been and is ready & willing to make the payment of all the pending dues towards the sale consideration, if any and had been following up with the respondent by way repeated requests and multiple physical visits to its office but it is the respondent, who is not accepting the same by not informing her about the status of the actual dues. She has paid Rs. 32,48,216/- towards the sale consideration of the said unit. Therefore, the complainant cannot be allowed to suffer for the arbitrary and unreasonable conduct of the respondent as the respondent is clearly exploiting the difficult situation of the complainant's life and is misusing its dominant position without having any respect towards the law of land. Further, the complainant is currently residing in rental accommodation and waiting for her dream home to be handed over by it, however on the other side the respondent is trying to snatch away her legal and contractual right to own the property which they booked together and waited for so long.

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

20. The complainant have sought following relief(s):
- i. To set aside the notice before cancellation dated 18.02.2022 issued by the respondent to complainant for the said unit being illegal, arbitrary and null and void.
  - ii. Direct the respondent to inform the complainant about the schedule of further payment towards sale consideration of said unit and to accept the payment towards the sale consideration.

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- iii. To set aside the cancellation notice towards the said unit in case issued by the respondent during the proceeding of present complaint being illegal, arbitrary and null and void.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:-

- i. That the complainant has quite cleverly concealed all the material facts from the Authority to attain their ultimate goal of undue benefit which they are trying to derive from the present complaint. However, it is pertinent to mention here that the unit in question is already allotted to another after the cancellation of the allotment, the respondent even refunded the balance amount of Rs. 8,80,751/- on 17.10.2022. The calculation qua refundable amount is as follow:

Cancellation charges		
(A)	Total consideration	1,60,91,077
(B)	10% Earnest Money (A*10%)	16,09,108
(C.)	GST @18 % on Earnest Money	2,89,639
(D)	Non Refundable GST	4,68,718
(E)	Total cancellation charges. (B+C+D)	23,67,465
(F)	Paid by customer	32,48,216
(G)	Net payable to Customer (F-E)	8,80,751

- ii. That since the allotment of complainant had already been cancelled after following due process and after giving sufficient time to her to pay the balance amount, her unit was cancelled. That even as per provisions of RERA in case of default of payment builder has every right to cancel the allotment. Thus, the present complaint is not

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maintainable in any form and she has no right to seek any relief from the Authority.

- iii. That the respondent launched a residential project under the name and style of "Samsara Vilasa" in Sector 63, Tehsil Wazirabaad, District Gurugram, Haryana, wherein the complainant in the year 2019 through broker namely Elite Land Base approached the respondent to book a residential floor. Then, the complainant vide an application applied for allotment and paid booking amount of Rs. 5,00,000/-.
- iv. That thereafter a registered agreement to sale was executed between the parties on 19.08.2019 and vide said agreement, it was specifically agreed upon by the parties that earnest money shall be 10 % of the total sale consideration as duly agreed in definition clause (Q) of the agreement and further, as per clause 9.3, it was further agreed between the parties that the allottee shall be considered under a condition of default, in case the allottee fails to make payments for two consecutive demands made by the promoter as per the payment plan annexed hereto, despite having been issued a notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the rules, from the due date mentioned in first such demand. The complainant has specifically agreed upon the conditions, they always knew very well that in case of default their allotment is liable to be cancelled, yet she chosen to make defaults one after another, and consequently after issuance of several reminders

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and a pre-cancellation notice, the allotment of complainant was terminated by the respondent vide letter dated 28.09.2022. That list of defaults committed by the complainant is summarized as under:-

S.no.	Date of demand	Due Date	Amount demanded	Amount paid
a)	20-04-2020	05-05-2020	16,73,322	Not paid
b)	22-12-2020	06-01-2021	33,13,835	Not paid
c)	17-03-2021	01-04-2021	65,94,861	Not Paid
d)	10-08-2021	25-08-2021	98,75,887	Not Paid
e)	27-12-2021	ASAP	98,75,888	Not Paid
f)	20-01-2022	ASAP	98,75,888	Not Paid
g)	18-02-2022 (pre-cancellation)	Within 7 days	98,75,888	Not Paid
h)	28-09-2022 (Final cancellation)	N.A समन जयत	N.A	N.A

- v. That after receiving above stated demand letters and pre-cancellation letter, the complainant contacted the officials of the respondent in the first month of the year 2022 and requested that since her husband expired due to Covid-19 and for the same reason she could not able to pay the demand raised by it and requested to provide more time to pay the total outstanding amount. That vide email dated 27.01.2022 respondent asked for the death certificate of the husband of the complainant. However, no such death certificate was sent by the complainant thus vide letter dated 18.02.2022, a notice before the cancellation was sent to the complainant. That after receiving said letter complainant vide email dated 16.03.2022 send an email to the



respondent whereby for the first-time, she provided the death certificate of her husband and further requested to provide further 3-4 months to make complete payment.

- vi. That considering the circumstances of the complainant, the respondent company holds the cancellation of allotment of the complainant for the further period. That after a period of 3-4 months complainant again sent an email dated 21.07.2023 to the respondent to further grant a time of 2-3 months. Even at this time, it accepted said request and kept cancellation on hold. That after a month complainant again sent an email dated 03.08.2022 to the respondent that the amount could not be arranged and further requested another 2-3 months for the same. It is submitted that as already discussed above that it was agreed between the parties that before final cancellation a 30 day prior notice was required to be given but in the present case keeping in view of the circumstances of the complainant, the respondent after giving prior notice before cancellation further waited for 222 days only in a hope that complainant might able to arrange the fund but she kept on delaying payment, thus ultimately vide cancellation letter dated 28.09.2022, the allotment of the complainant was cancelled and balance amount as mentioned in cancellation letter was refunded to her.
- vii. That as per agreement the possession was to be handed over subjected to certain terms and condition and other than force majeure another

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important factor for timely possession was timely payment and as already admitted by force majeure of Covid-19 by the complainant. Further, several government agencies from time to time stopped construction activities due to increase in pollution.

21. All other averments made in the complaint were denied in total.
22. 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:**

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

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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**

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.*

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.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding force majeure circumstances.**

24. The respondent has raised an objection that as per agreement the possession was to be handed over subjected to certain terms and condition and other than force majeure circumstances such orders by several government agencies from time to time stopping the construction activities due to increase in pollution. The Authority observes that the due date for completion of project is calculated as per clause 7.1 of agreement which comes out to be 19.11.2021 as detailed in the table above. Though there have been various orders issued by various competent authorities to curb the environment pollution, but these were for a short period of time and the fact that such type of orders are passed by the various competent authorities from time to time were already known to the respondent-

builder. Thus, the plea taken in this regard is not tenable. Further, as far as relaxation w.r.t to outbreak of pandemic Covid-19 is concerned, the same is no doubt a scenario covered under "force majeure" circumstances, but in the instant complainant, no relaxation w.r.t to same can be allowed to the respondent-builder because of the reason that the said clause of agreement do specifies extension on ground of force majeure circumstances but does not specifies a particular term/period to be allowed as extension. The Authority is of considered view that the term "force majeure" is a very wide term which can include "n" number of circumstances under its purview and thus, the same must not be mis-used by the respondent by using its dominant position and further, as decided in plethora of cases, that the allottee cannot be made to wait for an indefinite period of time to get the possession of the unit. Thus, the pleas of the respondent are rejected being devoid of merit.

**G. Findings on the relief sought by the complainant:**

**G.I To set aside the notice before cancellation dated 18.02.2022 issued by the respondent to complainant for the said unit being illegal, arbitrary and null and void.**

**G.II Direct the respondent to inform the complainant about the schedule of further payment towards sale consideration of said unit and to accept the payment towards the sale consideration.**

**G.III To set aside the cancellation notice towards the said unit in case issued by the respondent during the proceeding of present complaint being illegal, arbitrary and null and void..**

25. The aforesaid reliefs are being taken together being inter-connected.
26. The complainant submitted that due to demise of her husband and COVID-19, she wrote an email to the respondent asking for relaxation w.r.t due payments, in response of same, the respondent sent an email dated

27.01.2022 wherein asking for copy of death certificate. The complainant further submitted that thereafter it sent a notice for cancellation dated 18.02.2022 before sending any prior communication. The respondent on the other hand submitted that she approached it asking relaxation in making due payments and in its response it asked for the death certificate of her husband vide email dated 27.01.2022. But since the complainant failed to provide any such certificate, it issued notice before cancellation dated 18.02.2022. It was vide e-mail dated 16.03.2022 only, when she submitted the copy of death certificate to the respondent. It further submitted that the complainant vide email dated 16.03.2022, 21.07.2022 and 03.08.2022 asked for more time to make due payments and thus, after waiting for more than 6 months, it cancelled the allotment of the complainant vide letter dated 28.09.2022.

27. Vide proceedings dated 10.08.2023, the complainant through her counsel submitted that the act of the respondent is not valid as the principle of "Lis pendens" under Section 52 of Transfer of Property Act, 1882 would apply; as said cancellation was issued during the pendency of the complaint before the Authority. Moreover, such notice was cancellation was set aside by the respondent itself as admitted by it in para 05 of its reply. She further objected that no 30 days prior notice was given to her before cancellation of the subject unit and referred clause 9.3 of agreement which provides a period of 30 days be given before cancellation of allotment. The respondent rebutted the arguments of the complainant and submitted that the complainant approached the respondent asking relaxation in making due

payments and in its response it asked for the death certificate of her husband vide email dated 27.01.2022. As far as setting aside of notice for cancellation is concerned, the same was "hold" on the request of the complainant and never set aside. The complainant vide email dated 16.03.2022, 21.07.2022 and 03.08.2022 asked for more time to make due payments and thus, after waiting for more than 222 days, it finally cancelled the allotment of the complainant vide letter dated 28.09.2022 and has already refunded an amount of Rs. 8,80,751/- to the complainant on 17.10.2022 after necessary deductions.

28. Upon perusal of documents on record and consideration the arguments of both the parties at length, the Authority observes that the complainant and her deceased husband were jointly allotted the subject unit on 08.05.2019 and subsequently, an agreement for sale detailing terms and conditions of allotment, due date of possession, sale consideration etc was executed between the parties on 19.08.2019. The complainant has paid an amount of Rs. 32,48,216/- towards basic price of Rs. 1,56,23,933/- constituting 20.79% of basic price. During Covid-19, the complainant suffered huge loss due to demise of her husband and requested the respondent vide email to extend the date for payment of dues. The fact cannot be ignored that till the time various demand and reminder letters dated 17.03.2021, 10.08.2021, 27.12.2021 and 20.01.2022 were issued by the respondent. Meanwhile considering the request of the complainant, the respondent vide email dated 27.01.2022 asked for copy of death certificate of her husband and it was when no response was submitted by the complainant then it sent pre-

termination letter dated 18.02.2022. It was after receiving such pre-termination letter, the complainant approached the Authority on 16.08.2022 seeking setting aside of said pre-termination. The complainant never presented the fact that various demand letters and reminders were issued by the respondent before such pre-termination. The preamble of Act makes it very clear that the introduction of Act is done, not only to safeguard the interest of allottees but also to balance it with development of real estate sector and there has been plethora of cases where no leniency of Covid -19 has been given to the respondent. Even otherwise, if the fact of safeguard of rights of allottees are given preference, the complainant thereafter vide email dated 16.03.2022, 21.07.2022 and 03.08.2022 sought further extension for payment of dues towards consideration of allotted unit. Thus, the plea of the complainant that principle of lis pendens is not tenable at this stage as the process of cancellation has begun at the stage of default made by the complainant. Further, the plea of the complainant stating that no 30 days' notice was given by it to her, is not a strong argument as the trail of transactions before cancellation of subject unit on 29.09.2022, on the face of it proves the facts otherwise.

29. As per Section 19(6) & (7) of Act of 2016, the complainant-allottee was under obligation to make payment towards consideration of allotted unit. Despite issuance of several reminders as detailed above in the table followed by termination letter dated 29.09.2022, the complainant has failed to adhere to the obligation conferred over her vide provision of Section 19(6) & (7) of Act of 2016. Sufficient opportunities have been given by the

respondent-builder to the complainant before cancellation of subject unit vide letter dated 29.09.2022. Thus, the said cancellation considered to be valid. The respondent builder after deduction of certain amount has refunded an amount of Rs. 8,80,751/- to the complainant on 17.10.2022.

30. The complainants has admittedly paid a sum of Rs. 32,48,216/- against basic sale consideration of Rs. 1,56,23,933/- constituting 20.79% of basic sale consideration and while cancelling the allotment, the respondent has forfeited more than 10% of the amount and which is not legally permissible in view of law laid down by the Hon'ble Apex Court of land 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, (2016) 4 SCC 136*, 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 the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. A similar view was taken by the *Hon'ble National Consumer Dispute Redressal Commission in consumer case no. 2766 of 2017 titled as Jayant Singhal & Anr. Vs M/s M3M India Limited decided on 26.07.2022*. Even keeping in view, the principles laid down in the first two cases, the Haryana Real Estate Regulatory Authority Gurugram framed regulation 11(5) known as (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under-

**"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"*

31. Thus, keeping in view of aforesaid circumstances and the law of the land, though the cancellation of the allotted unit is held to be valid, but the respondent was not justified in retaining more than 10% of the basic sale consideration on cancellation. It could have retained 10% of the basic sale consideration of the unit and was require to return the remainder/balance amount on cancellation. Since that was not done, so the respondent is directed to refund the balance amount (i.e, Rs. 32,48,216 - 8,80,751 = Rs. 23,63,465/-) after deducting 10% of the basic sale consideration of the unit being earnest money within 90 days from the date of this order along with an interest @10.75 % p.a. on the refundable amount, from the date of cancellation i.e., 29.09.2022 till the date of realization.

**H. Directions of the Authority:**

32. Hence, the authority hereby passes this order and issue 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:
- The respondent/promoter is directed to refund the balance amount (i.e, Rs. 32,48,216 - 8,80,751 = Rs. 23,63,465/-) to complainant-allottee after deducting 10% as earnest money of the basic sale consideration of Rs. 1,56,23,933/- with interest at the prescribed rate i.e., 10.75% on such

balance amount, from the date of cancellation i.e., 29.09.2022 till the date of realization.

- 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.

33. Complaint stands disposed of.

34. File be consigned to the registry.



*v.i - g*

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 10.08.2023**

**HARERA**  
**GURUGRAM**