

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

**Complaint no. :** 546 of 2021  
**First date of hearing:** 18.02.2021  
**Order reserved on :** 26.04.2023  
**Date of pronouncement :** 26.07.2023

Abhijeet Singh Ahluwalia <b>R/o:</b> - 350, Block M, New Generation Apartments, Kalgidhar Enclave, Dhakoli, Zirakpur, SAS Nagar (Punjab) Pin - 140603	<b>Complainant</b>
Versus	
M/s Oasis Landmarks LLP <b>Office:</b> Godrej One, 5th Floor, Pirojsha Nagar, Eastern Express highway, Vikhroli (East), Mumbai - 400079 <b>Also at:</b> 3rd Floor, UM House, Tower-A, Plot no. 35, Gate no. 1, Sector 44, Gurgaon - 122002	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>

<b>APPEARANCE:</b>	
Sh. Abhimanyu Rao (Proxy)	Counsel for Complainant
Sh. Varun Tandon and Shri Ramjit AR of the company	Counsel for Respondent

**ORDER**

1. The present complaint dated 28.01.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Details
1.	Project name and location	Godrej Icon (Iconic Tower), Sector 88A and 89A, Gurugram
2.	Project area	9.359 acres
3.	Nature of project	Group Housing Project
4.	RERA registered/not registered	Registered vide 54 of 2017 dated 17.08.2017 valid upto 30.04.2020
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013 151 of 2014 dated 05.09.2014
6.	Provisional allotment letter dated	20.04.2017 (Page 39 of complaint)
7.	Date of execution of buyer agreement	Not executed
8.	Unit no. as per the buyer's agreement	1403, 14 <sup>th</sup> floor, tower B (Page 22 of complaint)
9.	Unit measuring	2142 sq. ft. (super area) [Page 22 of complaint]
10.	Due date of delivery of possession as per clause 16 of application form i.e., 46	20.10.2021



	months from the date of issuance of allotment letter along with grace period of 6 months over and above this period. (Page 28 of complaint)	
11.	Total consideration as per application form on page 23 of complaint	Rs. 1,59,06,348/-
12.	Total amount paid by the complainant	Rs. 53,82,000/- (As per SOA annexed by respondent)
13.	Reminder Letters	13.06.2016, 09.02.2017, 07.03.2017, 20.11.2017, 29.06.2018
14.	Termination Letter	31.03.2019 (Page 21 of reply)
15.	Occupation certificate	18.09.2020 (Page 31 of reply)
16.	Date of offer of possession to the complainant	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- I. That on 20.10.2016, the complainant booked the unit by paying Rs. 2,00,000/- through the NEFT transfer totalling the sum. An application form was given to the complainant to fill, which was duly filled and deposited with the respondent.
- II. That on 20.04.2017, the respondent issued the "Provisional Allotment Letter" of the unit. As per the term of conditions of the allotment letter, the cost of unit was arrived at Rs. 1,51,94,360/-.



III. That the payment plan agreed between was 20: 20 : 20: 20: 20 , whereas the 20% of the amount was to be paid at the possession. On the demand of the respondent, the complainant has already paid over 37% of the agreed amount i.e. Rs. 56,82,000/- till date to the respondent, details of the payment is given below:

S.N	Cheque no. & date	Amount
1.	20.10.2016 NEFT TRANSFER	25,000/-
2.	20.10.2016 NEFT TRANSFER	25,000/-
3.	20.10.2016 NEFT TRANSFER	1,50,000/-
4.	25.10.2016 RTGS TRANSFER	25,00,000/-
5.	04.04.2017 RTGS TRANSFER	4,82,000/-
6.	27.12.2017 RTGS TRANSFER	1,00,000/-
7.	14.03.2018 RTGS TRANSFER	2,00,000/-
8.	15.03.2018 RTGS TRANSFER	1,00,000/-
9.	01.06.2018 RTGS TRANSFER	2,50,000/-
10.	01.06.2018 RTGS TRANSFER	2,50,000/-
11.	01.06.2018 RTGS TRANSFER	2,50,000/-
12.	01.06.2018 RTGS TRANSFER	2,50,000/-
13.	04.06.2018 RTGS TRANSFER	2,50,000/-
14.	04.06.2018 RTGS TRANSFER	2,50,000/-
15.	04.06.2018 RTGS TRANSFER	1,00,000/-
16.	28.08.2018 RTGS TRANSFER	2,00,000/-
17.	19.07.2019 RTGS TRANSFER	3,00,000/-

All the payment except the last payment of Rs. 3,00,000/- is reflected in their ledger statements even as of today, many verbal and written reminders were sent to the respondent for updating of

- this payment of Rs. 3,00,000/- but the respondent has neither paid any attention to update this in the ledger account of the complainant nor it has provided the receipt of this payment.
- IV. That as mentioned in the clause 14 of application form and terms mentioned in the provisional allotment letter, the allotment was provisional and subject to "definitive document" i.e. apartment buyer's agreement. As per the said clause of the application form, the respondent was supposed to call the complainant immediately after issuance of the allotment letter to furnish the builder - buyer agreement.
- V. That it is pertinent to note that the allotment letter was issued on 20.04.2017 and the apartment buyer's agreement was to be signed immediately after that, but the respondent has failed miserably to execute the builder buyer agreement with the complainant.
- VI. That the respondent builder has accepted more than 10% of the Sale value even before the execution of the apartment buyer's agreement is Direct contravention of Section 13 of the Real Estate (Regulation and Development Act), 2016.
- VII. That the respondent has totally failed to comply with the provision of the said act and aggressively pushed the complainant to pay up more money in contravention to the said act. That the complainant has been repeatedly in touch with the company requesting them to furnish the builder buyer agreement through several verbal and written communication but the respondent off late is shying away from its liability.
- VIII. That through a series of letters over the years the complainant has requested again and again to furnish the apartment buyer's agreement to safeguard his interest in the project and to make him

eligible for application for Home Loan through the financial institutions. The complainant has on a number of occasions approached the banking institutions for the home loan but due to the non-execution of the apartment buyer's , the banking institutions have not provided the home loan to the complainant.

- IX. That the respondent builder has been avoiding its responsibility to furnish the apartment buyer agreement and is unable to reply any specific reason for the non-compliance of this important aspect to comply with the law of the land. That, in one of the email which was received on 19.04.2017 ,in the response to the request mail ,the Customer care Executive wrote to the complainant, text of which is being reproduced hereunder :

*Dear Mr. Ahluwalia  
Greetings from Godrej Properties !!*

*We are process of preparing BBA for the apartment. You will receive the same by end of next week on the registered address. ....*

- X. That the respondent has unnecessarily continued to charge the Interest on the payment which has been illegally demanded by it( over 10 % payment even before the execution of builder buyer agreement ) and an interest of over Rs. 16,00,000/- is standing in the ledger statement of the complainant. That the main grievance of the complainant in the present complainant from respondent the builder, is that the complainant is an end user who wished to live in the apartment, but the respondent has miserably failed in its duty to furnish even the builder buyer agreement of the unit in the approximate last 4 years.

- XI. That the respondent acted in contravention to section 12 of the said act and has caused the damage to the complainant by providing incorrect and false statements in the application form and



allotment letter, and has failed miserably to execute even the apartment buyer's agreement after more than 4 years of the booking the apartment. That for the first time cause of action for the present complaint arose on 20.04.2017, when an allotment letter was provided to the complainant. Further the cause of action again arose on various occasions, including on: 28.08.2018, and on many dates till date, when the payments were paid and protests were lodged with the respondent about its failure to execute the apartment buyer agreement of the unit. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent by an order of injunction and/or passes the necessary orders. The complainant finds the company unprofessional and does not want to further deal with the company anymore and wishes to cancel the unit and wants a full refund of the payment with interest.

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

4. The complainant has sought following relief(s).
  - I. Direct the respondent to cancel the unit and refund the entire amount without any deduction.
  - II. Direct the respondent to pay Interest at the scheduled rate of interest from the date of the actual payment till the date of actual refund.
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.
  - a. That at the very foremost, it is the humble submission of the respondent that the captioned complaint is bad in law as it falls outside the scope and ambit of this authority. The complainant is not the allottee in terms of the Real Estate (Regulation and Development) Act, 2016. The complainant is not the allottee as the allotment of the complainant stands cancelled by the respondent vide termination letter dated 31.03.2019 for non-payment of the outstanding dues in terms of the payment schedule in the allotment letter agreed upon by the complainant. It is thus submitted, that this authority has no jurisdiction to entertain and adjudicate the captioned complaint, in its present form.
  - b. It is submitted that the captioned complaint is a gross abuse of the process of law and has been filed with the sole intent to arm twist and coerce the respondent into parting with amounts, which are contractually not due and payable to the complainant. The captioned complaint is also devoid of merits and is based on flimsy grounds which are not supported by any document whatsoever. It is also pertinent to note herein that the complainant has not filed an affidavit in terms of Section 65-B of the Evidence Act, w.r.t the emails appended with the complaint. This being the case, the aforesaid emails filed with the complaint cannot be relied upon by this authority and carry no weight with themselves. Hence, the captioned complaint merits outright dismissal on this ground alone.





- c. The complaint smacks of *mala-fides* and the Complainant is guilty of *suppressio veri* and *suggestio falsi*. The complainant has purposefully, with the intent to misguide this hon'ble authority, concealed material facts, the revelation of which will lead to dismissal of the complaint itself. The complainant has concealed the fact that immediately after the execution of the allotment letter, they defaulted in making payments in terms of the payment schedule. A perusal of the allotment letter clearly shows that the complainant agreed to purchase an apartment in the project and the respondent agreed to sell the same for the consideration mentioned in the allotment letter, which was agreed to be paid in instalments as per the payment schedule stated in annexure b of the allotment letter. The allotment letter expressly states that payment of installments in time is the essence of the contract and in case of delay, the complainant would be liable to pay interest. It is a fundamental principle of law that once a proposal is accepted, it becomes a contract provided that it is coupled with lawful consideration and lawful object and is not barred by any statute. Thus, it is evident that the allotment letter is a duly executed contract which is binding upon the parties to it. The respondent was constrained to issue numerous reminder letters seeking payment of outstanding dues, starting as early as 13.12.2016. The complainant has not placed the several reminder Notices, including the termination notice dated 31.03.2019. The said act of the complainant amounts to perjury, for this reason the respondent reserves its right to initiate appropriate legal proceedings in this regard.



On the contrary, due to non-payment of outstanding dues by the complainant, as evident from the statement of account and statement of interest, it is the respondent who has suffered loss and hence reserves the right to file appropriate proceedings to recover such loss.

- d. It is humbly submitted that as per the allotment letter dated 20.04.2017 (hereinafter referred to as the "**Allotment Letter**"), it was reiterated and agreed by the parties an amount of 20% of the basic sale price would be treated as earnest money.
- e. It is submitted that the complainant has sought to allege violation of Section 18(1) of RERA. Without prejudice, it is submitted that the aforesaid reliance placed upon section 18(1) of RERA is misplaced, as the aforesaid provision has no applicability to the present case or to the averments made in the complaint under reply.
- f. Vide an Application for allotment dated 12.10.2016 (hereinafter referred to as "Application") the complainant, out of his own free will and volition, and after having fully read and considered the terms and conditions thereof, made an expression of interest for the allotment of an apartment in the residential building complex, titled "Godrej Icon" being developed by the respondent in Sector 88A and 89A Gurugram, Haryana [hereinafter referred to as "Project"].
- g. On 20.04.2017, the complainant was issued the allotment letter [hereinafter, referred to as "Allotment Letter"]. Vide the allotment letter, the complainant was allotted an apartment bearing no. B1403,



14<sup>th</sup> Floor, Tower B, at Godrej Icon [hereinafter, referred to as "the said Apartment"].

- h. While executing the aforesaid documents the complainant unequivocally undertook to abide by all the terms and conditions contained therein. The complainant also categorically agreed to be liable for defaults and breaches on his part, as contemplated in the aforesaid documents duly executed by the complainant.
- i. It is pertinent to bring to this authority's attention that the Complainant did not contest the Application Form nor the Allotment Letter and has without any protest agreed to the said documents by affixing his signatures on the same. That not even a whisper was made by the Complainant regarding any term or condition given in the said documents therein and are thus bound by the said terms and conditions. It is a fundamental principle of law that once a proposal is accepted, it becomes a contract provided that it is coupled with lawful consideration and lawful object and is not barred by any statute. A perusal of the allotment letter clearly shows that the Complainant agreed to purchase an apartment in the Project and the Respondent agreed to sell the same for the consideration mentioned in the Allotment Letter, which was agreed to be paid in instalments as per the Payment Schedule captured in Annexure B of the Allotment Letter. The Allotment Letter includes stipulations stating that payment of installments in time is the essence of the contract and in case of delay,



the Complainant would be liable to pay interest. Thus, it is evident that the Allotment Letter is a duly executed contract which is binding upon the Parties to it. To this end, the Respondent craves the leave of this Authority to rely upon and cite judgments of the Hon'ble Courts to the aforesaid effect, at the time of final arguments.

- j. It is pertinent to mention that in the Allotment letter, the Complainant had expressly agreed that in case the Complainant failed to comply with their obligations under the contemplated sale transaction, then the Respondent would be entitled to forfeit the entire earnest money. As per the terms of the Allotment letter, it was agreed that 20% of the Basis Sale Price shall be treated as the "Earnest Money" and that the same would be forfeited in case of failure by the Complainant to comply with the terms and conditions of the sale transaction.
- k. That as per the terms of the Allotment Letter, the Complainant was obligated to make the payments as per the Payment Plan as detailed in Annexure B of the said Allotment Letter.
- l. That the Complainant, in sheer violation of the Payment Plan, failed to make timely payments to the Respondent herein in lieu of which multiple reminders had already been sent to him to no avail.
- m. It is pertinent to mention that the Respondent had issued multiple notices on the Complainant's regarding payment of instalments as per the Payment Plan but to no effect. Notices/reminders were issued to the Complainant by the Respondent on 13.12.2016, 09.02.2017, 07.03.2017, 20.11.2017, 05.01.2018 and, 29.06.2018.



- n. That on failure of the complainant to act upon the aforesaid reminder letters, the respondent was constrained to issue a termination notice/letter dated 31.03.2019 to the complainant.
- o. That it is only upon receiving the aforesaid termination notice dated 31.03.2019, did the Complainant with the fear of losing the allotment, and in order to evade his liability, made vague and baseless allegations/averments that there were certain inconsistencies in the calculation with respect to the outstanding dues. These baseless allegations were made by the Complainant with the sole motive to evade his liability to pay the outstanding dues, causing further losses to the Respondent.
- p. At this juncture, the Respondent craves leave of this Authority to submit that the Complainant has not approached this Hon'ble Authority with clean hands. The Complainant has concealed material facts and has not averred complete and correct facts in the present Complaint. The Complaint has been filed with the sole motive to evade the contractual liability to pay the outstanding amount as per the Payment Plan agreed between the parties, in-fact the Complainant has approached this Hon'ble Authority to circumvent his legal liabilities and arm twist the Respondent to part with huge sums of money which is the rightful entitlement of the Respondent. What is pertinent to mention here is the fact that it is the Respondent who has suffered huge losses pursuant to the inactions of the Complainant. Therefore, it is evident that the present complaint has been filed with an ulterior motive to circumvent



the payment of outstanding dues as per the binding terms and conditions mutually agreed between the parties. This being the case, the Complaint has no legs to stand upon and is afflicted with an irregularity that goes to its roots and renders the same ripe for dismissal.

- q. It is submitted that the law of the land is well settled, which is reflected in the statutes as well as the precedents rendered by the Hon'ble Courts, that a Party to a contract must be made to honor the terms thereof and be bound by the same. To this end, the Respondent craves the leave of this Hon'ble Authority to rely upon and cite judgments of the Hon'ble Courts to the aforesaid effect, at the time of arguments.
- r. It is humbly submitted that considering the above, there exists no room for any doubt(s) that the Respondent has proceeded as per the agreed terms and conditions contained in the Allotment Letter executed between the Parties which as elucidated in para D hereinabove, is binding on them. Per contra, the captioned Complaint is only a mere afterthought on the part of the Complainant to wriggle out of his contractual obligations, liabilities and responsibilities. There has been no lapse, whatsoever on the part of the Respondent, at any point in time. The Respondent is a customer centric organization, which has always acted swiftly for the benefit of its customers, even in the present case.
7. 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**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

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

10. 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) 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.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-



compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

12. 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. 2021-2022 (1) RCR (Civil), 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."*

13. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case 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 cancel the unit and refund the entire amount without any deduction.

**F.II** Direct the respondent to pay Interest at the scheduled rate of interest from the date of the actual payment till the date of actual refund.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

**Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."**

15. The complainant was allotted unit no. 1403, 14<sup>th</sup> floor in the project "Godrej Icon (Iconic Tower), Sector 88A and 89A, Gurugram" by the respondent-builder for a sale consideration of Rs. 1,59,06,348/-and he



paid a sum of Rs. 53,82,000/- which is approx. 33% of the sale consideration. A builder buyer's agreement was not executed between the parties and according to the application form dated 20.04.2017 the due date of possession comes to be 20.10.2021. The complainant failed to pay amount due against the allotment unit.

16. As per clause 13 of the application form the complainant was liable to made the payment as per the payment plan and the relevant clause of the application form is reproduced under for ready reference:

*13. In case Applicant fails to pay any instalment in furtherance of this Application within 60 days from the due date, in that event Developer shall be entitled to reject this Application or cancel the Allotment Letter as the case may be, and forfeit the entire amounts paid by the Applicant to the Developer till such date of rejection/cancellation subject to maximum of Earnest Money i.e. 20% of Cost of Property plus applicable taxes.*

17. The respondent issued reminders on 13.06.2016, 09.02.2017, 07.03.2017, 20.11.2017, and 29.06.2018 thereafter, issued cancellation letter i.e., 31.03.2019 to the complainant. The Occupation Certificate for the project of the allotted unit was granted on 18.09.2019. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 53,82,000/- against sale consideration of Rs. 1,59,06,348/- of the unit allotted to him. The complainant has failed to adhere to the terms and conditions of the application form. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.

18. The Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer



Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as **Jayant Singhal and Anr. Vs. M/s M3M India Ltd.** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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 legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (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., 31.03.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G. 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. 53,82,000/- after deducting 10% of the sale consideration of Rs. 1,59,06,348/- with interest at the prescribed rate i.e., 10.75% p.a. on such balance amount, from the date of cancellation i.e., 31.03.2019 till the actual date of 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.

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2023