

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

**Complaint no.:** 6345 of 2022  
**Date of decision:** 10.07.2024

1. Ashok Bindra  
2. Anupama Bindra  
**Both R/o:** - Unit no.-003, Tower-6,  
Emaar Palm Gardens, Sector-83,  
Gurugram-122004.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
**Office address:-** Sector-83, Village-Kherki Daula,  
Gurugram, Haryana.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Vivek Singla (Advocate)  
Shri Harshit Batra (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 as provided 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. Project and unit related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	<b>Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)</b>
	HRERA registration valid up to	31.12.2018

	HRERA extension of registration vide	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	02.05.2019
7.	Unit no.	PGN-08-0006
8.	Area of the unit	3750 SQ. F.T
9.	Provisional allotment letter	12.09.2018 (Page 32-33 of reply)
10.	Cancellation on	05.08.2019 (Page 34-35 of reply)
11.	Basic sale consideration	Rs. 1,98,82,512/- (Page 12 of complaint)
12.	Amount paid by the complainant	Rs. 13,00,000/- (As stated by the complainant)
13.	Date of execution of buyer's agreement with Rajeev kumar bansal (Subsequent allottee)	17.06.2021

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -
  - I. That the respondent is a company incorporated under the Companies Act, 1956, having their registered office at 306-308, Square One, C-2, District Centre, Saket, New Delhi, South Delhi-110017, and are engaged

in the planning, construction, development and sale of residential and commercial projects.

- II. That around August 2018, the respondent shared details of its project "Palm Gardens" developed on a sprawling residential land parcel and strategically located at a prime location. They further represented that the possession will be offered on or before 31.12.2018 as per the MOU.
- III. That based on the representations and goodwill of the respondent, the complainants agreed to purchase a unit in the project. The complainants paid Rs.1,00,000/- on 28.08.2018 through NEFT and handed over cheques amounting to Rs.5,00,000/- on 31.08.2018 and Rs.7,00,000/- on 01.09.2018. The details of the NEFT and cheques handed over by the complainants are as follows:

Chq. No./ NEFT No.	Dated	Drawn on Bank	Amount (Rs.)
N239180617285970	28.08.2018	Hdfc Bank, Delhi	1,00,000/-
000037	31.08.2018	Hdfc Bank, Delhi	5,00,000/-
000042	01.09.2018	Hdfc Bank, Delhi	7,00,000/-

- IV. That the provisional allotment letter was issued to the complainants on 12.09.2018 which was subject to the complainants acceptance of all the terms and conditions as set out in the Buyer's Agreement which was to be executed.
- V. That as per the allotment letter, the possession of the unit was to be offered to the complainants by 31.12.2018. The complainants waited and followed up patiently till the mid of 2019 and thereafter because of

non-completion of the project and not offering possession of the unit, the complainants asked for a way out. The respondent provided the way out of adjusting the advance in the payment for a unit -PGC/26 offered for allotment of shop measuring 248 sq.ft in a shopping complex or if it is not possible then refund of the same amount.

- VI. That the said MOU clearly stated that the allotment was only provisional in nature and a separate buyer's agreement would be entered into between the respondent and the complainants at a subsequent stage which was not executed till date.
- VII. That the malevolent intent of the respondent is apparent from the fact that despite more than half a year having passed, they did not enter into a formal buyer's agreement nor have given a formal allotment of the unit.
- VIII. That the complainants have been following up persistently with the respondent through email and phone calls since mid of 2019 about adjusting the advance money of Rs.13,00,000/-. That the complainant also requested for refund of advance money of Rs.13,00,000 /- with interest which was later on denied by the respondent by stating that the unit PGN-8-006 has been cancelled and the earnest money of Rs.13,00,000/- has been forfeited. But the fact was that the complainant was instructed by the respondent to cancel the unit and against this cancelled unit, another unit i.e., PGC/26 was offered. The complainants also paid Rs.3,00,000/- as an advance separately for the other unit offered. That clause 18 (a) of the MOU or Provisional Allotment Letter clearly specifies that the company shall offer possession of the unit to the applicant (successful allottee) on or

before 31.12.2018 and/or such extended period as may be granted by the Authority and/or as may be agreed between the parties.”

IX. That as per the above said clause no extension letter of the Authority has been provided to the complainant by the respondent and no such extended date was agreed upon.

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

4. The complainants have sought following relief(s)

- i. Direct the respondent to refund the entire money paid by the complainant i.e Rs.13,00,000/- with interest from the date of each payment made by the complainant till date the refund is made.
- ii. Declare the MOU or Provisional Allotment Letter dated 12.09.2018 as cancelled.

**D. Reply filed by the respondent**

5. The respondent had contested the complaint on the following grounds:

- I. That the complainants being interested in the project “Palm Gardens” at Sector 83, Village Kherki Daula, Tehsil and District Gurgaon approached the respondent to purchase the unit and upon their application for allotment, unit bearing no. PGN-08-0006 on ground floor admeasuring super area 3750 sq. ft. was allotted vide provisional allotment letter dated 12.09.2018. That along with the provisional allotment letter, the Buyer’s Agreement was also handed over for execution.
- II. That the complainants, after having independently surveyed and after full satisfaction with respect to the development of the unit and the project executed the application form, the contents of which were willingly and voluntarily agreed by the complainants. The rights and obligations of the parties flow directly from the application form. It is

also a matter of fact that the complainants were given broker's discount of Rs.2,00,000 at the time of booking.

- III. That it was categorically agreed between the parties that the execution of Buyer's Agreement was of essence. It was also the obligation of the complainants to make the future payments, as agreed. That it was the prime responsibility of the complainants to execute the agreement which was provided for execution along with the allotment letter. However, the complainants miserably failed to do so.
- IV. That as per the payment plan, the next installment was bound to be paid "within 45 days of issuance of allotment letter & Registration of Buyer's Agreement". It is a well settled trite law that no demand could have been raised to the complainants before the execution of the Agreement. Hence, the complainants were requested to execute the Buyer's Agreement and thereafter make the requisite payment, however, it was not done by the complainants.
- V. That consequently, the unit was terminated on 05.08.2019. After the termination of the unit, the booking amount paid by the complainants was forfeited as per clause 15 of the Application form, which is reiterated hereunder:

**Clause 15.** *The Applicant understands that the Company shall treat 10% ten percent of the Total Price to be paid/paid by the Applicant as per the Payment Plan as Earnest Money to ensure fulfilment, by the Applicant of the Terms and Conditions as contained herein and as may be contained in the Buyer's Agreement. In case of cancellation of allotment for any reasons whatsoever, for no fault of the Company or in the event of failure of the Applicant (successful allottee) to sign and return the Buyer's Agreement in its original form to the Company within thirty (30) days from the date of its dispatch by the Company, the Company shall be entitled to cancel the booking and forfeit the entire Earnest Money along with the Delay Payment Charges and GST paid by the Company on behalf of the Applicant for the Said Unit, and thereafter*

*return the balance amount, if any, to the Applicant (successful allottee) within the time stipulated under the Real Estate Act. The Applicant (successful allottee) agrees that the conditions for forfeiture as stated hereinabove shall remain valid and effective till the execution and registration of the conveyance deed and that the Applicant (successful allottee) hereby authorizes the Company to effect such cancellation and forfeiture after providing a notice of 30 days prior to such cancellation*

- VI. That the outset, it needs to be categorically noted that the present complaint is barred by limitation. After the termination on 05.08.2019, no claim persisted in favor of the complainants. That cause of action for any grievance that the complainants may have not existed on the date of filing of the complaint or the date of notice by the Authority.
- VII. That the present complaint has been filed after three years and hence, cannot be entertained. That this Authority in the case titled as "**Jattan Tanwar vs Emaar India Ltd.**" bearing complaint no. **2186 of 2021**, stated that:

*"The complainant remained dormant on his rights for more than 7 years since the cause of action arose i.e. from the issuance of cancellation letter dated 13.02.2014 and till filing of this complaint i.e., 23.04.2021 as he did not approach any forum to avail his rights for almost 7 years' It is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to **refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims.** Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Further, as observed in the landmark case i.e., **B. L. Sreedhar and Ors V. K. M. Munireddy and Ors. (AIR 2003 SC 578)** the Hon'ble Supreme court held that "**Law assists those who are vigilant and not those who sleep over their rights**" Law will not assist those who are careless of his/her right' In order to claim one's right, he/she must be watchful of his/her rights. only those persons'*



*who are watchful and careful of using his/her rights, are entitled to the benefit of law.*

- VIII. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint for refund of amount along with interest is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. Moreover, the respondent submitted that after cancellation they have created third party right and have placed on record relevant documents to that effect. The procedures of law cannot be allowed to be misused by the courts and it is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause.
- IX. That the allotment letter *ex facie* shows that the total sale price of the unit was Rs.1,98,82,512, 10% of the same amounts to Rs.19,88,251 and the complainants have only paid Rs.13,00,000, i.e., 6.5% of the total sale consideration. That without agreeing to the contents of the complaint in any manner whatsoever, it is submitted that even if the complainants would have been entitled to any refund after lawful deductions, the same would have been over and above 10% of the total sale consideration, i.e., over earnest money. However, the complainants have miserably failed in depositing even the earnest money. Thus, no claim of the complainants persists.
- X. That in accordance with the above, the claim of the complainants is bound to be dismissed and cannot be entertained, in any circumstance, whatsoever.

XI. That without prejudice to the contentions of the respondent, it is most humbly submitted that the respondent has ensured its utmost *bonafide* and lawful conduct since the very commencement. There is no delay in the development of the project, which was duly, timely, efficiently and effectively completed as per the agreed timelines. As per clause 18 of the application form, the possession was to be given within 3 months from the date of issuance of the occupation certificate by the concerned authorities and the same was subject to force majeure conditions beyond the control of the respondent. The Clause 18(a) is reiterated hereunder:

*Clause 18(a). Within 3 months from the date of issuance of occupation certificate by the concerned authorities, the Company shall offer the possession of the Unit to the Applicant (successful allottee). Subject to Force Majeure and fulfillment by the Applicant (successful allottee) of all the terms and conditions of the Agreement including but not limited to timely payment by the Applicant (successful allottee) of the Total Price payable in accordance with Payment Plan, along with stamp duty, registration charges and other charges in connection thereto due and payable by the Applicant (successful allottee) and also subject to the Applicant (successful allottee) having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Applicant (successful allottee) on or before 31 December 2018 and/or such extended period as may be granted by the Authority and/or as may be agreed between the Parties.*

XII. That it was categorically agreed between the parties that the possession timelines shall be duly extended if delay is due to *force majeure* circumstances beyond the control of the respondent. Clause 18(c) of the application form is reiterated hereunder:

*Clause 18(c). If, however, the offer of possession of the Unit is delayed due to Force Majeure, the time period for offering possession shall stand extended automatically to the extent of the delay caused under the Force Majeure circumstances. The Applicant (successful allottee) shall not be entitled to any compensation for the period of such delay. The Applicant (successful allottee) agrees and confirms that, in the event it becomes impossible for the Company to*

*implement the Project due to Force Majeure conditions, then the Agreement and the allotment of the Unit shall stand terminated and the Company shall refund to the Applicant (successful allottee) the entire amount received by the Company from the Applicant (successful allottee) after deduction of GST paid by the Company on behalf of the Applicant for the Said Unit within 90 (ninety) days from that date on which Company confirms that it has become impossible for the Company to implement the Project. The Company shall intimate the Applicant (successful allottee) about such termination at least 30 (thirty) days prior to such termination of the Agreement. After refund of the money paid by the Applicant (successful allottee), the Applicant (successful allottee) agrees that he/she shall not have any rights, claims etc. against the Company and that the Company shall be released and discharged from all its obligations and liabilities under the Agreement.*

- XIII. That the respondent faced a number of force majeure circumstances and the defaulting conduct of the complainants. It must be brought to light that the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants.
- XIV. That the project got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However,

ILFS continued with its wanton acts of instigating frivolous and false disputes for reasons best known to it. It is submitted that the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the agreement.

- XV. That Clause 18(a) specifically provides that respondent shall offer possession of the unit to the allottee on or before 31.12.2018 or such extended period as may be granted by the Authority. The allotment was made on 12.09.2018, whereas there has been a typographical error in clause 7(a) "*the Company shall offer possession of the unit on or before 31.12.2018*" rather it should have been 31.12.2019, which is also logical. For an under-construction property, under no circumstance whatsoever, the possession could have been completed and delivered within 3 months. Moreover, this timeline was also extended by the Authority. Reference is laid to the Registration certificate no. 330 of 2017 dated 24.10.2017 and the extension certificate no. 02 of 2019 dated 02.08.2019 which extended the completion timeline till 31.12.2019.
- XVI. That it is submitted that after the lawful termination of the unit, the unit was sold to a third person namely, Rajeev Kumar Bansal and Asha Bansal vide Buyer's Agreement dated 17.06.2021 and consequently, conveyance deed dated 07.04.2022 was also executed. That it is categorical to note that the respondent was not obligated to adhere to any request made by the complainants with respect to transfer of funds

to a different unit and hence, the contentions of the complainants in this regard are vehemently denied and cannot be relied on.

XVII. That hence, there are no defaults of the respondent. It is submitted that the complainants has consciously defaulted in their obligations as enumerated in the Application Form as well as under the Act. The complainants cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law and hence deserves to be dismissed.

6. 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 and submission made by the parties.

#### **E. Jurisdiction of the authority**

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

##### **E.1 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 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;*

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.

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

**F.I. Objection regarding complaint being barred by limitation.**

11. The respondent has contended that the complaint is barred by limitation. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This

Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

12. In the present matter the cause of action arose on 05.08.2019 when the unit was cancelled by the respondent. The complainants have filed the present complaint on 28.09.2022 which is 3 years 1 months and 23 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

**F.II. Objections regarding force majeure circumstances.**

13. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by the NGT to stop construction and development activities, restrictions on usage of water. The plea of respondent regarding various orders of the NGT and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, the project got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), ILFS has intentionally delayed the progress of construction for which the

respondent cannot be held liable either in equity or in accordance with the provisions of the agreement. The Authority is of the view that the said dispute between the contractor and the respondent/promoted has nothing to do with the complainants and the complainants cannot be made to bear the losses. Thus, the promoter/respondent cannot be given any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

- G.I. Direct the respondent to refund the entire money paid by the complainants i.e Rs.13,00,000/- with interest from the date of each payment made by the complainant till date the refund is made.**
- G.II. Declare the MOU or Provisional Allotment Letter dated 12.09.2018 as cancelled.**

14. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. 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."  
(Emphasis supplied)*

15. The complainants entered into a booking for a unit in the project "Palm Gardens" located at Sector-83, Gurgaon, Haryana and were provisionally allocated unit number PGN-08-0006 with a carpet area of 2444.95 sq. ft., for a total sale consideration of Rs.1,98,82,512/-. An initial payment of Rs.13,00,000/- was made to the respondent. The provisional allotment letter, dated 12.09.2018, was issued to the complainants, and to date, no buyer's agreement has been executed between the parties. Clause 18(a) of the provisional allotment letter stipulated that possession of the unit was to be handed over to the complainants by 31.12.2018, establishing this as the agreed upon deadline for possession. Clause 18 (a) is reproduced below:

**Clause 18(a).** *Within 3 months from the date of issuance of occupation certificate by the concerned authorities, the Company shall offer the possession of the Unit to the Applicant (successful allottee). Subject to Force Majeure and fulfillment by the Applicant (successful allottee) of all the terms and conditions of the Agreement including but not limited to timely payment by the Applicant (successful allottee) of the Total Price payable in accordance with Payment Plan, along with stamp duty, registration charges and other charges in connection thereto due and payable by the Applicant (successful allottee) and also subject to the Applicant (successful allottee) having complied with all formalities or documentation as prescribed by the Company, **the Company shall offer the possession of the Unit to the Applicant (successful allottee) on or before 31 December 2018** and/or such extended period as may be granted by the Authority and/or as may be agreed between the Parties.*

16. No builder buyer's agreement has been executed between the parties, relieving the respondent from the obligation to demand more than 10% of the total sale consideration from the complainant for the subject unit. The complainants initially paid Rs.1,00,000/- as booking amount and

subsequently an additional Rs.12,00,000/-. Therefore, the complainants have paid a total of Rs.13,00,000/- out of the total sale consideration of Rs.1,98,82,512/-, which amounts to less than 10% of the total sale consideration.

17. The counsel for the complainants stated that the complainants are seeing full refund of the amount paid, citing the respondent's failure to deliver the unit within the agreed timeframe as per the terms of the application form. This request for refund was submitted on 18.03.2019, after the specified due date when the respondent failed to hand over the unit. In response, the counsel for the respondent argued that the unit was cancelled on 05.08.2019 because the complainants did not adhere to the payment plan and allotment letter by failing to deposit the due amount.
18. Upon meticulous examination of the facts and the documented evidence, the Authority observes that the respondent acquired the occupation certificate for the subject unit on 02.05.2019, and subsequently issued a cancellation letter on 05.08.2019, following the receipt of the occupation certificate from the relevant authorities. The complainants correspondingly sent an email to the respondent on 23.07.2019, surrendering the unit and requesting the transfer of the paid amount associated with the unit to the allotment of a shop in the adjacent shopping complex at Palm Garden. The e-mail at page no. 37 of the complaint is reproduced below:

*" i would like to surrender my booking made for Unit no. PGN-8-006 in Emaar Palm Gardens project and request you to transfer the amount of 13 lacs paid as advance against the said unit against my request for allotment of a shop measuring 248sq.ft. in the neighbourhood shopping complex at Palm Gardens-sector-83, Gurgaon*

*Pls confirm the same at the earliest"*

19. The complainants made the request for a refund before the respondent initiated the cancellation, although this occurred subsequent to the respondent obtaining the occupation certificate. Additionally, Clause 15 of the application form explicitly states that upon cancellation of the unit, it was mutually agreed between the parties that the respondent would forfeit 10% of the total sale consideration as earnest money. The said clause is reproduced below:

*"The Applicant understands that the Company shall treat 10% ten percent of the Total Price to be paid/paid by the Applicant as per the Payment Plan as Earnest Money to ensure fulfilment, by the Applicant of the Terms and Conditions as contained herein and as may be contained in the Buyer's Agreement. In case of cancellation of allotment for any reasons whatsoever, for no fault of the Company or in the event of failure of the Applicant (successful allottee) to sign and return the Buyer's Agreement in its original form to the Company within thirty (30) days from the date of its dispatch by the Company, the Company shall be entitled to cancel the booking and forfeit the entire Earnest Money along with the Delay Payment Charges and GST paid by the Company on behalf of the Applicant for the Said Unit, and thereafter return the balance amount, if any, to the Applicant (successful allottee) within the time stipulated under the Real Estate Act. The Applicant (successful allottee) agrees that the conditions for forfeiture as stated hereinabove shall remain valid and effective till the execution and registration of the conveyance deed and that the Applicant (successful allottee) hereby authorizes the Company to effect such cancellation and forfeiture after providing a notice of 30 days prior to such cancellation*

20. The Authority is of the view that the complaint must be dismissed because the complainants did not substantiate any violations of the Act

by the respondent. It is noted that no builder buyer agreement was executed between the parties, and the complainants have only paid Rs.13,00,000/-, which constitutes less than 10% of the total sale consideration for the unit. The respondent cancelled the unit due to the complainants' failure to make further payments and the absence of an executed buyer's agreement. Consequently, expecting the respondent to retain the unit indefinitely is unreasonable. Since the amount paid by the complainants was less than 10%, it has been forfeited by the respondent as earnest money as per the terms of the application form. Therefore, the complaint lacks merit and is liable to be dismissed.

21. The complaint stands disposed of.
22. File be consigned to registry.

Dated: 10.07.2024

**(Ashok Sangwan)**

Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
GURUGRAM